

Review of the Convention for the  
Protection of Cultural Property in  
the Event of Armed Conflict

(The Hague Convention of 1954)

Patrick J. Boylan

1993

*In Memoriam:*

*Hugh and Christiana Boylan*

*Kingston upon Hull, England*  
*7th/8th May 1941*

© 1993. *Patrick J. Boylan, Department of Arts Policy and Management, City University, Frobisher Crescent, Barbican, London EC2Y 8HB.*

## Contents

### CONTENTS

	<i>Page</i>
<i>Foreword</i>	5.
<i>Executive Summary and Recommendations</i>	7.
<i>Chapter</i>	
1. Introduction	19.
2. Evolution of concepts of cultural protection in times of armed conflict	23.
3. The 1954 Convention's definition of Cultural Property	49.
4. The 1954 Convention's concepts of protection, safeguarding and respect for Cultural Property	.
5. Peacetime preparation for the application of the 1954 Convention	61.
6. The concept and application of 'Special Protection': the International Register and Transport	75.
7. Practical application of the 1954 Convention: official Emblem, scope and the roles of Protecting Powers, UNESCO, and Commissioners-General	83.
8. Periodic Reports of High Contracting Parties	89.
9. Legal Enforcement and Sanctions	91.
10. Movable Property in times of armed conflict: the 1954 Hague Protocol and the 1970 UNESCO Convention	99.
11. Adoption of 1954 Convention and Protocol by States	103.
12. World Heritage Convention and List	109.
13. Non-international conflicts: national, regional, ethnic and religious armed conflicts	115.
14. Role of UNESCO	127.
15. Role of the United Nations	133.
16. Role of both High Contracting parties and other States	137.
17. Role of Non-Governmental Organisations	141.
18. Possible future amendments to the 1954 <i>Convention</i>	143.

*Appendices*

1.	Appendix I: Texts of 1954 Hague Convention, Protocol and Hague Conference Resolutions	147.
2.	Appendix II: Parties to 1954 Hague Convention and other international treaties.	169.
3.	Appendix III: Treaty on the Protection of Artistic and Scientific Institutions and Historic Monuments (Roerich Pact), Washington, 15 April 1935	177.
4.	Appendix IV: Extracts from 1923 Convention for Rules of Air Warfare drawn up by a Hague Conference of Jurists	179.
5.	Appendix V: International Museums Office, October 1936: Preliminary Draft International Convention for the Protection of Historic Buildings and Works of Art in Time of War	181.
6.	Appendix VI: Comparison of definitions of Cultural Property in different international instruments	189.
7.	Appendix VII: Periodic Reports of High Contracting Parties	199.
8.	Appendix VIII: January 1993 report of Department of Defense, United States of America, to Congress on international policies and procedures regarding the Protection of Natural and Cultural Resources during Times of War	201.
9.	Appendix IX: Government of the Netherlands: translation of <i>Handbook on Protecting the Cultural Heritage in Emergencies</i> , January 1991	207.
10.	Appendix X: Outline of Recommended Composition and Role of proposed Intergovernmental Advisory Committee on the Protection of Cultural Property in the Event of Armed Conflict	219.
11.	Appendix XI: Charles E. McConney, Los Angeles, 1992: Draft Proposal for the Creation of a Permanent Monuments, Fine Arts and Archives Unit within the U.N. Peace-keeping Forces (Summary)	221.
12.	Appendix XII: Parliamentary Assembly of the Council of Europe: February 1993 Report on the destruction by war of the cultural heritage in Croatia and Bosnia-Herzegovina	225.
	<i>Acknowledgements</i>	235.
	<i>Bibliography</i>	241.

## Foreword

### FOREWORD

Born just two weeks before the start of World War II in the English port city of Hull, Yorkshire, that was to suffer the most severe and sustained bomb damage of any town in the United Kingdom<sup>1</sup>, my earliest memories are of war: the destruction of our family home when I was only eighteen months old; a single but clear memory of my paternal grandparents before they were killed along with over sixty neighbours less than three months later in a communal shelter just two hundred metres from the main railway line to the docks of the country's third most important port. However, even the worst of those experiences left me unprepared for the vast areas of total destruction seen during my first visits to Rotterdam and Köln in the early 1950s.

As a young schoolchild I had been made aware the war destroys culture as well as family, neighbours, strangers, homes and workplaces through parental stories of the destruction of more than half of Hull's unique, and pioneering, system of museums created over a period of nearly forty years, and largely due to the genius and efforts of the City's founding museum director, Thomas Sheppard. In 1964 I obtained my first museum job, in that same museum service, still only a fraction of the size it had been in 1940, with special responsibility for helping to develop a new central museum to replace at least part of what had been lost between 1940 and 1944. Sadly, the war damage compensation received had been only nominal, and despite the best efforts of the City Council the proposal was finally abandoned in the economic crisis of the early 1970s.

However, my four years with the Hull Museums gave me a close insight into the effects of war on internationally important collections. The catalogues and indexes of the collections of all but two of the museums had also been totally lost in the fire bombing of the Central Museum in the summer of 1943. Consequently, one of my responsibilities, that of reconstructing for scientific publication lists of type and other published specimens meant painstaking searches through thousands of scientific papers and books covering areas known to have been represented in the collections. The same method had to be used in attempting to identify the few hundred specimens rescued by the fire service and museum staff during and in the days after the total destruction of the Central Museum, almost all of which had lost their labels in the fire or because of the water used to extinguish it, and some were heavily encrusted with the melted lead that had rained down from the burning roofs of the museum.

My first museums and arts directorship, from 1968 to 1972, took me to the ancient City of Exeter, the Roman capital of the south-west peninsula. Here too the memories of war were still strong, because in April 1942 it was the victim of the first of the so called 'Baedeker Raids' (and of two more within the next three weeks). These destructive concentrated air attacks on the cathedral zones of some of England's most important historic (and undefended) towns, had been explicitly ordered by Hitler as reprisals for the British fire-storm experimental attack on the historic north German city of Lübeck, claiming that the British had acted in clear breach of the terms of engagement publicly exchanged between the belligerents, renouncing attacks on undefended historic centres and civilian populations unless the other side breached the undertaking first.

A more recent experience of the impact of war that I will never forget was my 1977 visit to Peter the Great's magnificent summer palace on the Baltic close to St Petersburg, deliberately blown up by the retreating German army at the end of the Siege of Leningrad,

<sup>1</sup>

87,500 out of 93,000 buildings in the City were destroyed or damaged, though this appalling toll is almost totally unknown outside the City, since the wartime censors banned the use of the City's name, allowing only reports of 'air raids on a North East Coast Town'.

leaving only parts of two outside walls standing, but expertly and lovingly restored over a period of more than thirty years. Similarly, I still find it impossible to fully express in words the impact of my first visit to the great Saxon capital of Dresden, virtually untouched until the - frankly incomprehensible - thirty-six hours of almost continuous bombing raids in February 1945, barely a week before the arrival of the Red Army in the city, and less than three months before the end of the War in Europe.

Armed conflicts, in the form of both traditional wars and - increasingly internal inter-communal strife - has been, and remains one of the major causes of the loss of the cultural patrimony of the peoples of the areas ravaged by both international and civil conflicts. However, humanity's culture and patrimony cannot be defined in narrow nationalistic, religious, linguistic or ethnic terms. Members of the same species sharing a common genetic ancestry 'We the peoples of the United Nations' (to use the opening words of the United Nations Charter - and the slogan for the U.N.'s forthcoming fiftieth anniversary celebrations in 1995) have a common culture and patrimony which in which the loss of the physical or spiritual cultural heritage of one people is a loss for the whole of humanity.

This loss is not just a loss for the people or community directly deprived of the evidence of their own past and present culture: the consequence is ultimately no less grave for those who may have deliberately brought it about, whether through the damage and destruction of historic buildings, monuments, sites, movable cultural property or of institutions of learning and education dedicated to them, whether through ignorance, neglect or by deliberate acts inspired by hatred.

Of course, though theologians and philosophers may well feel able to demonstrate that there is such a thing as a 'just war' no armed conflict can be seen as a good thing. Despite the cynical definition by Clausewitz of war as no more than diplomacy continued by different means, war is a sign of failure. Inevitably and entirely justifiably in armed conflicts the primary concern is with its impact on people, especially the innocent non-combatants such as children, women and the elderly, over the centuries, and indeed the past millennia, war has caused great and irreparable losses. Without descending to the banal, contemptible even, sophistry of the old debate as to whether in a disaster you should save the life of a child who can be replaced through the human reproductive process, or the Rembrandt masterpiece which can never be replaced, it is not unreasonable for the world community to seek to protect its cultural inheritance, and pass it on to future generations, even in the most extreme emergencies of war. Indeed, the need to minimise the effect on both the spiritual and physical heritage has been recognised in a growing body of International Humanitarian Law during more than a century.

Thirty-nine years ago the governments representing many of the peoples of the world, meeting in The Hague, The Netherlands, reviewing the successes and failures of cultural protection in the Second World War and other recent armed conflicts, resolved to create a new world system for the protection of the physical patrimony of humanity in times of war and other armed conflict, the *Convention for the Protection of Cultural Property in the Event of Armed Conflict, The Hague, 1954*. As the fortieth anniversary of that initiative approaches it is entirely appropriate that there should be a far-ranging debate on the future development and application of that key international treaty.

*Patrick J. Boylan*

*London, 30 April 1993*

## Foreword

### EXECUTIVE SUMMARY AND RECOMMENDATIONS

#### A. *TO UNESCO, OTHER INTER-GOVERNMENTAL INTERNATIONAL ORGANISATIONS, ALL STATES PARTY TO THE 1954 HAGUE CONVENTION, NON-SIGNATORY COUNTRIES, AND INTERESTED NON-GOVERNMENTAL ORGANISATIONS*

- A. 1. There have been many negative cases in more than one hundred wars and other armed conflicts that have occurred in different parts of the world since the adoption of the *Convention on the Protection of Cultural Property in the Event of Armed Conflict* and its supporting *Protocol* at The Hague in 1954, most recently in many parts of ex-Yugoslavia. In many of these wars and conflicts there have been serious losses of important cultural property and hence of the patrimony of all peoples. These losses have been due in most cases to the failure of parties in the various international and internal armed conflicts to comply with international law, and to both respect and positively safeguard physical evidence of the local, regional, national and international heritage.
- A. 2. Nevertheless, despite these apparent failures over the past forty years, the *Convention, Regulations and Protocol on the Protection of Cultural Property in the Event of Armed Conflict*, The Hague, 1954, are still entirely valid and realistic as international law, and remain fully applicable and relevant to present circumstances. The problem is essentially one of failure in the application of the *Convention* and *Protocol* rather than of inherent defects in the international instruments themselves.
- A. 3. The 1954 *Convention* as so well established that it is now regarded as an integral part of Customary International Law<sup>2</sup>, and as falling within the category of International Humanitarian Law<sup>3</sup>, because of the intimate, and ever-closer, relationship between the physical evidence of the culture of a people and its national, culture, ethnic and spiritual identity.
- A. 4. Technical improvements to the detailed provisions of the *Convention* and *Protocol*, may perhaps be desirable in the long term. However, these are a far lower priority at this time than the over-riding priority of achieving greater recognition, acceptance and application of their provisions. This is extremely urgent in view of the many cases, some highly-publicised, in which cultural property has been destroyed, damaged or looted in flagrant contravention of international law in both international and internal armed conflicts in recent years. Consequently, formal amendments to the *Convention* and *Protocol* are not recommended at the present time, though some points for possible future clarifications and improvements are identified in section G of these Recommendations.

---

<sup>2</sup> See for example the views of the United States Department of Defense in its submission to Congress of 19 January 1993 - Appendix VIII of this Report.

<sup>3</sup> Although the relevant Nuremberg War Crimes trials, particularly that of Rosenberg, appeared on the surface to focus on issues of ownership, and hence might be regarded as relating to property law or private international law, the fact that the actions were brought as war crimes under customary law as expressed in, for example, the *Hague Conventions* placed the issue beyond doubt. Most recently this position has been re-affirmed by the United Nations Commission of Experts investigating alleged war crimes in ex-Yugoslavia, (U.N. Doc. S/25274 dated 26 January 1993, p. 13) and by senior United Nations officials in interviews on 24 February 1993.

- A. 5. No reasonable interpretation of the 1954 *Convention*, which deals specifically and exclusively with *cultural* heritage property of importance to humanity, would permit its extension to include *natural* heritage property of similar importance, even though both are covered by the UNESCO World Heritage Convention of 1972 (*Convention concerning the Protection of the World Cultural and Natural Heritage*). Incorporating the natural heritage in the provisions would require fundamental amendments to its basic objectives or, more likely, a completely new treaty.



### **Executive Summary and Recommendations**

- A. 6. As a first step in achieving greater recognition and more effective implementation of the 1954 *Convention*, it is essential that the number of States Party to it be greatly increased, since the effectiveness of any international law ultimately depends on the principle of universal acceptance<sup>4</sup>.
- A. 7. However, some of the most important provisions of the 1954 *Convention* - those relating to the concept of pre-registered and internationally notified 'special protection' of localities of pre-eminent world cultural importance - have clearly not been effective because of the almost total failure of High Contracting Parties to submit proposals for 'special protection'. High priority must be given to making progress in this area, particularly (though by no means exclusively) by urging High Contracting Parties to the 1954 *Convention* to submit potentially eligible World Heritage Convention cultural sites for 'special protection' designation as 'centres containing monuments and other immovable cultural property of great importance'<sup>5</sup>.
- A. 8. In armed conflicts, whether international, inter-community or otherwise internal to a single sovereign state, in addition to unlawful action against protected cultural property there are all too often large numbers of civilian casualties or other cases of abuse of other aspects of international law and of civilised values. It is inevitable that in such cases the human tragedies will usually attract greater international and media attention than the loss or damage of the physical patrimony. However, it is important that all parties recognise that in many recent cases the destruction of the physical evidence of the existence of the national, ethnic and/or religious community under attack has been an integral part of the various types and levels of humanitarian abuse of the civilian peoples, through to the level of alleged genocide, as legally defined<sup>6</sup>. Consequently it is most important that all parties take urgent action to increase understanding of, and respect for, the culture, symbols and values of all peoples, especially of minority peoples.

### **B. TO UNESCO**

- B. 1. The current policy of the Director-General of urging newly admitted Member States to adopt without delay (*inter alia*) the 1954 *Hague Convention* and *Protocol* is welcomed, and should be continued. In addition the Executive Board should immediately request Director-General to approach again every other non-signatory sovereign State recognised by the United Nations and/or UNESCO, whether or not they are UNESCO members, in accordance with Articles 31 and 32 of the *Convention*, urging them to adopt the *Convention*.

---

<sup>4</sup> Though there are now good grounds for regarding as established Customary International Law the principle that cultural property must be protected in times of armed conflict, (see for example the views of the United States of America Department of Defense in its submission to Congress, 19 January 1993 -Appendix VIII of this Report), formal ratification or accession and legislative implementation of the 1954 *Hague Convention* and *Protocol* at the national level is clearly desirable, if only for the avoidance of doubt on its applicability.

<sup>5</sup> The only major cultural complex currently on the list of five sites granted 'Special Protection' under Chapter II of the 1954 *Convention* is the Vatican City: the others are all temporary refuges or war-time evacuation shelters. It must be recognised that many World Heritage List cultural sites may not be eligible for 'Special protection' because the Contracting Party concerned finds it impossible or impracticable to meet the conditions of the *Convention* because of their proximity to actual or potential legitimate military targets.

<sup>6</sup> *Convention on the Prevention and Punishment of the Crime of Genocide*, 1948.

- B. 2. In addition to taking action in times of armed conflict either through the appointment of Commissioners-General or Special Representatives of the Director General, UNESCO should appoint or nominate experts to serve as liaison and advisory officers in the field to commanders of United Nations Peace-keeping Forces in support of UN peacekeeping and peacemaking operations;
- B. 3. It is probably inevitable that in times of actual or threatened armed conflict international public opinion will focus attention on particularly famous and important sites: Angkor Wat in Cambodia, Dubrovnik in Croatia, Tyre in Lebanon. While World Heritage and other famous sites should certainly never be neglected, UNESCO and other international organisations, when under such pressure, should not restrict their actions and practical measures to such sites at the expense of more broadly based support for the wider cultural patrimony suffering serious damage or under threat in the region concerned.
- B. 4. There is a considerable body of practical information and experience, dating from at least the period of the Spanish Civil War and the Second World War onwards, on practical measures for the protection of monuments, museums, libraries, archive repositories etc. in the face of the prospect of armed conflict. For example, the International Museums Office prepared for the International Institute of Intellectual Cooperation, (in many respects UNESCO's predecessor under the League of Nations system), a very substantial practical handbook in the Autumn of 1939, and - especially UNESCO's own substantial Museums and Monuments Series handbook by A. Noblecourt published in 1954 (French edition) and 1958 (English edition)<sup>7</sup>. UNESCO should commission and publish up-to-date research and advice on practical protection measures, integrating this advice with recommendations on necessary practical measures for the prevention and mitigation of natural and civil disasters.
- B. 5. UNESCO should work closely with all relevant non-governmental international organisations, including all of the NGOs associated with UNESCO working in the field of material culture<sup>8</sup>, and with the International Committee of the Red Cross, in both developing and actively promoting such professional and technical advice.
- B. 6. One of the highest priorities for all international and national bodies in relation to both immovable and movable cultural property, and especially for UNESCO, must be to develop greater understanding of, and respect for, the great many different cultures and traditions of the different peoples of the world. Work towards this should include additional programmes of education and information for peoples of all ages, and especially within multi-ethnic and multicultural societies. Some of the greatest losses in recent armed conflicts have been the result of deliberate damage and destruction of the cultural evidence of the existence of enemy, or indeed just different, peoples.
- B.7. In times of war and other armed conflict UNESCO should put additional resources into attempting to counter by all practicable means the prevailing negative cultural propaganda, particularly through the presentation of unbiased radio and television programmes both from ground stations and satellite stations.<sup>9</sup>

---

<sup>7</sup> Noblecourt, 1954 & 1958: see also paras. 5.6 - 5.9 of this Report.

<sup>8</sup> A non-exhaustive list of organisations which should be involved is given in the suggested composition of the proposed UNESCO Intergovernmental Advisory Committee on the Protection of Cultural Property in the Event of Armed Conflict - see Appendix X.

<sup>9</sup> The UNESCO Radio tape service programme giving information on the 1991-92 bombardment of the World Heritage List city of Dubrovnik was an excellent example of what could be done in this respect.

### Executive Summary and Recommendations

- B. 8. Pending any future revision or updating of the provisions of the 1954 *Convention and Protocol*, it is strongly recommended that the next General Conference of UNESCO should be asked to consider and adopt a substantial composite Resolution incorporating a series of practical Recommendations in relation to the Protection of Cultural Property in the Event of Armed Conflict, and in particular aimed at greatly improving the effectiveness and practical application of the 1954 *Convention* including:
1. a Recommendation urging all non-signatory Sovereign States of the world to adopt and implement in terms of national legislation and administrative procedures both the *Convention on the Protection of Cultural Property in the Event of Armed Conflict, The Hague, 1954*, and its *Protocol* without delay;
  2. a Resolution urging that in view of the alarming scale of loss of movable cultural property from monuments, museums, libraries, archives and other depositories of cultural property in times of both international and internal armed conflict, all High Contracting Parties to the 1954 *Convention* be urged to adopt both the 1954 *Hague Protocol* and the 1970 UNESCO *Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property*, and to institute effective national and international measures to prevent trafficking in cultural material from war zones;
  3. a Resolution establishing a UNESCO Intergovernmental Advisory Committee on the Protection of Cultural Property in the Event of Armed Conflict, constituted under Category II (Articles 18 - 20) of the UNESCO *Regulations for the general classification of the various categories of meetings convened by UNESCO*<sup>10</sup>. The Committee should follow in general terms the model of the World Heritage Committee<sup>11</sup>, though it would not have executive powers. The main purpose would be keep under review the effectiveness and implementation of the 1954 *Convention and Protocol*, to advise the Director-General, the General Conference, States Party to the Convention, as well as non-signatory sovereign states, on appropriate practice in relation to all aspects of the implementation of the *Convention* and more generally on the Protection of Cultural Property in times of Armed Conflict. The Intergovernmental Advisory Committee would in particular receive, review and formally publish the periodic reports of High Contracting Parties specified in Article 26(2) of the 1954 *Convention*, and would assist the Director General in relation to the training and education programmes referred to below. Draft terms of reference and outline rules of procedure for the proposed Advisory Committee are proposed in Appendix X of this Report;
  4. authorization of plans for UNESCO to establish a programme of regional intergovernmental information/training seminars for both High Contracting Parties and non-signatory States in different parts of the world (perhaps one per year for five or six years), as it is clear that many of the non-signatory Member States of UNESCO and some High Contracting Parties are uncertain about what adopting and implementing 1954 *Convention* would mean in practical terms. This is particularly true of the large number of States in

---

<sup>10</sup> Regulations adopted at the 14th, 18th and 25th sessions of the UNESCO General Conference, (UNESCO *Basic Texts*, 1992, pp.120 - 122.

<sup>11</sup> UNESCO, 1972. *Convention concerning the Protection of the World Cultural and Natural Heritage* Chapter III, Articles 8 - 10.

the Americas which in 1954 were already parties to the 1935 'Roerich Pact'<sup>12</sup>, and of the many Member States in Africa, Asia and the Caribbean which became independent during the period of de-colonisation during the third quarter of the century;

5. a Resolution reminding all High Contracting Parties to the 1954 *Convention* of the importance of their obligation under Article 26 of the *Convention* to forward four-yearly reports to the Director-General on the 'measures being taken, prepared or contemplated... in fulfilment of...' the *Convention* and Regulations.
6. a Recommendation proposing urgent new programmes of action to improve public understanding and tolerance in relation to the values of cultural property and cultural diversity, at both the international level through both UNESCO and relevant Non-Governmental Organisations, and at national, regional and local levels, through Member States, National Commissions for UNESCO, and educational and non-governmental organisations;
7. proposals for additions to UNESCO's Third Medium Term Plan, especially Programmes III.3 (Preservation and enhancement of the cultural heritage), VII.1 (Peace in the minds of men) and VII.2 (Human rights)<sup>13</sup>, to provide additional staff and financial resources for necessary urgent action to enable UNESCO to respond more effectively to current crises, and to establish the proposed new arrangements for increasing its activities in this field, including the proposed programmes of regional intergovernmental information/ training seminars and of public information and education;
8. authorization for UNESCO support of United Nations peacemaking and peacekeeping operations in areas of cultural importance through the appointment or nomination of appropriate experts to liaise with United Nations force commanders in the field;
9. a Resolution calling on the United Nations to take appropriate action through the General Assembly, Security Council, Military Staff Committee and Secretary-General respectively to adopt the policies and role proposed for the United Nations in Section C of these Recommendations.

### **C. TO THE UNITED NATIONS**

- C. 1. Historically, and even in recent times, disputes over issues relating to the physical evidence of the national, cultural and - especially - religious identities of peoples have been significant factors in the development and escalation of international disputes, and have even on occasion provided the final *casus belli* for international and civil wars. The United Nations should recognise that even in less extreme cases such issues can be potent factors in escalating conflicts, and in the promotion and spread of international and inter-community fear and hatred. They can therefore be a significant threat to the maintenance of peace and of both peacemaking and peace-keeping. Consequently, the implications of the possible threat to peace of such matters is an entirely proper consideration for the Security Council under its responsibilities relating to the 'Pacific Settlement of Disputes' and 'Threats to Peace' under Chapters VI and VII

<sup>12</sup> Washington Pact of 15 April 1935 for the *Protection of Artistic and Scientific Institutions and of Historic Monuments* (Roerich Pact).

<sup>13</sup> UNESCO 1990. *Third Medium-Term Plan (1990-1995)* [25 C/ 4 Approved] (UNESCO, Paris).

### **Executive Summary and Recommendations**

of the United Nations Charter, (see also the current Secretary-General's 1992 *An Agenda for Peace*)<sup>14</sup>.

- C. 2. In accordance with these principles, the United Nations should continue to support the efforts of UNESCO and the High Contracting Parties to the 1954 Convention in relation to promoting the understanding and recognition of the cultural dimension in international relations and in both international and internal armed conflicts;
- C. 3. In future the United Nations, should as a matter of routine, seek expert advice through UNESCO on the cultural protection implications of proposals for action under Chapters VI and VII of the *Charter* in relation to threats to international peace, armed conflicts and peacekeeping.
- C. 4. In relation to the issue of possible 'cultural' war crimes in the former Yugoslavia, the Secretary-General of the United Nations should accept the offer of the Director-General of UNESCO to assist in this investigation of possible war crimes. In particular it is most desirable that the United Nations' team of experts investigating the complaints and allegations in respect of ex-Yugoslavia should be augmented by the appointment of at least one expert in relevant cultural property issues.
- C. 5. The United Nations is urged to develop and present to the proposed international War Crimes Tribunal on cases relating to ex-Yugoslavia<sup>15</sup> some test cases in relation to war crimes against cultural property in violation of the provisions of the 1954 *Convention*, in order to determine the extent of the application and effectiveness of international law in such matters, and to establish precedents and examples in this respect.
- C. 6. The assistance of the United Nations in providing practical support to UNESCO official representatives undertaking duties in relation to the provisions of the 1954 *Convention* in some past peacekeeping (including Observer Mission) operations has been of great importance. The United Nations should in future provide such necessary facilities and logistical support for UNESCO-appointed or -nominated experts on a regular basis. In addition to undertaking their functions on behalf of UNESCO and in relation to the 1954 *Convention*, where appropriate such experts should also act as liaison and advisory officers in the field to commanders of United Nations Peace-keeping Forces, on the lines successfully pioneered in the later stages of the Second World War in western and central Europe.
- C. 7. It is recognised that the training and other preparation for their missions of peacekeeping etc. forces allocated to the United Nations is primarily the responsibility of the military systems of the Member States providing the forces. However, it is most important that both officers and the ordinary troops engaged on peacekeeping missions should have adequate training in relevant international and national military and civilian law relating to cultural protection, (and indeed in respect of the cultural, ethnic and religious values of the peoples of the country of the operation in question). The United Nations should develop standard minimum requirements in terms of training, briefing and/or the applicable national military operations manual, including issues relating to the protection of cultural property. Participating Member States should then be requested to ensure that forces allocated to United Nations operations are adequately trained

---

<sup>14</sup> United Nations, 1990: particularly Articles 34 and 39 respectively; Boutros-Ghali, 1992 pp. 13 - 22.

<sup>15</sup> Under Security Council Resolution 808 of February 1993.

and briefed in such matters, and that appropriate military discipline is maintained in relation to both the respecting of monuments and other cultural property, and the enforcement of relevant cultural property export laws and codes.

- C. 8. Because important cultural monuments and collections are frequently seen as amongst the clearest expressions of the identity and values of peoples, the United Nations should recognise as a form of humanitarian aid measures to provide emergency practical assistance, including the services of international experts and of essential measures such as the supply of specialised conservation materials and equipment required for the preservation of cultural property of international, national or other cultural importance damaged or threatened by armed conflict. Such essential assistance should not be subjected to undue restriction or delay under any United Nations sanctions regime.
- C. 9. In the context of both the *Universal Declaration of Human Rights* (1948) and the 1992 *Declaration of the United Nations* in relation to the rights (including cultural rights) of minority peoples, and especially Articles 1, 4(2), and 4(4)<sup>16</sup>, the United Nations should support UNESCO and United Nations Member States in the development of programmes of public information and education about cultural and ethnic diversity and respect for the cultures of all peoples, especially within multi-ethnic, multi-religious and multicultural societies.

**D. TO ALL HIGH CONTRACTING PARTIES TO THE 1954 CONVENTION**

- D. 1. Most High Contracting Parties to the 1954 *Convention* still have very much to do at the practical level to implement the solemn pledges they have given to the world community, and indeed to their own citizens, in their ratification of, or accession to, this important Treaty. Far more needs to be done at the practical level to meet the obligations that States Parties to the *Convention* have entered into in their acceptance of it. There are however some notable exceptions to this generalisation, though they number perhaps four or five at the most, for example, Austria, Switzerland and The Netherlands, (and indeed in some respects the former Yugoslavia). These examples of serious and successful application of the practical provisions of the *Convention* show that the task is not a very onerous one in terms of either money or resources. Information on the practical measures taken needs to be shared more widely, for example through the proposed new UNESCO training/information seminar and publications programmes.
- D. 2. Particularly high priorities are the implementing of effective provisions within national military and civilian criminal law for the investigation and punishing of alleged 'cultural' war crimes and other offences by nationals and other residents of the State, and of active programmes of military and public education and information intended to increase knowledge and understanding of, and respect for, the protection of the cultural property and cultural values of all peoples.
- D. 3. In view of the grave losses of movable cultural property from areas affected by international wars and internal armed conflicts such as civil wars and inter-communal conflicts, high priority needs to be given to effective national administrative and criminal law measures to stop the international trafficking in stolen or otherwise illicitly acquired and transported cultural property from such war zones, in accordance with the spirit of the 1954 *Protocol* and the 1970

<sup>16</sup>

United Nations *Declaration on the Rights of Persons Belonging to National or Ethnic, Religious or Linguistic Minorities* (General Assembly Resolution 47/135, dated 18 December 1992).

### **Executive Summary and Recommendations**

*UNESCO Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property.*

- D. 4. All High Contracting Parties should review their arrangements for the training of military personnel of all levels in relation to their obligations under the *Convention* and other relevant aspects of international law. Member States participating in United Nations operations should ensure that the forces allocated to particular operations are adequately and specifically re-trained and briefed in such matters, and that appropriate military discipline is maintained in relation to the respect of monuments and other cultural property, and relevant cultural property export laws and codes.
- D. 5. All High Contracting Parties which are also parties to the 1972 *World Heritage Convention* should review each of the cultural localities within the State which are inscribed on the World Heritage List and consider whether they are eligible for the granting of 'Special Protection' as 'centres containing monuments' under Article 2(c) of the 1954 *Convention*.
- D. 6. All High Contracting Parties should note that in the absence of specific provisions for the resolution or enforcement of inter-government disputes or complaints concerning the interpretation and application of the 1954 *Convention* and *Protocol*, such matters may be referred to the International Court of Justice under Chapter XIV of the *Charter of the United Nations*, and specifically under Chapter II of the Statutes of the International Court of Justice annexed to the United Nations *Charter*<sup>17</sup>.
- D. 7. All High Contracting Parties should establish a national advisory committee to assist with the practical implementation of the 1954 *Convention* and *Protocol*, in accordance with Recommendation II of the 1954 Intergovernmental Conference.

#### **E. TO ALL STATES WHICH ARE NOT YET PARTIES TO THE 1954 CONVENTION**

- E. 1. All States which previously decided not to ratify or accede to the 1954 *Convention* and *Protocol*, or which have so far not considered accession to it should review their position in relation to the *Convention* as a matter of urgency, since such international instruments ultimately derive their authority from their universal acceptance by the world community.
- E. 2. The principles of the 1954 *Convention* should nevertheless be respected as Customary International Law, and as the successor and supplementary provisions and clarification of the principles established in earlier International Instruments, particularly the 1899 and 1907 *Hague Conventions* and the 1935 *Washington Treaty* ('Roerich' Pact), and also as the applicable law in many parts of the world where their armed forces may be in action, eg. as part of a United Nations peacekeeping operation.
- E. 3. Whether or not such States decide to ratify or accede to the 1954 *Convention*, they should take all necessary action to implement effective provisions within national military and civilian criminal law for the investigation and punishing of alleged 'cultural' war crimes and other offences by nationals and other residents of the State. They should also establish active programmes of military and public education and information intended to increase knowledge and understanding of, and respect for, the protection of the cultural property and cultural values of all peoples.

---

<sup>17</sup>

United Nations, 1990, (Doc. DPI/ 511).

- E. 4. In particular, Member States participating in United Nations operations should ensure that the forces allocated to particular operations are adequately and specifically trained and briefed in their obligations under Customary International Law and in the 1954 *Hague Convention* (since this could very well be applicable law in the theatre of operations), and that appropriate military discipline is maintained in relation to the respect of monuments and other cultural property, and relevant cultural property export laws and codes.

**F. TO NON-GOVERNMENTAL ORGANISATIONS**

- F. 1. All non-governmental organisations and especially international NGOs in relationship with UNESCO operating in the tangible culture sector, and relevant regional organisations, should recognise the important role they can play in developing both practical advice and training procedures in relation to the protection of monuments and collections etc. within their respective fields of interest in the face of the risk of both natural and civilian disasters as well as armed conflicts. They should work closely with UNESCO in both developing and actively promoting at the professional level the measures that it is recommended to undertake under Recommendations B.3 to B.7. above.
- F. 2. The relevant international, regional and national non-governmental organisations, together with National Commissions of UNESCO, should take an active role in promoting knowledge and acceptance of the 1954 *Convention* and *Protocol* among their members and their governments, urging both the adoption and active implementation of their provisions, especially in countries which have not yet adopted the *Convention* and/or which have not yet taken the necessary legal and administrative measures required for its effective implementation.
- F. 3. 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, eg. 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.

**G. POSSIBLE FUTURE AMENDMENTS OF THE 1954 CONVENTION**

- G. 1. As indicated above, although technical improvements to the detailed provisions of the *Convention* and *Protocol*, are certainly desirable in the long term, these are less urgent at this time than the over-riding priority of achieving greater recognition, acceptance and application of their provisions in the face of current and continuing breaches on the one hand, and the comparatively low level of ratifications on the other. Nevertheless, in the course of this study significant issues have been raised, which ought to be incorporated into the provisions of the 1954 Hague Instruments as soon as circumstances permit, probably by means of an *Additional Protocol*, rather than by a revision of the *Convention* itself, though that may be desirable in the future.
- G. 2. The present definition of 'cultural property' in the 1954 *Convention* is rather out-of-date and very imprecise. Subsequent UNESCO international instruments, particularly the 1970 and 1972 *Conventions*, and various UNESCO



### Executive Summary and Recommendations

*Recommendations* have adopted what are generally more comprehensive and explicit definitions (though these others are not at all consistent in their wording)<sup>18</sup>. In relation to future Instruments and policy statements it would be desirable for UNESCO to adopt a more consistent approach to definitions, subject of course to the special needs of the particular case. Also, in view of the growing importance of non-traditional catalogue and other record systems for both movable and immovable cultural property, in any future revision of, or Additional Protocol to, the 1954 *Convention*, the definition of 'cultural property' in Article 1 (a) the phrase 'or of reproductions of the property defined above' be replaced by 'or of paper, microform or electronic catalogues, documentation, or copies of the property defined above'.

- G. 3. In the 1954 *Convention* legal enforcement and action in respect of eg. alleged 'cultural' war crimes, rests almost entirely with national governments and national legal systems. Further, there is no explicit provision in the *Convention* for the resolution of inter-governmental disputes about its application and interpretation<sup>19</sup>, and it would be desirable to establish some appropriate, relatively simple and quick, means of arbitrating on inter-governmental disputes relating to the application of the 1954 *Convention*<sup>20</sup>.
- G. 4. Bearing in mind the precedents of the 1949 *Geneva Conventions* the inclusion of the 'military necessity' exemption was already inappropriate by the time of the 1954 Intergovernmental Conference. It is strongly recommended that in any revision of the primary text of the 1954 *Convention* or in any new Additional Protocol to it, High Contracting Parties should renounce the provisions of Article 3 (2) allowing the waiving of the provisions of the *Convention* in the case of military necessity.
- G. 5. It seems clear that the concept of 'Special Protection' in the *Convention* was devised primarily in order to protect a strictly limited number of permanent and temporary shelters and other 'refuges', though it is also possible for High Contracting Parties to propose for 'Special Protection' what are defined as 'centres containing monuments and other immovable cultural property of very great importance'. However, neither definition covers even the most important museums, libraries, archive repositories etc., and 'Special Protection' for these can only be applied for if these happen to be located in zones with outstanding *immovable* cultural property as well. Any future updating should revert to the precedents of the 1907 *Hague Convention* and the 1935 *Washington ('Roerich') Pact* and offer the possibility of 'ordinary' protection for important cultural institutions such as museums, important reference libraries, archives etc., and also provide for the granting of 'Special Protection' to the world's greatest museums and similar institutions on the basis of the pre-eminent importance of their collections, (providing, of course, it is possible to meet the other requirements for 'Special Protection' - particularly the demilitarising of the surrounding area).
- G. 6. The proposal that natural sites should be could be brought within a treaty which is explicitly defined (even within its title) as dealing only with 'cultural' sites

---

<sup>18</sup> See the comparison of definitions used in various UNESCO and other texts in Appendix VI.

<sup>19</sup> Though there is of course always the possibility of recourse to the International Court of Justice in accordance with Chapter XIV of the United Nations *Charter*.

<sup>20</sup> In the case of disputes between States Parties to the Convention who are also parties to the 1977 Geneva Protocols there is also the possibility of organising mediation through the International Committee of the Red Cross.

raises very important issues. There are also major differences in the size and nature of the territory that might e.g. be brought under 'Special Protection': the examples of the two categories on the World Heritage List show that on average the geographical areas of territory involved are often of a quite different order of magnitude in many cases raising the very real possibility of serious military objections, which might in turn weaken the existing protection afforded by the 1954 *Convention*. It would seem more fruitful to try to reach agreement on a separate Convention for the protection of natural sites, with more appropriate provisions to meet the specialist requirements of natural sites.

- G. 7. There are currently serious problems in relation to the procedures for the appointment of Commissioners-General for Cultural Property in times of armed conflict, both in general and particularly in relation to situations where there are no nominated Protecting Powers. Changes in this area are needed, with the aim of making the Commissioner-General provisions enforceable on both parties to an armed conflict. However, achieving this would require solutions to difficult problems of international law, and the matter therefore needs to be considered by appropriate legal experts.
- G. 8. In order to improve the understanding and application of the *Hague Convention* there is a need for it to be supported by an Intergovernmental Advisory Committee on the Protection of Cultural Property in the Event of Armed Conflict, modelled on the World Heritage Committee. The proposed terms of reference and composition are outlined in Appendix X of this Report.
- G. 9. In terms of the mechanism for making such changes, the first five of these - issues relating to the definitions in the *Convention*, to enforcement measures and the extension of the concept of 'Special Protection', and the establishment of the proposed Advisory Committee could probably be dealt with by means of the adoption of an *Additional Protocol*. However, the sixth, the suggested extension of the 1954 *Convention* to cover the natural heritage as well as the cultural heritage, would involve a fundamental change in its underlying purpose, and would probably require a completely new international instrument.

## Introduction

### CHAPTER 1

#### INTRODUCTION

1. 1. Although many specialists had been concerned for years about the effectiveness of at least the application at the practical level of the 1954 *Hague Convention*, international popular and media concern was aroused at the beginning of the 1990s by two armed conflicts: the Second Gulf War, fought in part over the Mesopotamian region that was one of the birthplaces of western civilization, and the conflicts in Yugoslavia, above all the attacks on the undefended World Heritage List Old Town of Dubrovnik, well known to millions of international tourists.
1. 2. Following expressions of concern about recent developments concerning the protection of cultural property during armed conflict from several countries, including Iran, at the October 1991 General Conference of UNESCO, the Director-General decided to seek ways of carrying out a study of the issues. Government of The Netherlands decided to include a review of the 1954 *Convention* as part of its contribution to the International Decade of International Law, and the Netherlands and UNESCO decided to commission and fund jointly a review of the objectives and operation of the *Convention* and *Protocol*, with a view to identifying measures for improving its application and effectiveness, and to see whether some revision of the *Convention* itself might be needed, perhaps by means of an Additional Protocol. At the end of November 1992 I was appointed by the two parties to undertake this review, to be completed in time for the May 1993 meeting of the UNESCO Executive Board.
1. 3. The main objectives and areas of study were to review and report, after extensive consultation and study of the relevant published documents and UNESCO files, on:
  1. the present scope of the 1954 *Hague Convention* and *Protocol* in relation to both movable and immovable cultural property;
  2. the objections to the 1954 Convention of States that have not ratified it and the reasons for these objections;
  3. the relationship of the 1954 Convention to both other international cultural property instruments and to more general laws of war;
  4. the effectiveness and implementation of, and possible improvement to, the peacetime preparations and training called for by the 1954 Convention;
  5. the implications for the protection of cultural property of non-international armed conflict, such as civil wars and terrorist campaigns;
  6. the possibility of improving the effectiveness and implementation of the Convention through international means, eg. international assistance; the possible role of United Nations peace-keeping forces, etc.;
  7. the resources needed at both national and international levels for effective implementation of the 1954 Convention;
  8. the effectiveness of various practical points in the 1954 Convention including:
    - a. the distinction between 'protection' and 'Special Protection' and the procedure for registering 'Special Protection' on UNESCO's International Register;
    - b. the arrangements in times of armed conflict for systems of 'Protecting Powers', Commissioners-General and for international assistance through UNESCO;

- c. the effectiveness of the procedures for sanctions and penalties in the event of breaches of the 1954 Convention.<sup>21</sup>
1. 4. I should stress that because of my background and qualifications I have not in any way been able to approach this task from the viewpoint of a lawyer. I am an essentially practical and pragmatic person, who has had over twenty years' senior management experience and responsibility covering nationally and regionally important historic monuments, archaeological and historic sites, museums, art galleries, collections in almost every significant subject area, and the professional support services for these, including archaeological, ecological and educational units.
1. 5. I have carried out very wide-ranging consultations in the course of this study, sending personal invitations to submit evidence and comments to over 350 organisations and individuals in more than 80 countries, and in addition my study has been announced in some specialist international periodicals. I have also made over 50 visits in connection with the study over the past six months.
1. 6. I have, of course, necessarily had to consider complex issues of international law, and I am greatly indebted to various colleagues - listed in the acknowledgements - for most valuable and stimulating discussions on such matters. However, the concerns addressed in this study and Report include many points of international law which are often not at all well defined or universally agreed. Consequently, if this Report and its recommendations are to be taken further the next stage must clearly be to test my assumptions and interpretations within the community of properly qualified specialist lawyers. I would only want to add that I believe strongly that such future discussions on new general legal arrangements and structures at the international level (not just in relation to the 1954 *Hague Convention* of course) should in future involve as a matter of routine not just specialists in international law (though their involvement is clearly of key importance)<sup>22</sup>. In this case, for example, it would be desirable to involve experts in the application of the principles and application of both criminal law and environmental protection law within both Civil Law and Common Law systems alongside the specialists in international law. This will be especially important if, as seems to be the case, the world community is moving towards the more frequent use of international courts or tribunals for the trial of, or lawsuits brought by, individuals, not just for the traditional role of regulating relations between States, as in the case of the proposed United Nations actions concerning alleged war crimes actions in the former Yugoslavia.
1. 7. In addition to the general documentation of the progress of UNESCO and States Parties to the *Convention* in implementing and applying it since it came into force in 1956, I have looked into some at several specific case studies of the impact of both international and internal armed conflicts on cultural property - both successes and failures, including in particular those of Cyprus since 1964, South Lebanon (and especially Tyre), since the mid 1970s, and ex-Yugoslavia over the past three years. I have also reviewed in some detail both the positive and negative experiences of the Second World War in Europe, since there are still lessons to be learned from these which were not incorporated in the 1954 *Hague Convention*.
1. 8. The history of the responses of the world community and the activities of UNESCO in relation to the *Convention* that have emerged from this study are

---

<sup>21</sup> This summary is based on agreed terms and contracts for the study.

<sup>22</sup> See in particular para. 9.24 below.

## Introduction

briefly referred to at the appropriate points in this Report, but the whole story deserves to be told in a comprehensive historical study. I have reluctantly decided that, though desirable, adding a historical review to what I was commissioned to prepare and to what is already a very substantial Report would make it unmanageable in practical terms. However, it would certainly be desirable to see the parallel historical review brought together in a final form for publication, perhaps to mark the the anniversary of the 1954 Intergovernmental Conference and the *Convention in 1994*.

1. 9. The Report considers each of the most important elements of the 1954 *Convention* in turn, before reviewing the particular issues of movable cultural property in times of armed conflict (particularly the 1954 *Hague Protocol*) and the relationship to the 1970 UNESCO Convention on illicit trafficking. The problem of the relatively low proportion of the independent States of the present day world that have adopted the *Convention* is also considered, together with the reasons for non-adoption and ways in which acceptance could be increased. The relationship with the highly successful 1972 UNESCO *World Heritage Convention* is also examined, and while the direct assimilation of the World Heritage List into the Hague Convention's designation of 'Special Protection' is considered inappropriate, States Parties to both are urged to consider submitting their cultural World Heritage List sites for Special Protection under the 1954 *Hague Convention*, if the other criteria can be met.
- 1.10. It is clear that non-international armed conflicts, including civil, ethnic and religious ones, are now a major factor in the loss of important cultural property, and this phenomenon is considered, and the potential role of the international community in developing understanding and tolerance is discussed. Finally, the future roles of UNESCO, the United Nations, sovereign States and the voluntary sector are examined in turn, while the twelve appendices present much background material of relevant to the study and to future consideration of the issues.
- 1.11. For the sake of convenience, this main body of the text has been preceded by a substantial Executive Summary, which also brings together the main recommendations of the Report, and the Appendices and Acknowledgements are followed by a selective Bibliography.



## Introduction

### CHAPTER 2.

#### ***EVOLUTION OF CONCEPTS OF CULTURAL PROTECTION IN TIMES OF ARMED CONFLICT***

2. 1. There are now a considerable number of studies of the emergence and development of the concept of legal protection for cultural property in times of war, and more recently in times of armed civil conflict also. A readily accessible and well-referenced short review is that of Prof. Stanislaw-Edward Nahlik in UNESCO's volume on *International Dimensions of Humanitarian Law*, published originally in French to mark the 40th anniversary of UNESCO<sup>23</sup> following his major study of 1967<sup>24</sup>. The verbatim proceedings of the 1954 *Inter-governmental Conference on the Protection of Cultural Property in the Event of Armed Conflicts, The Hague, 1954* were subsequently published<sup>25</sup>, and UNESCO will shortly publish a very detailed analysis and commentary on both the 1954 *Convention* text and the Inter-governmental Conference proceedings prepared by Dr Jiri Toman<sup>26</sup>.
2. 2. Historically, the fate and treatment of cultural property have often been important issues in both international wars and in many kinds of internal armed conflicts, such as civil, religious and liberation wars. The taking of important movable cultural symbols of invaded and conquered states and peoples as trophies of war (or merely for their economic value), and the defacing or destruction of their monuments as marks of victory, have been important parts of the culture of the waging of war for millennia<sup>27</sup>.
2. 3. To give just two examples out of many thousands that could be cited, the famous golden horses of St Mark's, Venice, were reputedly captured from Constantinople in the looting of the city by the Venetians following its fall to the First Crusade on 13 April 1204<sup>28</sup> and were in turn seized by France on the orders of Napoleon and taken to Paris in 1798, only to be returned under the imposed peace treaty of 1815<sup>29</sup>. Van Eyck's famous polyptych *Adoration of the Mystic Lamb* altarpiece

---

<sup>23</sup> Nahlik, 1988, pp. 203 - 204, which has brief references to some very interesting early examples of the argument that belligerents should respect and protect works of art, including the proposals of the Polish jurist, Jacob Przymusiński (1553), the German jurist Justin Gentilis (1690) and Emer de Vattel in 1758, together with references to provisions for the restitution of looted cultural property as a common feature of peace treaties from the end of the Thirty Years War (Peace of Westphalia, 1648) onwards.

<sup>24</sup> Nahlik, 1967.

<sup>25</sup> Government of the Netherlands, 1961.

<sup>26</sup> I was privileged to have access to Dr Toman's text in advance of publication during my period working in UNESCO: the French edition is due to be published in late 1993, and it is hoped that an English translation will follow in 1994.

<sup>27</sup> Good reviews with many cases detailed are Wilhelm Treue's *Kunstraub* (English translation: Treue, 1960) and Chamberlin's *Loot*, 1973.

<sup>28</sup> Treue, 1960, pp. 32 - 40; Chamberlin, 1983, pp. 139 - 141.

<sup>29</sup> Treue, 1960, pp.195 - 198.

presented to St Bavon's in Ghent in 1432 was also seized by France in the Napoleonic Wars and again by the Germans in both the First and Second World Wars (in the Second World War with the Michelangelo *Madonna and Child* from the nearly Bruges Cathedral as well<sup>30</sup>). Indeed, the restitution of the Van Eyck was a specific condition of the 1919 Treaty of Versailles<sup>31</sup>.

2. 4. The destruction, defacing or conversion to a deliberately inappropriate use of monuments of special cultural value to the identity and spiritual values of a conquered people - such as religious buildings and national historic sites - has been widely used throughout history as a sign of conquest and subjugation. Again, cases of this syndrome are far too numerous to list. However, obvious examples include Cortes' destruction of the religio-political centres of Aztec culture in Mexico City and Cuernavaca and the building of colonial headquarters and Christian cathedrals on the desecrated sacred places, the numerous examples of forced conversions of Hindu temples into mosques in Mogul India, and of churches to mosques and vice versa over the centuries over much of the Near East and south-east Europe.
2. 5. Such destruction and forced changes were if anything even more common in non-international strife, such as the internal religious wars in northern and central Europe during the protestant reformation of the 16th and 17th centuries, in which there were enormous losses of both building complexes such as churches and monasteries, and of cultural objects of religious significance, such as works of art, reliquaries and sacred vessels.
2. 6. Similar destruction took place in the political revolutions of the 18th centuries and more recent times, beginning with the French Revolution, though - alarmed by the scale of iconoclastic devastation of both buildings and collections of the first two years of the revolutionary period - the French *Convention* soon took urgent legislative action in the *Quatres Instructions Initiales* of 1791 to try to halt such destruction<sup>32</sup>.
2. 7. During the same period the traditional understanding of the rights of booty and prize-taking in war began to be questioned, at least in relation to museum collections. For example, in the 1812 war the British Navy captured a ship carrying works of art belonging to the Philadelphia Museum of Art and claimed these as prizes of war. In a subsequent action under British law in a Canadian court it was held that objects of artistic value on the ship had to be returned to the owner, arguing that art is part of the common heritage of all mankind and is thus protected from seizure during war<sup>33</sup>.
2. 8. However, as in many other areas of the laws or customs of war, the relevant modern international humanitarian law can be traced back to the classic five volume *Vom Kreige* of Carl von Clausewitz, published in 1832, and to the United States of America War Department's *General Orders No. 100: Instructions for the*

---

<sup>30</sup> See for example Treue, 1960, Chamberlin, 1983.

<sup>31</sup> Article 247, which also required the return of Dirk Bouts' *Last Supper* to the Church of St Peter in Louvain and reparations in respect of the destruction of the Louvain University Library.

<sup>32</sup> See Boylan, 1992.

<sup>33</sup> Case of the Vessel *Marquis de Somereuil*, 1812: *Stewart's Vice-Admiralty Reports for Nova Scotia, 1803 - 1813*, p.482: cited by Bassiouni, 1983, p. 288, note 19.



## Evolution of Concepts of Cultural Protection

*Governance of the Armies of the United States in the Field*, drafted by Francis Lieber and first published in April 1863<sup>34</sup>.

- 2.9. In Book V Chapter III(B) Clausewitz stressed the principle of proportionality in relation to the conduct of war, and on the need to restrict the war effort to genuine military targets and imperatives:

In this manner, he who undertakes War is brought back again into a middle course, in which he acts to a certain extent upon the principle of only applying so much force and aiming at such an object in War as is just sufficient for the attainment of the political object<sup>35</sup>.

- 2.10. Cultural property was explicitly protected for the first time in Lieber's Code. Following a general prohibition on the seizure or destruction of private property, this continued by stressing that works of art, scientific collections, libraries and hospitals must be protected from injury even in fortified places whilst these were being besieged or bombarded. If necessary it could be removed (for its own safety) but it could not be given away or injured. The Code also stressed that the ultimate ownership of such material after the war was a matter for including in the terms of the eventual treaty of peace<sup>36</sup>:

34. As a general rule, the property belonging to churches, to hospitals, or other establishments of an exclusively charitable character, to establishments of education, or foundations for the promotion of knowledge, whether public schools, universities, academies of learning or observatories, museums of fine arts, or of a scientific character - such property is not to be considered public property...

35. Classical works of art, libraries, scientific collections, or precise instruments, such as astronomical telescopes, as well as hospitals, must be secured against all avoidable injury, even when they are contained in fortified places whilst besieged or bombarded.

36. If such works of art, libraries, collections, or instruments belonging to a hostile nation or government can be removed without injury, the ruler of the conquered state or nation may order them to be seized and removed for the benefit of the said nation. The ultimate ownership is to be settled by the ensuing treaty of peace. In no case shall they be sold or given away, if captured by the armies of the United States, nor shall they ever be privately appropriated, or wantonly destroyed or injured<sup>37</sup>.

- 2.11. Further, Article 44 declared that unauthorized destruction or damage of property was prohibited under penalty of death or other severe penalty adequate for the gravity of the offense<sup>38</sup>.

- 2.12. The first international codifications of wartime protection for cultural property followed closely the Lieber Code. These were in the *Declaration of Brussels* - drawn up by the 1874 international conference, and which provided as Article 8:

The property of parishes (communes), or establishments devoted to religion, charity, education, arts and sciences, although belonging to the State, shall be treated as private

---

<sup>34</sup> For a detailed history and analysis see in particular the study by Quincy Wright, 'Francis Lieber's Code for Land Warfare', (Wright, 1971).

<sup>35</sup> Von Clausewitz, 1968, pp. 374 - 375.

<sup>36</sup> *Lieber Code* Articles 35 - 36: see Wright, 1971, pp. 64 - 66.

<sup>37</sup> Quoted by Merryman 1986, pp. 833 - 834.

<sup>38</sup> *Lieber Code* Article 44, see Wright, 1971, p. 69.

property. Every seizure, destruction of, or wilful damage to, such establishments, historical monuments, or works of art or science, shall be prosecuted by the competent authorities<sup>39</sup>.

The 'Oxford Code' of 1880, drawn up at a conference of the Institute of International Law adopted similar terms in its Articles 34 and 56:

**Art. 36.** In the case of bombardment, all necessary steps must be taken to spare, if it can be done, buildings dedicated to religion, art, science and charitable purposes, hospitals and places where the sick are gathered on the condition that they are not being utilised at the time, directly or indirectly, for defense. It is the duty of the besieged to indicate the presence of such buildings by visible signs notified to the assailant beforehand.

**Art. 53.** The property of municipalities, and that of institutions devoted to religion, charity, education, art and sciences, cannot be seized. All destruction or wilful damage to institutions of this character, historic monuments, archives, works of art, or science, is formally forbidden, save when urgently demanded by military necessity.<sup>40</sup>

However, neither Brussels, 1874, nor Oxford, 1880, were formally ratified as international treaties.

- 2.13. The first formal international treaty providing some protection for cultural property was that produced by the first (1899) Hague Conference, which adopted the Brussels/Oxford principles as Article 56 of the *Regulations Respecting the Laws and Customs of War on Land*, while the parallel rules governing naval bombardment tried to afford some protection to churches and other important cultural monuments, including provision for marking such protected buildings with a distinctive flag<sup>41</sup>.
- 2.14. A more substantial international conference, convened jointly by the United States and Russia, and attended by forty-four sovereign states was held in The Hague in 1907, and this adopted a series of treaties relating to the Laws and Customs of War. Of these the *Fourth Hague Convention on the Laws and Customs of War on Land* was most directly relevant, though the *Ninth Hague Convention Concerning Bombardment by Naval Forces in Time of War* carried forward the Hague 1899 prohibition on the shelling from the sea of historic monuments etc.
- 2.15. The *Regulations* annexed to the *Fourth Hague Convention* took the attempted protection of cultural monuments and institutions in times of land warfare further than any of the nineteenth century codes, providing in Articles 25, 27, 28 and 56 respectively that:

25. The attack or bombardment, by whatever means, of towns, villages, dwellings, or buildings which are undefended is prohibited.

27. In sieges and bombardments all necessary steps must be taken to spare, as far as possible, buildings dedicated to religion, art, science or charitable purposes, historic monuments ... provided that they are not being used at the time for military purposes. It is the duty of the besieged to indicate the presence of such buildings or places by distinctive and visible signs, which shall be notified to the enemy before hand.

28. The pillage of a town or place, even when taken by assault, is prohibited.

56. The property of municipalities, that of institutions dedicated to religion, charity and education, the arts and the sciences, even when State property, shall be treated as private property. All seizure of, destruction or wilful damage done to

<sup>39</sup> Quoted in Merryman, 1986, p. 834.

<sup>40</sup> Oxford Manual, 1880.

<sup>41</sup> Article 27 of Hague, 1899.

## Evolution of Concepts of Cultural Protection

institutions of this character, historic monuments, works of art and science, is forbidden, and should be made the subject of legal proceedings<sup>42</sup>.

- 2.16. However, despite the provisions of the *Fourth Hague Convention* there were grave losses of cathedrals, churches, other historic monuments, museums, libraries and collections across the various land battlefields of the First World War, leading to much concern about the effectiveness of the existing Laws of War. It was considered that the failures were partly due to claims of 'military necessity' on the part of both attacking and defending forces, but there was also much concern about the development of new technologies of war. There was special concern about the use of poisonous gases (some of which are, of course, highly corrosive and therefore capable of causing physical damage to many kinds of works of art and other cultural objects, and which were seen as presenting a further threat through the killing and disabling of cultural protection personnel), and the development of aerial bombardment. Although the use of poison gas was prohibited by the 1925 *Geneva Protocol*, there was less success with the planned development of rules to control aerial bombardment, which created unprecedented danger to cultural property. In 1923 a draft convention for *Rules of Air Warfare* was drawn up by a Hague Conference of jurists. However, though the latter was closely modelled on the established rules relating to military and naval bombardment (and in particular the *Tenth Hague Convention* of 1907 - with its specific prohibition of the bombardment of religious and other cultural buildings), it was never adopted as an international instrument. The 1923 proposals included protection for all non-military populations and areas, and specific provisions aimed at protecting of cultural property in Articles 25 and 26:

Art. 25.

In bombardment by aircraft, all necessary steps must be taken by the commander to spare as far as possible buildings dedicated to public worship, art, science or charitable purposes, historic monuments, hospital ships, hospitals and other places where the sick and wounded are collected, provided such buildings, objects or places are not at the time used for military purposes. Such buildings, objects and places must by day be indicated by marks visible to aircraft. The use of marks to indicate other buildings, objects, or places than those specified above is to be deemed an act of perfidy. The marks used as aforesaid shall be in the case of buildings protected under the Geneva Convention the red cross on a white ground, and in the case of other protected buildings a large rectangular panel divided diagonally into two pointed triangular portions, one black and the other white.

A belligerent who desires to secure by night the protection for the hospitals and other privileged buildings above mentioned must take the necessary measures to render the special signs referred to sufficiently visible.

Art. 26.

The following special rules are adopted for the purpose of enabling states to obtain more efficient protection for important historic monuments situated within their territory, provided that they are willing to refrain from the use of such monuments and a surrounding zone for military purposes, and to accept a special regime for their intersection.

- (1) A state shall be entitled, if it sees fit, to establish a zone of protection round such monuments situated in its territory. Such zones shall in time of war enjoy immunity from bombardment.
- (2) The monuments round which a zone is to be established shall be notified to other Powers in peace time through the diplomatic channel; the notification shall also indicate the limits of the zones. The notification may not be withdrawn in time of war.

---

<sup>42</sup>

International Committee of the Red Cross, 1989, pp. 25; 30.

- (3) The zone of protection may include, in addition to the area actually occupied by the monument or group of monuments, an outer zone, not exceeding 500 metres in width, measured from the circumference of the said area.
- (4) Marks clearly visible from aircraft either by day or by night will be employed for the purpose of ensuring the identification by belligerent airmen of the limits of the zones.
- (5) The marks on the monuments themselves will be those defined in Article 25. The marks employed for indicating the surrounding zones will be fixed by each state adopting the provisions of this article, and will be notified to other Powers at the same time as the monuments and zones are notified.
- (6) Any abusive use of the marks indicating the zones referred to in paragraph 5 will be regarded as an act of perfidy.
- (7) A state adopting the provisions of this article must abstain from using the monument and the surrounding zone for military purposes, or for the benefit in any way whatever of its military organization, or from committing within such monument or from any act with a military purpose in view.
- (8) An inspection committee consisting of three neutral representatives accredited to the State adopting the provisions of this article, or their delegates, shall be appointed for the purpose of ensuring that no violation is committed of the provisions of paragraph 7. One of the members of the committee of inspection shall be the representative (or his delegate) of the State to which has been entrusted the interests of the opposing belligerent<sup>43</sup>.

2.17. The next major development grew out of what was initially the private initiative and campaign of a remarkable individual, Nicholas K. Roerich<sup>44</sup>. Born in St Petersburg in 1874, Roerich trained as an artist and worked across Europe as an artist and designer, (the Paris premiere of the Diaghilev/Nijinsky ballet of Stravinsky's *Le Sacre du Printemps* was one of his theatre designs) before moving first to the United States and then to India and the Himalayas. Becoming increasingly committed to mysticism and oriental religion he used the Roerich Museum of his own paintings in New York as a base during his visits to the United States.

2.18. As early as 1904 he had developed proposals for an international pact for the protection of educational, scientific and artistic institutions and missions. In 1931 the first international conference was held in Bruges on the proposed 'Roerich Pact' and his proposal for a 'Banner of Peace' to be displayed to identify protected buildings and institutes of cultural importance. Soon afterwards the Montevideo conference of the Pan-American Union (the forerunner of the present-day Organisation of American States) passed a unanimous resolution urging all American states to sign the Pact.

2.19. Roerich soon had the patronage and support of both Eleanor Roosevelt and United States Secretary of Agriculture (and future presidential candidate) Henry Wallace. The result was the signing of the Roerich Pact as the Treaty of Washington on 15 April 1935 (Pan-American Day) by representatives of 21 American governments, and the adoption of Roerich's Banner of Peace and official symbol of cultural protection. In presenting the Pact to the International Conference President Roosevelt stated that 'This treaty possesses a spiritual significance far deeper than the text of the instrument itself'<sup>45</sup>.

<sup>43</sup> *Rules of Air Warfare, drafted by a Commission of Jurists at the Hague, December 1922 - February 1923*. International Committee of the Red Cross, 1989, pp. 127 - 139.

<sup>44</sup> I am greatly indebted to Charles E. McConney of Los Angeles for sharing with me his research on Roerich and his work in advance of his planned future publication. Other recent sources are two short articles: Elbinger, 1990 and Brenner, 1990.

<sup>45</sup> Elbinger, 1990, p. 17.

## Evolution of Concepts of Cultural Protection

- 2.20. When it was submitted to the United States Congress the Roerich Pact was accompanied by a detailed study by J. T. Schneider of issues relating to the protection of cultural property generally. This included in addition to a comprehensive review of current USA position and of the Roerich Pact itself, a series of extremely valuable reviews of then current foreign legislations and structures - including among others detailed reviews of the situation in Belgium, France, Germany, Great Britain, Italy, Japan and Poland. Particularly interesting and important were the comments of Schneider on purpose of Washington Treaty itself:

A forward step of Pan-American as well as of international importance was consummated with the signing on April 15, 1935, of a treaty, popularly known as the 'Roerich Pact', initiated by the Roerich Museum of New York in the United States, for the protection of artistic and scientific institutions and historic monuments. Its purpose is 'that the treasures of culture be respected and protected in times of war and peace.' The universal adopting of a flag is urged in order thereby to preserve in any time of danger 'all nationally and privately owned immovable monuments which form the cultural treasures of the peoples.' It is hoped that this treaty will be broadened so as to include all nations as signatory parties<sup>46</sup>.

- 2.21. The text was in fact very simple and direct<sup>47</sup>, which may explain, at least in part, the remarkable speed with which it was processed and brought into force, (in the case of the United States all Senate and presidential procedures in less than three months).
- 2.22 The full text of the Treaty (which is still in effect across all of North America and in most countries of Central and South America) is reproduced as *Appendix III* of this report, but the essential elements are set out in the Preamble and the opening Articles:

The High Contracting Parties, animated by the purpose of giving conventional form to the postulates of the resolution approved on 16 December 1933, by all the States represented at the Seventh International Conference of American States, held at Montevideo, which recommended to 'the Governments of America which have not yet done so that they sign the 'Roerich Pact', initiated by the 'Roerich Museum' in the United States, and which has as its object the universal adoption of a flag, already designed and generally known, in order thereby to preserve in any time of danger all nationally and privately owned immovable monuments which form the cultural treasure of peoples,' have resolved to conclude a Treaty with that end in view and to the effect that the treasures of culture be respected and protected in time of war and in peace, have agreed upon the following Articles:

### Article 1.

The historic monuments, museums, scientific, artistic, educational and cultural institutions shall be considered as neutral and as such respected and protected by belligerents. The same respect and protection shall be due to the personnel of the institutions mentioned above. The same respect and protection shall be accorded to the historic monuments, museums, scientific, artistic, educational and cultural institutions in time of peace as well as in war.

### Article 2.

The neutrality of, and protection and respect due to, the monuments and institutions mentioned in the preceding Article, shall be recognized in the entire expanse of territories subject to the sovereignty of each of the Signatory and Acceding States, without any discrimination as to the State allegiance of said monuments and institutions. The

---

<sup>46</sup> Schneider, 1935, p. 31

<sup>47</sup> *Treaty on the protection of artistic and scientific institutions and historic monuments (Roerich Pact)*, Washington, 15 April 1935: International Committee of the Red Cross, 1989, pp. 31 - 32.

respective Governments agree to adopt the measures of internal legislation necessary to insure said protection and respect.

**Article 3.**

In order to identify the monuments and institutions mentioned in Article 1, use may be made of a distinctive flag (red circle - with a triple red sphere in the circle on a white background) in accordance with the model attached to this Treaty.

- 2.23. However, despite the high ideals and explicit commitments of the Pact, most Parties to it did little or nothing to implement its provisions at the practical level. For example only Mexico prepared and registered internationally a list of monuments and institutions for which they wished to seek protection in accordance with Article IV of the Treaty. Also, this treaty was by definition a Pan-American one (though other countries including India were reported to have made declarations supporting and adopting Roerich's text), and of course despite the efforts of President Wilson at the end of the First World War the United States remained largely neutral and detached from the world scene and outside the then world body, the League of Nations.
- 2.24. In Europe, the storm clouds of approaching war were gathering. In 1936 there were many reports of clear breaches of the principles of the 1907 Hague Convention in the widespread cultural destruction in the Spanish Civil War, including anti-clerical acts such as attacks on church property by the Left, and extensive aerial bombing using new generations of German-designed heavy bombers and dive bombers by the forces of Franco<sup>48</sup>. As a consequence, the 6th Commission of the League of Nations, 'following many requests from members of the [League's] International Commission for Intellectual Cooperation' commissioned the International Museums Office to re-examine 'the problem of the protection of monuments and works of art in times of war or of civil disturbances'<sup>49</sup>. The ambition to add 'civil disturbances' to the categories of conflicts regulated was a most important change from the long-established principles of the laws and customs of war, and indeed on the absolute internal sovereignty of States.
- 2.25. The Directory Board initiated work on the political, legal and technical issues involved, with the Professor of International Law at the University of Louvain, prof. Charles de Visscher leading the legal study. Meeting in October 1936 under the presidency of Sir Eric Maclagan (Director of the Victoria and Albert Museum, London), the Board reviewed, adopted and remitted to International Commission for Intellectual Cooperation a draft text intended to develop in far more detail the limited provisions of the 1907 Fourth and Ninth *Hague Conventions and Regulations*, and the more detailed proposals of the (unratified) 1923 Geneva draft *Rules of Air Warfare*.
- 2.26. The title proposed was the *International Convention for the Protection of Historic Building and Works of Art in Time of War*, the full text of which was published by the International Museums Office in both French and English<sup>50</sup>. (The English version is reproduced as *Appendix IV* of this report, since though it was never ratified it has a number of provisions not taken up in the postwar 1954 *Hague Convention* which would still be worth further consideration in preparing any future updating or additional Protocol of the *Hague Convention*).

---

<sup>48</sup> Discussed in some detail at pp. 128 - 132 in the substantial study on the 'International Legal Aspects of the Spanish Civil War' of Thomas & Thomas (1971); see also Alvarez Lopes, 1982 and Catalonia, 1937.

<sup>49</sup> Office International des Musées, 1939, p. 177 (author's translation).

<sup>50</sup> Office International des Musées, 1939, pp. 180 - 201.

## Evolution of Concepts of Cultural Protection

2.27. The draft began by emphasising the obligation on 'every Government' to prepare and arrange in peacetime for the protection of 'historic buildings and works of art' in wartime<sup>51</sup>, including both physical arrangements and military training. All High Contracting Parties would refrain from any act of hostility against designated pre-notified refuges, though these were to be limited in number, open to international inspection and:

be situated at a distance of not less than 20 kilometres from the most likely theatres of military operations, from any military objective, from any main line of communication, and from any large industrial centre (this distance may be reduced in certain cases in countries with a very dense population and small area<sup>52</sup>.

2.28. So far as monuments or groups of monuments were concerned, pre-notified monuments or groups of monuments not used directly or indirectly for purposes of national defence and at least 500 metres from any military objective would be entitled to 'special protection'<sup>53</sup> though, on a reciprocal basis, Contracting Parties could enter into special agreements to protect monuments 'of fundamental importance to the international community' which failed to meet the general criteria proposed<sup>54</sup>.

2.29. Other provisions included the use of a distinctive mark to identify cultural sites, the exemption of historic buildings and works of art from reprisals, and immunity during transport of works of art (including private collections) being transferred temporarily under international supervision to a third country for protection<sup>55</sup>. Further proposed Articles provided for International Commissions of Inspection, for the High Contracting Parties to meet in general conference to decide on implementation measures and to appoint a Standing Committee and Secretariat, and for the 'Contracting States' together with the proposed Standing Committee having amongst its other functions the responsibility to work together with belligerents to resolve differences of interpretation and application.

2.30. The proposed Convention was to be supported by Regulations for Execution, covering issues such as the proposed International Verification Commission<sup>56</sup>, protection for national staff appointed to 'preserve and guard' refuges, museums and monuments, (i.e. presumably including the curatorial and conservation staff) and practical aspects of the suggested temporary evacuation<sup>57</sup>. There was a particularly detailed and comprehensive series of provisions for the proposed General Conference and Standing Committee including, for example, the possibility of removing the headquarters of the Secretariat to a neutral country in the event of the host country becoming a belligerent<sup>58</sup>.

---

<sup>51</sup> Draft Convention, Article 1.

<sup>52</sup> Draft Convention, Article 4.

<sup>53</sup> Draft Convention, Article 5.

<sup>54</sup> Draft Convention, Article 6.

<sup>55</sup> Draft Convention, Articles 7 - 10.

<sup>56</sup> Draft Regulations 1 - 7.

<sup>57</sup> Draft Regulations, Articles 8 - 10.

<sup>58</sup> Draft Regulations, Article 12.

2.31. The draft Convention was warmly received and endorsed by the League of Nations' International Commission for Intellectual Cooperation, and active efforts were made by the professional community to try to apply its principles in the rapidly escalating Spanish Civil War, while pressing at the same time for the convening of the Intergovernmental Conference needed to take the project forward.

2.32. The graphic demonstration of the implications of large-scale aerial bombardment using the new German warplanes of various types, including dive bombers and heavy bombers, together with other new types of heavy weapons, and the scale of the cultural (as well as human) atrocities in Spain, raised widespread alarm. In addition to protesting at the various Spanish attacks on historic cities and monuments, professionals and public authorities across much of Europe began to prepare air-raid precautions for many museums and monuments<sup>59</sup>, including plans for the physical evacuation to places of safety - along the lines proposed in the International Museums Office draft Convention.

2.33. As a second Europe-wide war appeared inevitable, on 1 September 1939 President Roosevelt of the United States of America sent messages to the governments of Germany, France, Poland and the United Kingdom. Clearly referring to recent outrages such those that had been happening in Spain, Roosevelt demanded explicit assurances from all potential combatants that in the event of armed hostilities breaking out there should be no air attacks on civilian populations nor on unarmed towns, in effect adherence to the requirements of the (unratified) 1925 Hague *Rules of Air Warfare*:

The cruel ariel bombardments of civilian populations in undefended centres, in the hostilities that have raged in different parts of the world in the course of recent years and of which the consequence has been the mutilation and death of thousands of defenceless women and children, has wounded the hearts of all civilised men and women and has profoundly shocked the conscience of humanity.... Consequently, I address this present appeal to the governments which could be engaged in the present hostilities that each one of them affirm publicly its determination to not proceed, in any case or circumstance, to an ariel bombing of civil populations or undefended towns, being understood that the same rules of war shall be scrupulously observed by all their adversaries. I ask you for an immediate response.<sup>60</sup>

2.34. The four potential belligerents replied positively giving clear assurances on these and related points, and - in effect - guaranteeing protection of non-military targets by the (ancient and traditional) means of mutual exchanges and guarantees of the respective rules of engagement for the forthcoming hostilities. For example, on 1 September the German Chancellor, Adolf Hitler insisted that:

The views expressed in the message of President Roosevelt, namely to refrain in all circumstances from bombing non-military targets... is a humanitarian principle, corresponding exactly to my own views, as I have already declared.... For my part, I presume that you have noted that, in my speech given today in the Reichstag, I announced that the German air force have received the order to limit their operations to military objectives. One obvious condition for the continuation of these instructions is that the air forces opposing us observe the same rules.<sup>61</sup>

2.35. The United Kingdom, French and Polish governments gave similar assurances on 1 September with Lord Halifax, the British Foreign Secretary, stating that:

---

<sup>59</sup> See for example Museums Journal, (1938), British Museum, (1939), Netherlands Government, 1939.

<sup>60</sup> Office International des Musées, 1939, p. 222. (The quotations in this and the next four notes are the author's translations from the French versions).

<sup>61</sup> Quoted in Office International des Musées, 1939, p. 223.



## Evolution of Concepts of Cultural Protection

His Majesty's Government welcomes the important and moving appeal of the President of the United States of America against the aerial bombing of civil populations or undefended towns. Profoundly impressed by the humanitarian considerations to which the proposals of the President refers, His Majesty's Government has, in advance, declared that its policy has will be, if it becomes involved in a conflict, to refrain from acts of this nature, and to strictly limit bombing to military targets, it being understood that the enemy scrupulously observes the same rules. His Majesty's Government has already deposited with certain governments the details of the rules that it has imposed on itself to be followed in case of conflicts, and which it will make public.<sup>62</sup>

- 2.36. With the start of the war on 3 September the British and French made public a Joint Declaration on aerial bombing which was much more detailed and explicit, including in addition to specific references to the avoidance of civilian populations and, `to preserve with all possible measures, monuments of human civilisation:

The Governments of France and of the United Kingdom, solemnly and publicly affirm, their intention to conduct the hostilities which have been imposed upon them, with the firm desire to protect the civilian populations and to preserve, with every possible measure, the monuments of human civilisation. In this spirit they have welcomed with a profound satisfaction the appeal of President Roosevelt, on the subject of aerial bombing. Therefore, they have already sent express instructions to the commanders of their armed forces, under which they shall only bombard, by aerial or maritime means or by terrestrial artillery, strictly military targets, in the strictest meaning of the term.<sup>63</sup>

Likewise, the Declaration continued, in the case of bombardment by ground artillery:

they will exclude objectives which do not present a clearly defined military objective, in particular, the large urban areas situated outside the battlefield and, similarly, will strive to avoid the destruction of areas and buildings of interest for civilisation.... A demand will be addressed to the German Government to ascertain if they are can give corresponding assurances. It goes without saying that if the enemy does not observe certain restrictions to which the governments of France and Great-Britain have imposed on the operations of their armed forces, these governments reserve the right to have recourse to all the action they consider appropriate.<sup>64</sup>

- 2.37. The International Museums Office also moved quickly on the outbreak of hostilities, and produced a very substantial (232 pages) handbook on the protection of monuments and works of art in time of war<sup>65</sup>. This had many practical examples of the recommended measures for protecting museum collections and monuments, in part using the Spanish Civil War experience. The book also included the texts (in both French and English) of the draft Convention, and French translations of the exchanges between the United States and the three principal belligerents for reference and information.

- 2.38. The successes and failures at the both the legal and practical levels to protect cultural property in the Second World War have been extensively recorded and studied.<sup>66</sup> However, it is important to record that despite the lack of legally

---

<sup>62</sup> Office International des Musées, 1939, p. 222 - 223.

<sup>63</sup> Office International des Musées, 1939, p. 225 - 226.

<sup>64</sup> Office International des Musées, 1939, pp. 225 - 226.

<sup>65</sup> Office International des Musées, 1939.

<sup>66</sup> See for example Beseler & Gottschow, 1988; British Committee on the Preservation and Restitution of Works of Art, 1946A, 1946B, 1946C, 1946D, 1946E; Cassou, 1947; Commission de Récupération

binding force, in many ways the exchanges of September 1939 of what amounted to the rules of engagement between the belligerents were very largely respected for the first 2½ years of the war, at least on the Western Front. It is of course true that there were very many civilian casualties during that period, but both sides seem to have endeavoured to restrict their air attacks to legitimate military, communications, and armaments-related industrial targets. The large number of human and cultural casualties were largely if not wholly the result of collateral damage of areas in close proximity to legitimate military or economic targets as a result the lack of accurate navigation and bomb-aiming aids, especially for night bombing.

2.39. To take just two English examples, losses of civilian lives and of cultural property (especially historic churches and other historic public buildings) was very severe in the historic City of London. However, at a time when long distance night bombing on dark nights rarely achieved an accuracy of plus or minus five kilometres, no part of the 'Square Mile' was much more than 1 km. from the vitally important Pool of London between Tower and London Bridges, and contained three of the main railway terminals serving east coast ports. In the case of the most severely damaged British town of all, Hull, East Yorkshire, few residential or commercial areas were even 1 km. from the city's 12 km. of docks and quays along the Humber estuary and the River Hull at right angles to it, or of the more than 30 route km. of railways serving the docks of the Kingdom's third port. In such cases air bombardment, if accepted as a lawful means of war at all, was inevitably going to result in unintended damage over large areas surrounding any legitimate military or communications target located in densely populated areas.

2.40. The fundamental change of strategy came at the end of March 1942 with the British firestorm test-bombing of the undefended historic city of Lübeck, which lead directly to German reprisal bombings, (what were termed in England the 'Baedeker Raids') of April and May 1942 on the English cathedral cities of Exeter, Norwich, York and Canterbury. Describing the Lübeck attack in his post-war memoirs, the creator of both the United Kingdom's Bomber Command, and the 'strategic bombing' strategy, Sir Arthur ('Bomber') Harris was very open about his motives:

On the night of March 28th-29th [1942] the first German city went up in flames. This was Lübeck, a rather distant target on the Baltic coast ... from the nature of its buildings easier than most cities to set on fire.... It was not a vital target, but it seemed to me better to destroy an industrial town of moderate importance than to fail to destroy a large industrial city. However, the main object of the attack was to learn to what extent a first wave of aircraft could guide a second wave to the aiming point by starting a conflagration... In all, 234 aircraft were dispatched and dropped 144 tons of incendiaries and 160 tons of high explosives. At least half of the town was destroyed, mainly by fire. it was conclusively proved that even the small force I had then could destroy the greater part of a town of secondary importance.<sup>67</sup>

2.41. In his post-war memoirs, Harris defended his actions (highly criticised at the time, not least by the American military, and more widely ever since) in switching

---

Artistique, 1946; Direction Générale de l'Economie, 1947; Pape, 1975; polish Ministry of Culture and Art, 1949 - 1953; Rorimer, 1950; Roxan, 1964; Valland, 1961; Woolley, 1947.

<sup>67</sup>

Harris, 1947, p. 105; Harris' action and Hitler's public response is also discussed by McDougal & Feliciano, 1967, p. 686. From my days as Director in Exeter 25 years ago I was well aware that Germany had publicly announced the 'Baedeker Raids' as reprisals for the destruction of Lübeck, but I had always believed that this was an unfortunate accident due to the proximity of the medieval city to legitimate naval targets on the nearby estuary and Baltic coast. I am grateful to W. Hays Parks, U.S. Department of Defense, for drawing my attention to the true reason, i.e. the experiment to test out the firestorm theory of 'Bomber' Harris.

## Evolution of Concepts of Cultural Protection

the air attack to the German cities and hence the civilian population, making the astonishing claim that:

International law can always be argued pro and con, but in this matter of the use of aircraft in war there is, it so happens, no international law at all. There was never any agreement about it, with the single exception that about the time of the siege of Paris in the war of 1870 the French and Germans came to an agreement between themselves that neither side should drop explosives from free balloons.<sup>68</sup>

- 2.42. In making this claim Harris many have been right in relation to the stalled attempts to establish a specific international treaty concerning aerial bombing. However, his claim that 'there was never any agreement about it' ignores totally the mutual exchanges through the mediation of President Roosevelt in September 1939 agreeing severe restrictions on aerial bombing, and which clearly constituted a *de facto* exchange of the rules of engagement. Arguably the unilateral breach without prior notice of such agreed terms comes within the definition of 'perfidy' under customary law, allowing the other side to respond in kind without notice. This point was certainly not lost on the German military command which immediately exercised its reserved right of retaliation and publicly presented its action in these terms. The response was in the form of a deliberate attack on the Roman and medieval capital of the English West Country, the cathedral city of Exeter, followed over the next three weeks with heavy attacks on the historic hearts of the cathedral cities of Norwich, York and Canterbury (the latter two being the seats of the two Provinces of the Church of England), plus two more heavy raids on the centre of Exeter.
- 2.43. This escalation of the war led to a revival of concern about the need to protect important monuments and collections, and these worries grew as the western allies began to prepare for the liberation of continental Europe. Also, by this time alarming information was beginning to emerge about the scale of German destruction and looting on the eastern front, especially in Poland and Russia, and later of state-organised looting in France and the other occupied territories.
- 2.44. In the 1943 Italian mainland campaign the Allied Supreme Commander in Europe, General Dwight D. Eisenhower, issued clear directions requiring his forces to respect and preserve cultural property<sup>69</sup>. However, following widespread criticism of the destruction of the Monastery of Monte Cassino in February 1944, Eisenhower promulgated even more explicit rules of engagement on 26 May 1944 in advance of the Normandy landings:

Shortly we will be fighting our way across the Continent of Europe in battles designed to preserve our civilization. Inevitably, in the path of our advance will be found historical monuments and cultural centers which symbolize to the world all that we are fighting to preserve. It is the responsibility of every commander to protect and respect these symbols whenever possible.... [After referring to enemy's use of Cassino to "shield his defense" continues]: ... where military necessity dictates, commanders may order the required action even though it involves destruction of some honored site. But there are many circumstances in which damage and destruction are not necessary and cannot be justified. In such cases, through the exercise of restraint and discipline, commanders will preserve cultural centers and objects of historical and cultural significance. Civil Affairs Staffs and higher echelons will advise commanders of locations of historical monuments of this type, both in advance of the front lines and in occupied areas. This information, together with the necessary instruction, will be passed down through command channels to all levels.<sup>70</sup>

---

<sup>68</sup> Harris, 1947, p. 177.

<sup>69</sup> Discussed further in Chapter 4 of this Report, see especially para. 4.9 - 4.10.

<sup>70</sup> Rorimer 1950, p. x.

- 2.45. The final years of the Second World War in Europe saw a further major development within the military command structure aimed at protecting cultural property, with the establishment of posts of Monuments, Fine Arts and Archives (M. F.A. & A.) officers attached to the United States, United Kingdom and Free French forces. Although very small in number these, usually academic experts or professionals in the field in civilian life, played a vitally important part in minimising both direct war damage (through assisting in identifying areas to be protected (more than 400 were pre-listed in advance of the May 1944 invasion of Normandy, for example), and in supervising the protection of both buildings and collection during and after the battles. With achievement of peace, the M., F.A., & A. Units switched their attention to the recovery and restitution of looted and otherwise illegally transferred cultural property. In support of this one of the earliest pieces of martial law legislation adopted in occupied Germany was Military Government of Germany Law No. 52 which provided that:
- ... no person shall import, acquire or receive, deal in, sell, lease, transfer, expert, hypothecate or otherwise dispose of, destroy or surrender possession, custody or control of any property ... which is a work of art or cultural material of value or importance, regardless of the ownership or control thereof.<sup>71</sup>
- 2.46. First hand accounts have been given by officers of all three nations, and detailed reports sector by sector on the war damages were published by all three allies: particularly valuable are those of the art historians Capt. James Rorimer, the first American M., F.A., & A. officer, and Rose Valland, the Parisian curator, and of the distinguished archaeologist, Sir Leonard Woolley, who headed the United Kingdom M., F.A., & A. efforts<sup>72</sup>. The Los Angeles lawyer, Charles McConney, who has made a special study of this has recently proposed the re-establishment of expert teams of this kind on standby to assist in United Nations peace-keeping operations.<sup>73</sup>
- 2.47. The five years between 1944 and 1949 saw a series of extremely important world developments and events which, though not specifically relating to the legal protection of cultural property at the international level were to lay the foundations for the post-war world, for good or ill. On the negative side were the rapid escalation of the potential power and destructiveness of armaments. Most notable were the advances in aerial bombardment, first with the mass bombings using the new generation of heavy bombers creating unprecedented area devastation, culminating in the total destruction in February 1945 of the historic heart of Dresden, and then the first use of atomic weapons, first on Hiroshima and then on Nagasaki. On the positive side was the creation of new international organisations with supporting international law, and major new developments in international humanitarian law drawing on the negative experiences of the Second World War.
- 2.48. Moves to lay the foundations for the new post-war world order began with the Dumbarton Oaks international conference in 1944, and these aspirations were expressed in detailed form in the San Francisco Treaty of 26 June 1945 - the Charter of the United Nations. Though this introduced no new provisions specifically relating to culture it had two major effects which were directly relevant. The first was the new structure for the making and maintenance of

---

<sup>71</sup> Rorimer, 1950, p. 216.

<sup>72</sup> See note 43 above for the details.

<sup>73</sup> The outline summary of his report is reproduced as Appendix XI of this Report.

## Evolution of Concepts of Cultural Protection

peace and of establishing pacific relations between states<sup>74</sup>, and second for were the provisions for the creation of additional intergovernmental organisations, which led directly to the establishment of the United Nations Educational, Scientific and Cultural Organisation (UNESCO) on 16 November 1945.

- 2.49. In the same year (on 8 August 1945) the London Charter established the rules for the war crimes tribunals, particularly those held over the next three years in Nuremberg. This declared that the states of the United Nations had the right to investigate, try and punish 'violations of the international law of war' as representatives of the world community, while in addition the occupying powers, as the victorious belligerents as exercising supreme power in Germany were entitled to exercise domestic jurisdiction over German nationals in place of the deposed German State. The London Treaty also established the rules for the investigation of war crimes - defined as (a) crimes against peace, (b) war crimes [contrary to both customary international humanitarian law and specific treaties, especially the Hague Conventions], and (c) 'crimes against humanity... whether or not in violation of domestic law'<sup>75</sup>.
- 2.50. The subsequent Nuremberg war crimes trials clarified some issues relating to cultural property, particularly the cases brought against Goering and Rosenberg alleging both direct and indirect complicity in the direct looting and forced sales of tens of thousands of works of art and other items of movable cultural property<sup>76</sup>. Of particular importance was the explicit statement of the Nuremberg Tribunal in the key general rulings concerning applicable law in the 'Nazi Conspiracy and Aggression' in 1947 and in relation to property in the 'I.G. Farben' case respectively:

The law of war is to be found not only in treaties, but in the customs and practices of states which gradually obtained universal recognition, and from the general principles of justice applied by jurists and practised by military courts. This law is not static but by continual adaptation follows the needs of a changing world.<sup>77</sup>

... we are unable to find that there has been a change in the basic concept of respect for property rights during belligerent occupation of a character to give legal protection to the widespread acts of plunder and spoliation committed by Nazi Germany during the course of World War II.<sup>78</sup>

- 2.51. In 1948, drawing on the revelations of the Holocaust that had emerged at the end of the Second World War, and particularly in the Nuremberg war crimes trials, the United Nations formally declared genocide to be a grave international crime. This was implemented in the *Genocide Convention* of 9 December 1948, which came into force in January 1951, and is equally applicable to situations of international armed conflict, civil wars, other internal armed conflicts and peacetime. This declared that:

---

<sup>74</sup> Discussed in more detail in Chapter 19 - Future role of the United Nations below.

<sup>75</sup> O'Brien, 1972, pp. 195 - 195.

<sup>76</sup> I am particularly indebted to M. Robert Lecat of the French Ministry of Culture for giving me a photocopy of this part of the French Government's (apparently unpublished) preparatory report of December 1945 for Nuremberg on alleged war crimes against cultural property during the German occupation.

<sup>77</sup> Nazi Conspiracy and Aggression: Opinion and Judgement, 1947 [Nuremberg Judgement 51], quoted by Miller, 1975, p.10.

<sup>78</sup> United States v. Krauch et al. 1948 (8 Trials of War Criminals... No. 10), quoted by Miller, 1975, p.10.

the Contracting Parties confirm that genocide, whether committed in time of peace or time of war, is a crime under international law which they undertake to prevent and punish.<sup>79</sup>

- 2.52. The following day, 10 December 1948 the General Assembly of the United Nations adopted the *Universal Declaration of Human Rights* which included provisions in relation to cultural rights:

Everyone has the right freely to participate in the cultural life of the community, to enjoy the arts and to share in scientific advancement and its benefits.<sup>80</sup>

- 2.53. The following year, on the initiative of the International Committee of the Red Cross the four *Geneva Conventions* were adopted. The *First, Second and Third Geneva Conventions* of 1949 dealt were in many ways a continuation of the by then already long tradition of international law of war, especially the *Hague Conventions* of 1899 and 1907, and amplified the customary international law in relation to (amongst other things) the protection of non-combatants. Also, following the principles established in the 1945 *London* treaty and the Nuremberg proceedings, under the common provisions to all four *Geneva Conventions* (now accepted by virtually all independent states of the world, and in any case now regarded as binding customary law) all High Contracting Parties undertake to seek out and prosecute, regardless of their nationality, all persons alleged to have committed or order defined 'grave breaches' of the *Geneva Conventions*.<sup>81</sup>

- 2.54. However, the *Fourth Geneva Convention* broke new ground in that it covered specifically the international humanitarian law relating to the protection of civilians<sup>82</sup>. Although there were no specific provisions relating to the protection of cultural property in Geneva IV, the Hague principles prohibiting the targeting of non-combatant populations and civilian property were reinforced<sup>83</sup>. Also one specific new provision which might be called in aid of the protection of cultural symbols, in so far as these are expressions of religious or cultural values, was adopted under the 'General Protection' provisions of the *Fourth Geneva Convention*:

Protected persons are entitled, in all circumstances, to respect for their persons, their honour, their family rights, their religious convictions and practices, and their manners and customs...<sup>84</sup>.

- 2.55. In the aftermath of the Second World War there were many reviews of the effectiveness or otherwise of both the practical and legal measures taken to protect cultural property, including monuments, historic areas, museums, libraries, archive repositories etc.<sup>85</sup>, (discussed further in the Second World War case study, Chapter 14).

<sup>79</sup> United Nations Declaration on Genocide, 9 December 1948: *Convention on the Prevention and Punishment of the Crime of Genocide, 1948*.

<sup>80</sup> Article 27 (United Nations, 1988).

<sup>81</sup> Articles 49, 50, 129 and 146 respectively of the *First to Fourth Conventions*; see for example, Verhaegen, 1987, p.607 and Kalshoven, 1987, pp. 67 - 69.

<sup>82</sup> *Geneva Convention Relative to the Protection of Civilian Persons in Time of War* (Convention IV of 12 August 1949).

<sup>83</sup> Particularly by *Fourth Geneva Convention* of 1949 Article 53.

<sup>84</sup> *Fourth Geneva Convention* of 1949 Article 27.

<sup>85</sup> See in particular the general reviews of Woolley (1947) for a United Kingdom perspective, Rorimer (1950) for the experience of United States Monuments, Fine Arts and Archives officers in Europe, the French Government's (apparently unpublished) 66 pages of evidence to the Nuremberg Tribunal on

## Evolution of Concepts of Cultural Protection

- 2.56. In relation to international law, the pre-war work of the International Museums Office for the League of Nations was taken up again by the Italian government initially, but the lead responsibility was then passed to UNESCO. Following a considerable period of preparatory work a diplomatic conference was convened at The Hague. The verbatim record of the complex series of negotiations in both plenary sessions and specialised commissions was eventually published as the formal record of the Conference, and has recently been analyzed in great detail, and compared with the final text, by Dr Jiri Toman<sup>86</sup>.
- 2.57. The result was the adoption on 14 May 1954 of *The Convention for the Protection of Cultural Property in the Event of Armed Conflict, The Hague, 1954*, detailed *Regulations* for the practical implementation of the Convention (which form an integral part of it), and a separate *Protocol for the Protection of Cultural Property in the Event of Armed Conflict*. Despite much debate and many differences of opinion on the details - particularly at the practical level - the 1954 Conference was clearly agreed on a number of important principles, particularly the concept of a valid international interest of the world community as cultural property as part of 'the cultural heritage of all mankind', requiring special legal measures at the international level for its safeguarding. In addition the Conference adopted three formal Resolutions<sup>87</sup>. The first of these:

expresses the hope that the competent organs of the United Nations should decide, in the event of military action being taken in implementation of the Charter, to ensure application of the provisions of the Convention by the armed forces taking part in such action.<sup>88</sup>

- 2.58. The second Resolution recommended the establishment by each High Contracting Party of a National Advisory Committee for the application of the *Convention* and the third Resolution asked the Director-General of UNESCO to convene a meeting of the High Contracting Parties, (though this did not in fact take place until 1962).

2.59. The full text of both the *Convention* and the *Protocol* are given in Appendix I of this Report, and each major element is analyzed in turn in the next eight chapters of this Report, so only an outline of their structure and content is necessary at this point.

---

the Nazi pillaging [Délégation française au Ministère Public - Section économique, Janvier 1946: *Exposé du Ministère Public: le Pillage des Oeuvres d'Art dans les Pays Occupés de l'Europe Occidentale*: Doc. ref. XIII, 51], and the published account of Cassous (1947) for France, the publication of the Hungarian Ministry of Culture (1947) for Hungary, the five volumes of reports of the Polish Ministry of Culture (1945), Lorenz (1947), and Polish Ministry of Culture (1949 - 1953) for Poland. Later major studies include Valland (1961) and Simon (1971) on France, Beseler & Gottschow (1988) on West Germany and Berlin, and Varshavsky & Rest (1985) on Leningrad.

<sup>86</sup> In press: the French edition is due to be published by UNESCO in late 1993, and it is hoped that an English translation will follow in 1994.

<sup>87</sup> 1954 *Hague Convention* Preamble (UNESCO 1985, p. 18); also see the declaration in Article 1 that this is 'of great importance to the cultural heritage of every people'. Prof. J. H. Merryman describes this innovation as 'a charter for cultural internationalism', and points out, with every justification, the profound significance of this new definition of the international interest for other areas of the law and policy concerning the international trade in and repatriation of cultural property, (Merryman, 1966, p. 837).

<sup>88</sup> *Hague Conference on the Protection of Cultural Property in the Event of Armed Conflict, The Hague, 1954*, Resolution I.

- 2.60. The background and objectives to the *Convention* and *Protocol* are set out clearly at the beginning:

***The High Contracting Parties,***

***Recognizing*** that cultural property has suffered grave damage during recent armed conflicts and that, by reason of the developments in the technique of warfare, it is in increasing danger of destruction;

***Being convinced*** that damage to cultural property belonging to any people whatsoever means damage to the cultural heritage of all mankind, since each people makes its contribution to the culture of the world;

***Considering*** that the preservation of the cultural heritage is of great importance for all peoples of the world and that it is important that this heritage should receive international protection;

***Guided*** by the principles concerning the protection of cultural property during armed conflict, as established in the Conventions of The Hague of 1899 and of 1907 and in the Washington Pact of 15 April, 1935;

***Being of the opinion*** that such protection cannot be effective unless both national and international measures have been taken to organize it in time of peace;

***Being determined*** to take all possible steps to protect cultural property;

***Have agreed*** upon the following provisions:<sup>89</sup>

- 2.61. The *Convention* itself first defines within the single term 'cultural property' (*biens culturels* in the French version) three different conceptual categories: (1) both immovable and movable items which are themselves of intrinsic artistic, historic, scientific or other cultural value such as historic monuments, works of art or scientific collections, (2) premises used for the housing of movable cultural property, such as museums, libraries and archive premises, and (3) 'centres containing monuments' such as important historic cities or archaeological zones. Protection is also offered by the *Convention* to temporary wartime shelters, to authorised means of emergency transport in times of hostilities, and to authorized specialist personnel: concepts derived directly from the protection for civilian air-raid shelters, hospitals and ambulances in relation to humanitarian protection in the *Geneva Conventions*<sup>90</sup>. The implications of these provisions are discussed in Chapter 3 below, while the subsequent definitions of and rules for the *Convention's* concepts and interpretations of 'protection', 'safeguarding' and 'respect' for cultural property, and for its public identification by means of an official symbol are detailed and discussed in Chapter 4 of this report.

- 2.62. The *Convention* also deals with the question of occupied territories, placing explicit obligations on any High Contracting Party occupying all or part of the territory of any other Party to take measures 'as far as possible' to safeguard and preserve cultural property, and are required to support and co-operate with the competent national authorities (and official experts) in this<sup>91</sup>. Chapter I of the *Convention* concludes with important provisions requiring the peace-time training of the armed forces:

1. The High Contracting Parties undertake to introduce in time of peace into their military regulations or instructions such provisions as may ensure observance of the present Convention, and to foster in the members of their armed forces a spirit of respect for the culture and cultural property of all peoples.

2. The High Contracting Parties undertake to plan or establish in peace-time, within their armed forces, services or specialist personnel whose purpose will be to secure respect for cultural property and to co-operate with the civilian authorities responsible for safeguarding it.<sup>92</sup>

<sup>89</sup> Hague Convention, 1954, Preamble.

<sup>90</sup> Hague Convention, 1954, Articles 1, 8 and 12 - 14.

<sup>91</sup> Article 5.

<sup>92</sup> Article 7.



## Evolution of Concepts of Cultural Protection

However, the terms of this Article are very imprecise and more detailed guidance, at least in respect of good practice, are needed, and it does not deal with the necessity to develop understanding and respect for cultural property amongst the general, civilian, population. These points are discussed in detail in Chapter 5 below.

- 2.63. Chapter II<sup>93</sup> of the *Convention* introduces and regulates the concept of 'Special Protection'. Under this UNESCO, after consulting all High Contracting Parties may place on a special list at the request of the state concerned, a limited number of temporary refuges or shelters for movable cultural property, and also 'centres containing monuments and other immovable property of very great importance', and subject to the defending State being both able and willing to demilitarise the location and its surroundings. This aspect of the *Convention* is discussed in Chapter 6 of this Report.
- 2.64. Chapter III provides protection and immunity, modelled closely on that granted to ambulances under the Hague and Geneva Conventions, for official transport used in both internal and international transfers of cultural property, subject to prior authorization and international supervision of the movement<sup>94</sup>. These issues are reviewed in Chapter 7 of this Report.
- 2.65. Chapters IV - VII cover a wide range of provisions relating to the protection of personnel engaged in the protection of cultural property<sup>95</sup>, details relating to the use of the official emblem of *Hague Convention* ( a blue and white shield), and issues relating to the interpretation and application of the *Convention*<sup>96</sup>: again all of these are closely modelled on the Geneva Conventions.
- 2.66. Of particular, and growing, importance was the decision of the 1954 Intergovernmental Conference to follow Common Article 3 of the 1949 *Geneva Conventions*, and extend the protection of cultural property beyond the traditional definition of 'war' into the difficult area of internal armed conflicts, such as civil wars, 'liberation' wars and armed independence campaigns, and - probably - to major armed terrorist campaigns:

1. In the event of an armed conflict not of an international character occurring within the territory of one of the High Contracting Parties, each party to Protection of cultural property in the event of armed conflict the conflict shall be bound to apply, as a minimum, the provisions of the present Convention which relate to respect for cultural property.

2. The parties to the conflict shall endeavour to bring into force, by means of special agreements, all or part of the other provisions of the present Convention.

3. The United Nations Educational, Scientific and Cultural Organization may offer its services to the parties to the conflict.

4. The application of the preceding provisions shall not affect the legal status of the parties to the conflict<sup>97</sup>.

---

<sup>93</sup> Articles 8 to 11.

<sup>94</sup> *Convention* Articles 12 - 14, and *Regulations* Articles 17 - 19.

<sup>95</sup> Article 16.

<sup>96</sup> Articles 15 - 18.

<sup>97</sup> Article 19.

2.67. In the years since the adoption of the 1954 *Convention* non-international armed conflicts, particularly those relating to internal strife along national, regional, ethnic, linguistic or religious lines, have become an increasingly common feature of the world order and in losses of monuments, museums, libraries and other cultural repositories. The issues relating to these are very difficult and complex, and are discussed in some detail in Chapter 13 below.

2.68. So far as dissemination of the Convention is concerned the High Contracting Parties undertake to so widely within their countries, certainly among the military, and if possible to the civilian population<sup>98</sup>, to communicate their national translations (beyond the French, English, Russian and Spanish texts of the 1954 Hague Conference) to other Parties (through UNESCO), and to submit periodic reports to UNESCO<sup>99</sup> at least once every four years on the measures being taken to implement the *Convention*<sup>99</sup>. In fact it is evident that only a small minority of High Contracting Parties have made serious efforts to disseminate knowledge of the *Convention* more widely within their countries, and the same is true of the submission of the required periodic reports<sup>100</sup>.

2.69. Bearing in mind the importance of measures for enforcement, and indeed the Nuremberg War Crimes Tribunal rulings, the provisions for enforcement action and sanctions were remarkably weak and rather vague:

The High Contracting Parties undertake to take, within the framework of their ordinary criminal jurisdiction, all necessary steps to prosecute and impose penal or disciplinary sanctions upon those persons, of whatever nationality, who commit or order to be committed a breach of the present Convention<sup>101</sup>.

2.70. The *Convention* provides no explicit mechanism for resolving disputes about enforcement between States Parties to it nor for any form of specific international legal or extra-territorial action of the kind undertaken against eg. Rosenberg in the Nuremberg war crimes trials. However, it must be stressed that the weakness of the *Convention* in this respect are the result of decisions of the Hague Conference to water down the original draft text, as is clear from both the *procès-verbal* of the *Conference* and Dr Jiri Toman's forthcoming analysis<sup>102</sup>.

2.71. The concluding Articles of the *Convention* dealt with a range of mainly legal issues, including a provision permitting the application of the *Convention* to colonies and other dependent territories, formalising the relationship of the new *Convention* to the 1899 and 1907 *Hague Conventions* and the 1935 Washington (Roerich) Pact, and provisions relating to both individual denunciation by a High Contracting Party and for inter-governmental revision of the *Convention* and *Regulations*<sup>103</sup>.

2.72. The 1954 *Hague Regulations*, which form an integral part of the *Convention*, set out first (in Chapter I) the practical procedures to be followed in relation to the

---

<sup>98</sup> Article 25.

<sup>99</sup> Article 26.

<sup>100</sup> See Chapter 8 and Appendix 5 on Periodic Reports by High Contracting Parties.

<sup>101</sup> Article 28.

<sup>102</sup> See para. 2.1 and notes 3 & 4 above.

<sup>103</sup> Articles 28 - 40.

## Evolution of Concepts of Cultural Protection

compiling by the Director-General of UNESCO of an international list of persons qualified to carry out the functions of Commissioners-General, and procedures to be followed in the event of armed conflict, including the arrangements for the appointment of cultural representatives, Commissioners-General and the responsibilities of the Protecting Powers (appointed in accordance with the Hague 1907 and Geneva 1949 principles)<sup>104</sup>.

- 2.73. The second part (Chapter II) of the *Regulations* deals with the practical arrangements and procedures for the granting and registration of 'Special Protection', including the notification of all proposals to every High Contracting Party and arrangements for the submitting of objections and for eventual arbitration on these if necessary, as well as provisions for the cancelling of 'Special Protection' where appropriate<sup>105</sup>.
- 2.74. Chapter III of the *Regulations* sets out in some detail the procedures for the transport of movable cultural property to a place of safety, (possibly abroad), for protection, with the approval of the Commissioner-General<sup>106</sup>, while the final part, Chapter IV, regulate the use of the Official Emblem and the identity cards and other identifying markers of persons duly authorised to undertake official duties in relation to the implementation of the *Convention*<sup>107</sup>.
- 2.75. The *Protocol for the Protection of Cultural Property in the Event of Armed Conflict* has two unambiguous purposes. First, a State Party to the *Protocol* undertakes to take active measures to prevent the all exports of movable cultural property as defined in the *Hague Convention* from any territory which it may occupy during an armed conflict. Second, all High Contracting Parties undertake to seize and hold to the end of hostilities any cultural property from war zones which has been exported in contravention of the first principle of the *Protocol*. It also provides that such cultural property shall never be retained as war reparations<sup>108</sup>.
- 2.76. The 1954 Intergovernmental Conference was attended by official delegates of a majority of the Sovereign States in membership of the United Nations at that date, and most participating States signed the Final Act over the following months. However the number of States that have formally ratified the *Convention* and *Protocol* is disappointing. A list of States Parties to these as at the beginning of June 1993 (showing also their relationship to the United Nations, UNESCO and the two other relevant UNESCO Conventions) is given as Appendix II of this Report, and the issue of acceptance and ratification is discussed in detail in Chapter 11 of the main text.
- 2.77. Following long and difficult negotiations the 1970 General Conference of UNESCO adopted the *Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property*, which aimed to outlaw the widespread trafficking in both smuggled and stolen works of art and other cultural property. Curiously, it includes no explicit reference to the 1954 *Hague Convention* and - especially - the *Hague Protocol*, even though it is widely

---

<sup>104</sup> Hague 1954 Regulations Articles 1 - 10.

<sup>105</sup> Hague Regulations, Articles 11 - 16.

<sup>106</sup> Regulations Articles 17 - 19.

<sup>107</sup> Regulations, Articles 20 - 21.

<sup>108</sup> Hague 1954 Protocol, Para. I.

recognised for centuries that the risk of cultural losses through theft and smuggling are probably at their greatest during times of armed conflict and disorder, whether international or internal. In the 1970 *Convention* UNESCO adopted a far more detailed definition of the term 'cultural property' than in the 1954 *Hague Convention*<sup>109</sup>, and in the longer term it would be desirable for UNESCO to adopt common definitions for both wartime and peacetime protection of movable cultural property.

- 2.78. Two years later UNESCO adopted the *World Heritage Convention* (1972), which provided for the designation of sites and zones of pre-eminent world importance as 'World Heritage Sites'. This *Convention* covers both cultural and - for the first time - natural sites. Once again the definitions adopted were quite different from those in the 1954 *Convention*, adding further to the difficulties and possibility of confusion<sup>110</sup>. However, the *World Heritage Convention* offers a number of valuable models for any updating of the 1954 *Hague Convention*, including the undertakings of States Parties to it to actively promote respect for the national and international patrimony throughout the population, and to establish and maintain adequate systems and organisational structures for the necessary practical measures<sup>111</sup>.
- 2.79. Eighteen years after the adoption of the original 1949 *Geneva Conventions*, in 1977, an International Conference to review these and called by the International Committee of the Red Cross, and completed its work by consensus, ie. without a formal vote<sup>112</sup>. The result was that the provisions of the *Fourth Geneva Convention* of 1949 were substantially widened by the *First Additional Protocol* (relating to international armed conflicts) and the *Second Additional Protocol* (relating to non-international armed conflicts and serious civil disturbances).
- 2.80. In parallel provisions, each *Protocol* prohibits attacks on cultural or religious property 'which constitute the cultural and spiritual heritage of peoples' and the use of this for military purposes by either attacking or defending regular or irregular forces<sup>113</sup>. However, the 1977 *Additional Protocols* have not yet gained the universal acceptance of the 1949 *Conventions*<sup>114</sup>, and a number of major powers (including the United States of America) still maintain objections to some aspects, particularly what is perceived to be an implied constraint in *Protocol I* on the use of nuclear weapons. More widely, the principles of *Protocol II* in relation to internal armed conflict are seen as by some governments as limiting a State's powers in putting down internal revolutions and other attacks on the integrity and hence the very survival of the State itself<sup>115</sup>.

---

<sup>109</sup> See Appendix IV of this report for a detailed comparison of the definitions used in various international instruments, and the discussion of the question of definitions in Chapter 3 of this Report.

<sup>110</sup> See Appendix IV and Chapter 3, as in note 87 above.

<sup>111</sup> See in particular Chapters 5 and 12 of this Report.

<sup>112</sup> *Diplomatic Conference on the Reaffirmation and Development of International Humanitarian Law Applicable in Armed Conflicts (Geneva, 1974 - 1977)*: concluded on 8 June 1977: see Kalshoven, 1987, pp. 71 - 145.

<sup>113</sup> *Additional Geneva Protocol I*, Part IV, 1977, Article 53 (international armed conflicts); *Additional Geneva Protocol II*, Part IV, 1977, Article 16 (non-international armed conflicts).

<sup>114</sup> Kalshoven (1987, p. 71 - 72) records that in during the first nine years (1977 to 1986), only 59 States had become parties to *Protocol I* and only 52 to *Protocol II*.

<sup>115</sup> Though, against the general trend, France has ratified *Protocol II* relating to non-international conflicts while, as a nuclear power, declining to ratify *Protocol I*.

## Evolution of Concepts of Cultural Protection

2.81. More recently, on the proposal again of the International Committee of the Red Cross, a further *Geneva Convention on prohibitions or restrictions on the use of certain conventional weapons which may be deemed to be excessively injurious or to have indiscriminate effects* was approved (in October 1980). The Second Protocol to the 1980 *Convention*<sup>116</sup>, includes specific prohibitions on the use of booby-traps on, amongst other cases, cultural property:

**Art.6. Prohibition on the use of certain booby-traps**

1. Without prejudice to the rules of international law applicable in armed conflict relating to treachery and perfidy, it is prohibited in all circumstances to use: ...
  - b) booby-traps which are in any way attached to or associated with: ...
  - vii) objects clearly of a religious nature;
  - ix) historic monuments, works of art or places of worship which constitute the cultural or spiritual heritage of peoples;<sup>117</sup>.

2.82. Finally, but by no means least, at the time of writing this Report, for the first time since the Nuremberg trials of 1945 - 1948 allegations of breaches of international law in relation to cultural property in the former Yugoslavia are being actively investigated with a view to international proceedings. By its Resolution 808 of 22 February 1993, the United Nations Security Council initiated formal procedures leading to the establishment of an international war crimes tribunal to investigate and act on allegations of 'grave breaches and other violations of international humanitarian law ... including ... destruction of cultural and religious property ...'<sup>118</sup>. It is difficult to over-emphasise the potential importance of any test cases relating to 'cultural war crimes' under the planned United Nations proceedings, in order to demonstrate to the world the gravity of such allegations<sup>119</sup>.

---

<sup>116</sup> *Protocol on prohibitions or restrictions on the use of mines, boob-traps and other devices* (Geneva 1980 Protocol II).

<sup>117</sup> Article 6 of Protocol II: *Protocol on prohibitions or restrictions on the use of mines, boob-traps and other devices* (Geneva 1980 Protocol II).

<sup>118</sup> United Nations Documents ref. S/ RES/ 808 (1993) and S/ 2574, February 1993.

<sup>119</sup> See the discussions in Chapter 9: Legal enforcement and sanctions.



**Definition of Cultural Property**

***CHAPTER 3.***

## **THE 1954 CONVENTION'S DEFINITION OF CULTURAL PROPERTY**

3. 1. The 1954 *Convention*, in both its title and purpose, focuses ultimately on two concepts fundamental to its interpretation and application: (1) 'cultural property' and (2) 'protection'. In relation to the first of these the *Convention* initially uses a very simple basic definition of what is to be protected and safeguarded under it, though this is followed by list of examples of what the term is deemed to include:

For the purposes of the present Convention, the term 'cultural property' shall cover, irrespective of origin or ownership:

- (a) movable or immovable property of great importance to the cultural heritage of every people, such as monuments of architecture, art or history, whether religious or secular; archaeological sites; groups of buildings which, as a whole, are of historical or artistic interest; works of art; manuscripts, books and other objects of artistic, historical or archaeological interest; as well as scientific collections and important collections of books or archives or of reproductions of the property defined above<sup>120</sup>;

3. 2. However, the list of examples cited is in reality far from comprehensive, and as a result the definition is perhaps weakened rather than strengthened by these. The 1907 *Hague Convention* provided for the safeguarding of 'buildings dedicated to religion, art, science or charitable purposes, historic monuments ...<sup>121</sup>', and was followed in this by the 1935 Washington Treaty (Roerich Pact), which focused on the cultural institutions themselves: '... historic monuments, museums, scientific, artistic, educational and cultural institutions'<sup>122</sup>.

3. 3. Nevertheless, the 1954 definition is a considerable improvement on the 1936 International Museums Office proposal of 'historic buildings and works of art'<sup>123</sup>, which could have left unprotected the whole of archaeology, history (other than historic buildings), sciences, libraries and archives, and probably much of the applied arts.

3. 4. In addition the 1954 *Convention* provides for protection on the same basis as their contents of certain permanent and temporary cultural premises:

- (b) buildings whose main and effective purpose is to preserve or exhibit the movable cultural property defined in sub-paragraph (a) such as museums, large libraries and depositories of archives, and refuges intended to shelter, in the event of armed conflict, the movable cultural property defined in sub-paragraph (a)<sup>124</sup>.

Finally, so far as definitions are concerned, there is an even less precise definition, in terms of deciding what does or does not warrant protection, in the case of the protection of:

- (c) centres containing a large amount of cultural property as defined in sub-paragraphs (a) and (b), to be known as 'centres containing monuments'<sup>125</sup>.

<sup>120</sup> 1954 *Hague Convention*, Article 1.

<sup>121</sup> Fourth Hague Convention of 1907, Article 27.

<sup>122</sup> Roerich Pact, Article 1 - see para. 2.22 of this Report.

<sup>123</sup> Office International des Musées, 1939, p. 181 - see also Appendix 3 of this Report.

<sup>124</sup> Article 1.

<sup>125</sup> Article 1.



## Definition of Cultural Property

3. 5. Subsequent to the 1954 *Convention*, UNESCO adopted two further International Conventions relevant to this area: *Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property, 14 November 1970*<sup>126</sup>, and the *Convention concerning the Protection of the World Cultural and Natural Heritage, 16 November 1972*<sup>127</sup> (World Heritage Convention), each of which has definitions which differ markedly from that of the 1954 *Convention*. In addition between 1956 and 1980 UNESCO adopted nine substantial *Recommendations*, each incorporating widely differing definitions of relevance: *Recommendation on International Principles Applicable to Archaeological Excavations* (5 December 1956), *Recommendation concerning the most Effective Means of Rendering Museums Accessible to Everyone* (14 December 1960), *Recommendation concerning the Safeguarding of the Beauty and Character of Landscapes and Sites* (11 December 1962), *Recommendation on the Means of Prohibiting and Preventing the Illicit Export, Import and Transfer of Ownership of Cultural Property* (19 November 1964), *Recommendation concerning the Safeguarding and Contemporary Role of Historic Areas* (26 November 1976) *Recommendation concerning the Preservation of Cultural Property Endangered by Public or Private Works* (19 November 1968), *Recommendation concerning the Protection, at National Level, of the Cultural and Natural Heritage* (16 November 1972 - at the same session as the *World Heritage Convention*), *Recommendation for the Protection of Movable Cultural Property* (28 November 1978), and the *Recommendation for the Safeguarding and Preservation of Moving Images* (27 October 1980)<sup>128</sup>.
3. 6. The wording used in defining 'cultural property' and related concepts in various International Instruments over the years, from the 1874 Brussels Conference through the *Hague Conventions* and the *Roerich Pact* to the UNESCO *Conventions* and *Recommendations* is analyzed subject by subject in Appendix IV of this Report.
3. 7. This shows just how much variation there is for both the overall concept of 'cultural property' and for similar sub-categories of specialised subject area in the wording of even the twelve UNESCO texts. Indeed in many cases the wording used for identical categories is so different as to suggest that those drafting the later texts were almost totally unaware of the currently approved UNESCO policies as expressed in earlier UNESCO Instruments. For example in relation to cultural property of ethnographic importance the 1954 *Hague Convention* is totally silent on the subject, the *UNESCO Recommendation on Illicit Export, Import and Transfer of Cultural Property* of 1964 proposes protection only for '... ethnological documents', the 1970 *UNESCO Convention on the Illicit Export, Import and Transfer of Cultural Property* protects '(f) objects of ethnological interest', the *UNESCO Recommendations on International Exchange of Cultural Property*, 1976, covers both 'objects and documentation of ethnological interest' while the 1978 *UNESCO Recommendation for the Protection of Movable Cultural Property*, uses the expression 'material of anthropological and ethnological interest'.
3. 8. It is neither practicable, nor perhaps even desirable, to go back and revise the definitions of cultural property of such a wide range of International Instruments

---

<sup>126</sup> UNESCO, 1985, pp. 57 - 73.

<sup>127</sup> UNESCO, 1985, pp. 75 - 98.

<sup>128</sup> The texts of each of these are printed in UNESCO 1985, pp. 103 - 239.

developed by UNESCO over a period of nearly forty years. However, in respect of any future action it is strongly **RECOMMENDED** it is desirable for UNESCO to adopt a more consistent approach to the question of definitions in future international instruments and policy statements<sup>129</sup>. Any recommended changes from the relevant established UNESCO definitions and vocabulary should in future be presented as positive policy decisions for the approval of the General or Special Intergovernmental Conference considering the matter.

3. 9. It is further **RECOMMENDED** that under this proposed procedure in any future revisions of the 1954, 1970 and 1972 UNESCO *Conventions* every effort should be made to adopt new definitions of movable and immovable cultural property, modelled on the principles of the 1970 *Illicit Import, Export and Transfer of Ownership etc. Convention* in respect of movable cultural property and of the 1972 *World Heritage Convention* in respect of immovable cultural property and monuments.
- 3.10. In the meantime, it is **RECOMMENDED** that in the drafting of any new Additional Protocol to the 1954 *Hague Convention* new definitions along these lines should be included. Alternatively, as a minimum, in such an Additional Protocol the attention of High Contracting Parties should be drawn to the established UNESCO definitions used in the 1970 and 1972 *Conventions* for movable and immovable cultural property, with each of the States Parties being recommended to consider using these as the basis of national interpretation of the (rather imprecise) definition of the 1954 *Convention* itself.
- 3.11. In the longer term it would also be desirable to re-consider decision of the 1954 Intergovernmental Conference to exclude from the definition important cultural institutions such as 'buildings dedicated to religion, art, science or charitable purposes, historic monuments ...' protected under the 1907 *Hague Conventions*, and '... historic monuments, museums, scientific, artistic, educational and cultural institutions', protected under the 1935 Washington Treaty (Roerich Pact), (both of which are, of course, still applicable in relevant cases. (In Chapter 6 of this Report it is further proposed that particularly important museums etc. ought to be eligible for designation as under 'Special Protection' in appropriate cases as well.)

---

<sup>129</sup>

See Appendix VI of this Report for detailed comparisons of the various definitions.

## **Definition of Cultural Property**



## Concepts of Protection, Safeguarding and Respect

### CHAPTER 4

#### ***THE 1954 CONVENTION'S CONCEPTS OF PROTECTION, SAFEGUARDING AND RESPECT FOR CULTURAL PROPERTY***

4. 1. The language of the 1954 *Convention* is very uncomplicated in relation to the second of the two key concepts of its title and purpose: that of 'protection' of cultural property. This is simply defined as comprising 'the safeguarding and respect for such property'<sup>130</sup>.
4. 2. However, the subsidiary definitions ('safeguarding' and 'respect') are rather odd. 'Safeguarding' is used not in the obvious sense of guarding and keeping safe that which is safeguarded (in this case cultural property) at all times, including the times of greatest danger, (e.g. in this case during armed conflicts). Instead, in the *Convention* 'safeguarding' is explicitly defined as referring only to peacetime preparations for the possible effects of war or other armed conflicts:

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.<sup>131</sup>

4. 3. Protection in times of war or internal armed conflict is instead merely termed 'respect', a term that - at least in common English parlance - falls far short of the term 'protection' used in the overall definition. 'Respect' is defined in some detail, though with the main emphasis on 'refraining from' defined activities, rather than on the taking of active measures for 'safeguarding' during actual hostilities:

The High Contracting Parties undertake to respect cultural property situated within their own territory as well as within the territory of other High Contracting Parties by refraining from any use of the property and its immediate surroundings or of the appliances in use for its protection for purposes which are likely to expose it to destruction or damage in the event of armed conflict, and by refraining from any act of hostility directed against such property.<sup>132</sup>

Under customary international law the general staff and individual field commanders of invading and occupying forces have an established responsibility not merely to refrain from unlawful acts ('respect') but to ensure adequate military and/or civil police etc. control over not only their own forces, but also irregular forces and civilians within the occupied territory so as to also 'safeguard' (in the *Hague Convention* sense) both the lives and property of non-combatants. (Indeed, in the current discussions about possible war crime cases in ex-Yugoslavia, the issue of field command and control over irregular forces and civilians in relation to the wilful destruction of property is seen as an important issue. It therefore seems reasonable to require attacking and occupying forces not merely to 'respect' but also to positively 'safeguard' cultural property in so far as this is practicable.

---

<sup>130</sup> 1954 *Convention*, Article 2.

<sup>131</sup> Article 3.

<sup>132</sup> Article 4(1).

4. 4. However, despite much discussion and counter-argument at the 1954 Hague Conference<sup>133</sup>, all of these obligations were qualified by the retention of the long-established, but by then already controversial, doctrine of 'military necessity' for the benefit of both the attacking and defending powers:

The obligations mentioned in paragraph 1 of the present Article may be waived only in cases where military necessity imperatively requires such a waiver.<sup>134</sup>

4. 5. The 'military necessity' exception has, of course, a long history in international humanitarian law, being included in 1907 *Hague Conventions*, following most if not all of the 19th century texts, from the United States' Lieber Code of 1863, where it is defined as:

those measures which are indispensable for securing the ends of war, and which are lawful according to the modern law and usages of war.<sup>135</sup>

4. 6. Few topics in relation to the humanitarian laws of war have attracted more comment and discussion than the exception for 'military necessity', and the limitations that international law places on this. It is generally accepted that the doctrine of 'military necessity' by no means gives unlimited and unrestrained power to either attacking or defending forces. For example in his comprehensive review of the Nuremberg Principles, O'Brien insists that 'the attitude that there are no legal restrictions on "military necessity" as defined by the responsible commander or government official is clearly rejected by the Hague Conventions of 1899 and 1907 and by the four Geneva Conventions of 1949', by 'numerous predecessors' of these and in the Nuremberg Principles.<sup>136</sup> He draws particular attention to some explicit prohibitions and exceptions from the rights of 'military necessity' including the Hague prohibitions on attacks on 'non-military' targets, and the London [War Crimes] Charter and Nuremberg Judgements rulings that war crimes include 'wanton destruction of cities, towns or villages, not justified by military necessity'<sup>137</sup>.

4. 7. *There is a considerable danger of a circular argument here: prohibited acts cease to be prohibited simply because the military commander deems them necessary, so 'anything goes' if the commander claims that it is a question of 'military necessity'. This is a question discussed at considerable length and in much detail by Adler in his study of the legal considerations of the choice of targets in war. In a key part of his analysis he argues:*

*Although military necessity was a primary consideration in the Hague Conventions [i.e. those of 1899 and 1907, not the 1954 Convention, and with reference particularly to the Hague 1907 Annex], it was implicitly limited to the use of force which is required to attain a given objective. The rights of belligerents to adopt means of injuring the enemy is not unlimited.<sup>138</sup>*

---

<sup>133</sup> Detailed by Nahlik, 1967, especially pp. 128 onwards; the debates of the International Conference are also discussed in detail in Dr Jiri Toman's forthcoming study for UNESCO.

<sup>134</sup> Article 4(2).

<sup>135</sup> Lieber Code, Article 14.

<sup>136</sup> O'Brien, 1972, p. 218; Kalshoven, 1987, especially pp. 64 - 67; see also the comprehensive consideration of the legal limits of international coercion of all kinds by McDouglas & Feliciano, 1967, and Kalshoven (1971 & 1990) specifically on the issue of reprisals.

<sup>137</sup> O'Brien, 1972, p. 220 - 221.

<sup>138</sup> Adler, 1972, p. 295.

## Concepts of Protection, Safeguarding and Respect

4. 8. Discussing the 'military necessity' exception in the 1954 *Hague Convention*, Adler continues:

Cultural Property is immune, except where military necessity prevents such immunity. The necessity relates to the actual use of the property, physical or tactical conditions of attack, and the capabilities and limitations of ordinance... an anomaly that would be removed by proper balancing of militarily necessary targeting with minimum incidental damage to nonmilitary targets. Such an approach would legitimize, for instance, the destruction of Monte Cassino and the Citadel at Hué in the Vietnam War unless alternative means were available to neutralise the military use of such institutions.<sup>139</sup>

4. 9. In more direct language, General Eisenhower had set out his view of 'military necessity' in his Staff Orders of 29 December 1943 relating to the Italian mainland campaign:

Today we are fighting in a country which has contributed a great deal to our cultural inheritance, a country rich in monuments which by their creation helped and now in their old age illustrate the growth of the civilization which is ours.

If we have to choose between destroying a famous building and sacrificing our own men, then our men's lives count infinitely more and the buildings must go. But the choice is not always so clear-cut as that. In many cases the monuments can be spared without any detriment to operational needs. Nothing can stand against the argument of military necessity. That is an accepted principle. But the phrase 'military necessity' is sometimes used where it would be more truthful to speak of military convenience or even of personal convenience. I do not want it to cloak slackness or indifference.<sup>140</sup>

- 4.10. Referring to 'military necessity' in relation to non-combatants rather than cultural property (though the principles seem equally applicable) Falk concludes:

The question at all times is one of balancing military advantage with accidental damage. If a prosecution for the action is forthcoming it should be directed at he who placed the military target in a populated area.<sup>141</sup>

- 4.11. This last point is a most important one in relation to the 1954 *Convention* protection (and indeed that under most codifications of international humanitarian law). The moment that the enemy uses an otherwise protected monument or other feature for a military purpose, or indeed places any form of the 'apparatus of war' (in the widest sense) in proximity to a protected place, that protection is temporarily lost. Consequently the defending power has to remove or effectively neutralise and demilitarise everything that could be a legitimate military, political or economic target within the vicinity of the monument or other protected feature. If any monument or other cultural feature is used for any kind of military purpose then the monument etc. immediately loses its protection under the 1954 *Convention*, and only regains protection when the military use ends. If this is not done then, no matter how important the feature, it becomes a legitimate military target.<sup>142</sup>

---

<sup>139</sup> Adler, 1972, p. 308.

<sup>140</sup> Quoted in American Commission, 1946, p. 48.

<sup>141</sup> Falk, 1972, p. 309.

<sup>142</sup> When the Holy See proposed the designation of the whole of the Vatican City as a 'centre containing monuments' with Special Protection under the *Convention* there had to be detailed negotiations with the government of Italy about the measures that it would be necessary for Italy to take, including diverting railway routes and neutralising Italian military and political establishments within a realistic zone of targeting error close to the boundaries of the Vatican City special protection zone. More recently in the Second Gulf War (the 'Desert Storm' campaign of 1991) the United States claimed that the Iraqis had used cultural property within its control to shield military objects from attack: 'A classic example is the positioning of two MiG-21 fighter aircraft at the entrance of the ancient temple

- 4.12. However, over the past half-century or more there has been a growing weight of opinion across the legal, political, humanitarian, and even military, spectrum that regardless of the conduct of the enemy, there have to be some absolutes in the conduct of war, which even the most pressing and urgent 'military necessity' cannot never over-ride. Following the atrocities of the Second World War the 1949 *Geneva Conventions* placed absolute limits on the right of retaliation or counter-action against even the most heinous war crimes. A key Common Article<sup>143</sup> requires unconditional compliance with each *Convention* regardless of the perceived perfidy or alleged war crimes of the enemy, with States Parties undertaking 'to respect and ensure respect for the present Convention in all circumstances'<sup>144</sup>, while the *First Protocol* of 1977 extends this absolute prohibition to reprisals against Cultural Property, with a specific cross-reference to the 1954 *Hague Convention*<sup>145</sup>.
- 4.13. It is arguable that in comparison with the 1907 Hague *Laws and Customs of War* the abandonment of the universal 'military necessity' exception in the *Geneva Conventions* was the most important single advance in codified international humanitarian law for more than forty years. Consequently, and having seen the widespread acceptance of the *Geneva Conventions* 4½ years earlier, those preparing the working draft for the 1954 Hague Intergovernmental Conference followed the new principles established in *Geneva*, and therefore excluded the 'military necessity' exemption of the Fourth and Ninth *Hague Conventions* of 1907.
- 4.14. However, this issue became a major area of contention in the 1954 Conference. The military delegates of the United States of America and of the United Kingdom insisted on the addition of a 'military necessity' exception clause as a fundamental condition of their States' acceptance of the *Convention*. The position of the United States at the Conference seems particularly illogical since it was (and remains) a Party to the 1935 Washington Pan-American Treaty ('Roerich Pact'), which requires unconditional 'respect and protection'<sup>146</sup> with no hint of any 'military necessity' exemption.
- 4.15. The proposed exception was opposed in a vote by not just by the USSR and all other States of the 'socialist' block, but also by some western European countries, including France, Greece and Spain. Other States, while opposing the principle of the proposed exemption, considered that the acceptance of the final treaty by both the USA and UK was absolutely essential and, by a majority, the Conference agreed to add the 'military necessity' provisions, though with the qualification that this could in future only be invoked when 'the military

---

of Ur. Although the law of war permitted their attack, and although each could have been destroyed utilizing precision-guided munitions, U.S. commanders recognized that the aircraft for all intents and purposes were incapable of military operations from their position, and elected against their attack for fear of collateral damage to the temple.' (U.S. Department of Defense to Congress, 19 January 1993 - see Appendix VIII).

<sup>143</sup> *First Geneva Convention of 1949*, Article 46; *Second Geneva Convention*, Article 47; *Third Geneva Convention*, Article 13; *Fourth Geneva Convention*, Article 33.

<sup>144</sup> Pictet, 1952 - 1960.

<sup>145</sup> *First Protocol to the Geneva Conventions*, 1977, Article 53.

<sup>146</sup> Washington (Roerich) Pact, Article 1.



## Concepts of Protection, Safeguarding and Respect

necessity *imperatively requires* such a waiver.' [my emphasis]<sup>147</sup>. (Those who reluctantly voted for the 'military necessity' concession in order - as they thought - to secure the adherence of the USA and the UK to the treaty were to be disappointed: despite this major weakening of its provisions at their insistence, though both signed it in 1965 neither has yet presented the *Convention* for ratification under national law.)

4.16. Bearing in mind the precedents of the 1949 *Geneva Conventions* the inclusion of the 'military necessity' exemption was already inappropriate by the time of the 1954 Intergovernmental Conference. It is strongly **RECOMMENDED** that in any revision of the 1954 *Convention* or in any new Additional Protocol to it, High Contracting Parties should renounce the provisions of Article 3 (2) allowing the waiving of the provisions of the *Convention* in the case of military necessity. Indeed, this should be seen as one of the highest priorities of the review process.

4.17. The general requirement of 'respect' (subject of course to imperative 'military necessity') was further clarified by two further clauses requiring effective measures against theft and pillage, and prohibiting reprisals against cultural property, respectively:

3. The High Contracting Parties further undertake to prohibit, prevent and, if necessary, put a stop to any form of theft, pillage or misappropriation of, and any acts of vandalism directed against, cultural property. They shall refrain from requisitioning movable cultural property situated in the territory of another High Contracting Party.

4. They shall refrain from any act directed by way of reprisals against cultural property.<sup>148</sup>

4.18. There is also an express prohibition of reprisals or otherwise prohibited acts: even if another High Contracting Party fails to comply with the *Convention* counter-action is still not allowed:

5. No High Contracting Party may evade the obligations incumbent upon it under the present Article, in respect of another High Contracting Party, by reason of the fact that the latter has not applied the measures of safeguard referred to in Article 3.

4.19. Other important obligations accepted by the States Parties to the *Convention* in relation to this part of it are the provisions relating to Occupation, and requiring any Contracting state in occupation of all or part of the territory of another Party to support so far as possible the established structure of cultural property protection in the occupied lands. However, should the competent national authorities be unable to handle the tasks the occupying power itself must 'take the most necessary measures of preservation'<sup>149</sup>.

4.20. This is followed by an obscurely worded provision that:

Any High Contracting Party whose government is considered their legitimate government by members of a resistance movement, shall, if possible, draw their attention to the obligation to comply with those provisions of the *Convention* dealing with respect for cultural property.<sup>150</sup>

---

<sup>147</sup> See the records of the Intergovernmental Conference, (Government of the Netherlands, 1961) and Dr Jiri Toman's forthcoming UNESCO study; other published considerations of the Conference's handling of the 'military necessity' issue are those of Nahlik (1967 & 1988).

<sup>148</sup> Article 4.

<sup>149</sup> Article 5 (1 & 2).

<sup>150</sup> Article 5 (3).

The intention appears to be to require the legitimate authority for an occupied territory, such as a government-in-exile, to draw the terms of the 1954 *Convention* to the attention of any internal resistance forces under its control or influence within the occupied territory. Ideally, all States Parties in a position to influence the conduct of irregular forces in an enemy (or indeed third) country should accept at least a moral obligation to try to apply this provision. An obvious current example would be for the Belgrade government of the residual Yugoslav state (a High Contracting Party to the 1954 *Convention*) to try to influence both the regular and irregular forces of the self-declared Bosnian Serb administration, and for Croatia (a State Party, by declaration of succession) to try to influence the conduct of irregular forces in the areas of Bosnia controlled by ethnic Croats. However, the extent to which this obligation is binding on States Parties which may be in a position to influence, but claim not to have effective control - in the strict legal sense - of irregular forces would be question of fact to be determined by appropriate legal process.

- 4.21. The other fundamental concept of the *Convention* is the obligation of States Parties in respect of peacetime preparation for the protection of cultural property, defined as 'safeguarding':

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.<sup>151</sup>

- 4.22. UNESCO published in 1954 and 1958 (French and English editions respectively) a very substantial practical handbook on recommended measures to be taken in relation to peacetime preparation, which was (and is) a valuable guide for action by both governments and individual cultural institutions and monuments<sup>152</sup>. Also, the text of the *Convention* provides (in Article 26) for the High Contracting Parties to report to UNESCO on the action taken under the *Convention*, thus sharing information on the action each had taken in relation to, amongst other things, the peacetime preparation.

- 4.23. However, the wording of the undertaking in respect of 'safeguarding' is so weak that a High Contracting Party could perfectly well decide that they need do virtually nothing, should they decide that this is what 'they consider appropriate', for any reason. For example, the government might believe (or may simply want its citizens and neighbouring States to believe) that there is no possibility of its involvement in any kind of armed conflict. This position, whether genuinely held or not, can of course be a serious barrier to the development of peacetime preparations for the possibility of war or other armed conflict in every area of national life, not solely in relation to the 1954 *Convention*. These issues are discussed in more detail in the following Chapter of this Report<sup>153</sup>.

---

<sup>151</sup> 1954 Hague *Convention* Article 3.

<sup>152</sup> Lavachery & Noblecourt, 1954 (1st, French, edition); Noblecourt, 1958 (2nd, English, edition).

<sup>153</sup> Chapter 5: Peacetime preparation for the application of the 1954 Convention.

## **Concepts of Protection, Safeguarding and Respect**

## CHAPTER 5

### PEACETIME PREPARATION FOR THE APPLICATION OF THE 1954 CONVENTION

5. 1. As outlined above<sup>154</sup>, the 1954 *Convention's* concept of 'safeguarding' is essentially the making of preparations in time of peace for the protection of cultural property in the event of any future international or internal armed conflict. However, there is little or no guidance within the *Convention* itself as to the measures that an individual Contracting State may deem to be 'appropriate' in its case.
5. 2. With one exception (discussed below) a Party could apparently perfectly well decide to do nothing at all if, in the judgement of the competent political and/or administrative authorities, nothing is what 'they consider appropriate'. Such a position is not unknown across the whole field of civil defence preparations, not just in relation to peacetime preparations for the protection of cultural property.
5. 3. This problem can be particularly acute in cases where the government of the State is reluctant to admit to neighbouring states - and indeed its own population - that there is the *slightest* possibility of its future involvement in any form of either international or internal armed conflict. Indeed, it may be argued, merely to appear to countenance the possibility of war may be seen by neighbouring states as either an aggressive and potentially unfriendly stance or a sign of weakness and fear, with the risk in either case that this could become a self-fulfilling prophecy. This is of course a serious problem with all areas of peacetime preparation for the possibility of war or other armed conflict.
5. 4. There is also an adoptive (though not compulsory) provision for the marking of cultural property in both peacetime and during armed conflicts<sup>155</sup> with a new official emblem. This was specified in the *Convention* as the successor to the use of a distinctive flag (to be notified to the enemy) provided for in the 1899 Hague Naval Bombardment Convention, to the black and white diagonally divided square emblem of protected monuments etc. of the 1907 Hague Naval Bombardment Convention, and to Roerich's emblem of a red circle on white, enclosing a triple red sphere in the circle, of the 1935 Washington Pact.
5. 5. The official emblem of a blue and white squares in the form of a shield is defined in the 1954 *Convention*: and its permitted use are defined as:

The distinctive emblem of the Convention shall take the form of a shield, pointed below, per saltire blue and white (a shield consisting of a royal-blue square, one of the angles of which forms the point of the shield, and of a royal-blue triangle above the square, the space on either side being taken up by a white triangle).

The purpose and application of the official emblem is discussed in Chapter 7 of this Report below.

5. 6. The decision to replace the Roerich Pact flag was one of the other, though more minor, issues of contention between the United States of America and the draughtsmen of the provisional text at the 1954 Intergovernmental Conference, with the USA arguing both that the change was unnecessary and that the proposed new Hague emblem was very similar to land survey markers widely

---

<sup>154</sup> Paras. 4.21 - 4.23.

<sup>155</sup> Article 6.

## Peacetime Preparation

used for both civilian purposes (and by United States ground forces in artillery training.)

5. 5. The one area of peacetime preparation in which there is an explicit obligation on Contracting Parties, relates to the State's own military forces:

1. The High Contracting Parties undertake to introduce in time of peace into their military regulations or instructions such provisions as may ensure observance of the present Convention, and to foster in the members of their armed forces a spirit of respect for the culture and cultural property of all peoples.

2. The High Contracting Parties undertake to plan or establish in peace-time, within their armed forces, services or specialist personnel whose purpose will be to secure respect for cultural property and to co-operate with the civilian authorities responsible for safeguarding it.<sup>156</sup>

5. 6. At the Third General Conference of the International Council of Museums (ICOM) in 1953 A. Noblecourt had presented a substantial paper on the protection of museum objects during armed conflicts<sup>157</sup>, while in the same year the Belgium Government published a new national manual on this<sup>158</sup>, in each case complementing and updating the wide range of such publications issued around the Second World War period<sup>159</sup>.

5. 7. To coincide with the 1954 Hague Intergovernmental Conference Lavachery and Noblecourt developed, and UNESCO published in its *Museums and Monuments Series*, a major study and practical manual on the recommended measures for the protection of cultural property in times of armed conflict<sup>160</sup>. This went much further than the 1939 International Museums Office advice<sup>161</sup>, drawing on the experience of the Second World War and also discussing the implications of new weapons technology, including nuclear weapons. Noblecourt (alone) updated the text in 1956, and a definitive English language edition was published two years later.

5. 8. This began (in Part One) with a discussion of and the texts of the 1954 *Hague Convention, Regulations*, the *Hague Protocol* and the Rules established by the Director-general of UNESCO concerning the International Register of Cultural Property under Special Protection<sup>162</sup>. Part Two outlined and considered the risks to cultural property arising directly from military operations: the possible effect of

---

<sup>156</sup> Article 7 - Military measures.

<sup>157</sup> Noblecourt, 1953.

<sup>158</sup> Royaume de Belgique, 1953.

<sup>159</sup> For example, Renan, 1937; International Museums Office, 1939; British Museum, 1939; Government of The Netherlands, 1939; Coremans, 1946; Smallcombe, 1946.

<sup>160</sup> Noblecourt, 1954.

<sup>161</sup> International Museums Office, 1939.

<sup>162</sup> Noblecourt, 1958.

different types of weapons (including nuclear weapons), and the potential hazards consequent on the breakdown of normal environmental conditions during an armed conflict, including environmental and biological deterioration.

- 5.9. Part Three examined in detail the practical measures that need to be considered in relation to protection techniques including topics as diverse as shelters, protection in situ of monuments, museums, archives and libraries, and measures against the risk of acts of vandalism by military personnel. This part was followed by forty pages of technical annexes covering practical measures: the making and use of sandbags, fire precautions, photogrammetric recording in order to have an adequate record for restoration in the event of damage, and of both packing and security microfilming techniques.
- 5.10. Part Four of Noblecourt's book reviewed and advised on the practical measures that could be taken at both the international and national level, including information on *Hague Convention* protection structures already established by Belgium, Denmark and the Netherlands (both civil and military in this case), with advice on action that could be taken at the local level as well. Noblecourt's last section, Part Five, offered detailed practical guidance for public authorities on the construction, adaptation and fitting out of both permanent buildings for all kinds of cultural purposes, and of temporary shelters and refuges of many kinds. The latter included purpose-built underground shelters, both in open country (with Belgian and Dutch examples), beneath or adjacent to museums (Belgium), and in adapted underground tunnels and mine workings (United Kingdom, USA and Sweden).
- 5.11. Almost forty years on, though long out of print the UNESCO manual written by Noblecourt still offers much practical information of great value to all concerned with both the general care of museums, monuments and collections in both peacetime and during armed conflicts, as indeed do some of the even earlier guides<sup>163</sup>.
- 5.12. However, up-to-date information and advice are now needed, especially if the High Contracting Parties are to review and update their application of the 1954 *Hague Convention*. It is therefore **RECOMMENDED** that UNESCO should commission and publish up-to-date research and advice on practical protection measures, integrating this advice with recommendations on necessary practical measures for the prevention and mitigation of natural and civil disasters.
- 5.13. Following the depositing in May 1956 of the fifth instrument of ratification, the 1954 *Hague Convention's* came into force in August 1956, and by the time of the first set of requested periodic reports (1962)<sup>164</sup>, Belgium, Byelorussia, Czechoslovakia, the Holy See, India, Italy, Netherlands and Poland all reported progress in developing peacetime preparations in accordance with the *Convention*. Positive measures reported included the preparation of inventories of monuments and collections and action to include training in the requirements of the *Convention* in relevant military regulations.
- 5.14. The various national reports of 1962, 1967, 1970, 1979, 1984 and 1989<sup>165</sup>, contain a great deal of very valuable information on possible models for practical

---

<sup>163</sup> See examples listed in note (6) above.

<sup>164</sup> UNESCO Doc. No. WS/0562.68 of 15 June 1962.

<sup>165</sup> 1962 Report: UNESCO Doc. No. WS/0562.68 of 15 June 1962; 1967 Report: UNESCO Doc. No. SCH/MD/1 of 19 May 1967; 1970 Report: UNESCO Doc. No. SCH/MD/6 OF 30 April 1970; 1979 Report: UNESCO Doc. No. CC/MD/41 of 25 June 1979; 1984 Report: Doc. No. CLT/MD/3 of 3 December 1984; 1989 Report: UNESCO Doc. No. CC/MD-11, December 1989.

## Peacetime Preparation

measures across most areas covered by the *Convention*, together with summaries of the work carried by UNESCO in support of it. An edited compilation of extracts of these six reports would be a good starting point for a new UNESCO handbook in relation to the *Convention's* 'safeguarding' provisions, i.e. peacetime preparation, especially at the organisational level, following on from the recommendations of Noblecourt's 1954/1958 UNESCO Museums and Monuments manual<sup>166</sup>.

- 5.15. In view of the very wide scope of this study and Report, in the time available it has been possible to examine in detail the peacetime planning arrangements of only a limited sample of States Parties to the *Convention*. Out of those examined in detail, it is clear that there are a number of models of good practice which could be disseminated more widely in published form, and as case studies in the training/information seminar programme recommended in this Report. Particularly good examples include those of The Netherlands and France (both discussed below), Austria<sup>167</sup> and Switzerland<sup>168</sup> (each of which has developed a particularly detailed inventory of protected monuments and institutions, supported by large-scale maps, together with comprehensive military measures, plus the adoption of an official identity card and arm-band bearing the official emblem, for those engaged in cultural protection duties), and India<sup>169</sup>. Following re-unification Germany is currently preparing a new military law and training manual and has asked the distinguished expert on the *Hague Convention* Prof. Dr.Jur. Josef Partsch, Professor Emeritus in the University of Bonn, to prepare a chapter on all aspects of the protection of cultural property in time of war<sup>170</sup>. The civilian and military preparation arrangements of the former Socialist Federal Republic of Yugoslavia were also models of their kind, despite the recent grave breaches of the *Convention*<sup>171</sup>, (and of course many other provisions of international humanitarian law including the *Geneva* and *Genocide Conventions*).
- 5.16. The increasing trend in many parts of the world towards national decentralisation and constitutional devolution under new federal or cantonal structures within States Parties to the *Convention* presents significant problems in terms of implementation. In such cases the federal government remains responsible for international relations and hence for ratifying such Instruments, but may lack the constitutional authority needed to enforce action under them, for example in this case the preparation of peacetime planning, the listing of protected monuments, the construction or preparation of shelters and refuges and emergency evacuation plans). The long and successful experience in applying the *Convention's* provisions in such decentralised High Contracting Parties as Switzerland, and Germany (particularly the civilian and military preparations

---

<sup>166</sup> Noblecourt 1954 & 1958.

<sup>167</sup> The progress of Austria's practical programme for implementing the *Convention* are detailed in the Director-General's compilations of periodic reports for 1967, 1979 and 1984 - see note 12 above for details.

<sup>168</sup> Switzerland's peacetime preparations are outlined in its reports to the Director-General for 1967, 1970, 1984 and 1989 - see note 12 above.

<sup>169</sup> India established a national Advisory Committee as early as 1959. More recent progress and current initiatives are detailed in the most recent report to UNESCO (UNESCO Doc. No. CC/MD-11 of December 1989)

<sup>170</sup> Personal communication from Prof. Partsch.

<sup>171</sup> See Chapter 17 below.

carried out in the former German Federal Republic) are valuable models for other States. Other States Parties currently in the process of devolving almost total responsibility for cultural and conservation matters to regional entities include Belgium and Spain, and these too may offer useful models for other States making similar transitions.

- 5.17. France has a long tradition of peacetime preparation for possible war damage and losses. The preparation of a national record of nationally important monuments and collections began in the first years after the 1789 Revolution<sup>172</sup>, while the experience of the German occupation in the Second World War led to extensive action to secure the protection of monuments, museums, libraries and archives during the 1944 liberation campaigns<sup>173</sup>, and particularly under De Gaulle's initial provisional government and the early years of the Fourth Republic.
- 5.18. France supported the draft proposals at the 1954 Hague Intergovernmental Conference, and (in particular) strongly opposed the demands led by the United States and the United Kingdom for the insertion of the 'military necessity' amendment, pressing the opposition to a vote against their NATO allies on the point. France passed the necessary national legislation, and deposited Instruments of Ratification in respect of both the *Convention* and the *Protocol*. However, responsibility for the practical implementation of both is rather fragmented, with a wide range of ministries involved.
- 5.19. All ministries, including National Education and Culture, have liaison officers with Defence Ministry. France has a comprehensive system of planning for national defence in the event of armed conflict, though some of the administrative and practical arrangements are secret as part of the national defence planning.<sup>174</sup> Both military and civilian staff training for national defence continues to have high priority, and the Institut des Hauts Etudes de Défense Militaire is responsible for running a continuing programme of defence planning courses, each of several weeks duration. These are attended by mixed groups of senior staff from all departments of the state administration.
- 5.20. Each year the Culture branch of the Ministry is able to nominate perhaps one or two senior staff from the museums or monuments services, including staff from both the operational side (including the national museums) and the various inspectorates, together with senior administrative staff. The training is by no means specific to the question of protecting the national heritage, and in fact this necessarily forms a small part of the syllabus of the courses. On the other hand through the courses the senior cultural officers nominated gain a comprehensive over-view of the national wartime emergency structure, and the way that cultural protection fits into this. Similarly, senior staff from all other areas of the civil and military systems are sensitised to the State's obligations under the *Hague Convention*, and no doubt valuable informal networks and understanding are developed.
- 5.21. The authorities for all arms of the French defence forces have comprehensive programmes of training and manuals covering all aspects of international

---

<sup>172</sup> Boylan, 1992.

<sup>173</sup> See for example Cassou, 1947; Rorimer, 1950 and Valland, 1961.

<sup>174</sup> I am very much indebted to M. Robert Lecat, Inspecteur Général de l'Administration, and M. Bruno Favel, Chargé de Mission, Département des Affaires Internationales (Ministère de l'Education Nationale et de la Culture, France), for a detailed briefing, and for follow-up documentation.



## Peacetime Preparation

humanitarian law for army, navy and air force personnel at all levels, graded according to their level of responsibility, and the obligations under the 1954 *Hague Convention* are part of these. For example, in relation to the French army at the entry and junior officer level basic training in the Laws of War is given to all officer cadets and junior officers at the Military Academy at St Cyr and the Ecole Militaire, and to other ranks in their specialised training centres and programmes. Then, as officers are trained for and promoted to more senior ranks more advanced training is offered by the various staff colleges, such as the Ecole de Guerre.

- 5.22. Legally and administratively much of France's civil defence functions remain decentralised and delegated to the local level. The préfets of the ninety-five metropolitan départements (senior civil servants appointed by parliamentary decree on the nomination of the Minister for the Interior) have extremely wide powers in this field, especially in the event of any actual or immediately threatened breakdown of the central power structure, whether in military or grave civil emergencies. With the recent development of a structure of twenty-two Régions as part of the national decentralisation programme the préfets are now sharing these powers and responsibilities with the regional directors. So far as the local museums, monuments etc. are concerned during actual military emergencies and for planning purposes they would be mainly under local or regional control. However, the Defence and Interior Ministries obviously set the general policies and standards, the civil defence colleges help to communicate these to staff at operational level both nationally and locally, and the Culture ministry inspectors and other specialists also assist in advising on standards and procedures.
- 5.23. There is parallel system of planning and training for major civil emergencies and threats such as security measures against terrorism and international and national organised crime etc. This system is run by the Police National, with Institut Hautes Etudes de la Sécurité Intérieure having a similar role to that of the Institut des Hauts Etudes de Défense Militaire in the military field. Appropriate senior Culture ministry personnel, such as the heads of security at national museums and monuments, the chiefs of their internal fire services and other appropriate ministry officials are nominated to these courses. (Following one or two attempted arson attacks against monuments and museums by terrorist groups over the past few decades the question of defence against non-international armed threats is an area receiving much more attention, and in times of particular tension extra security measures and checks are introduced in consultation with the State organisations responsible for internal security).
- 5.24. However, it is rather surprising that despite the scale of the museum, library and archive building programme in France in recent years, and particularly the programme of 'grands travaux', there does not seem to have been a general policy of building high security shelters and refuges in, or adjacent to, the new or reconstructed buildings.
- 5.25. In view of the numerous constitutional and organisational changes in France since 1957, to some extent the initial measures and organisation taken soon after the ratification of the 1954 *Hague Convention* and *Protocol* might usefully be reviewed. Also, both the important International Affairs Department of the Culture and Foreign Affairs Ministry are active in the international cultural aid areas, including valuable initiatives in some war-affected areas, and greater coordination could usefully be developed between the two ministries.
- 5.26. Having hosted the 1954 Intergovernmental Conference at The Hague, the Government of the Netherlands has always taken a special interest in the effective

implementation of the *Hague Convention and Protocol*, and completed the legislative process required for ratification of both in 1958, depositing the Instruments of Ratification with UNESCO on 14 October 1958. An early Dutch initiative was the production and distribution on 3 May 1962 to all States Parties to the *Convention* of a sample official national identity card for persons undertaking cultural protection duties, in accordance with Article 17 of the *Convention*. The Netherlands followed this with an application for 'Special Protection' under Article 8 of the *Convention* for a network of six national cultural property dispersal air-raid shelters in remote rural areas away from potential military targets, and these were inscribed on the International Register on 12 November 1969.

- 5.27. The Dutch arrangements for peacetime preparation are particularly comprehensive and well-integrated.<sup>175</sup> The primary responsibility lies with the Ministry of Welfare, Health and Cultural Affairs, which coordinates the relations with the other ministries necessarily involved, especially Defence. Another important aspect of the Dutch system which would serve as a valuable model for other nations is the increasingly close integration between the preparation for the risks of armed conflicts and of peacetime emergencies, both natural and civil disasters.
- 5.28. The management structure is admirably clear. Within the Ministry the Director of the Cultural Heritage Policy Directorate is responsible for developing and managing an integrated policy on cultural protection, including the preparation of legislation and regulations, and ensuring the implementation of the cultural protection policy at national, regional and local levels<sup>176</sup>. Under the Director the implementation is the responsibility of the Cultural Protection Inspector at the Ministry headquarters who heads an impressive network of volunteers throughout the country.
- 5.29. Each approved volunteer is appointed as a provincial, regional or general inspector by an individual decree of nomination by the Minister of Welfare, Health and Cultural Affairs. The positions are unpaid, though there are small budgets at each level for the reimbursement of out-of-pocket expenses. All inspectors have appropriate specialised expertise, and include distinguished architects, engineers, conservation specialists etc., some in private practice, others holding official appointments e.g. in universities or specialised institutions, while others have retired from such careers.
- 5.30. The functions and responsibilities of the three different categories of inspectors are summarised very clearly in the Ministry's new handbook to the cultural protection system:

The provincial inspectors coordinate measures aimed at protecting monuments and other cultural property within their areas of jurisdiction. It is their task to ensure that action can be taken in the event of emergencies. They also provide support for the regional inspectors in their areas, in close consultation with the Provincial Governor, the Provincial Military Commander or the Territorial Commander. They see to it that the regional inspectors are properly briefed, they assess recommendations and plans, and present these to the Minister and to owners of cultural property.

---

<sup>175</sup> I am very grateful indeed to Mrs Sabine Gimbrère, (Cultural Policy Department - Division of Multilateral Co-operation), Mr G.C. Lodder (Director, Cultural Heritage Directorate) and Mr J. Evenblij (Cultural Protection Inspector), (all in the Ministry of Health, Welfare and Culture), for explaining and giving me so much information on the Dutch cultural protection system, and for arranging meetings with representatives of all those involved, including the Ministry of Defence, museums, monuments and archives staff, and volunteer inspectors.

<sup>176</sup> Government of the Netherlands Handbook (1991), p. 4 (translated as Appendix IX of this Report: I am very much indebted to Mrs Sabine Gimbrère for commissioning the English translation of this).

## Peacetime Preparation

The regional inspectors, in their turn, support the provincial inspectors. They are responsible for protecting the monuments and other cultural property in their own regions in close collaboration with local mayors and municipal disaster relief organisations. They encourage the drawing up of emergency plans to protect cultural property and make recommendations on protective action. Their regions generally coincide with those of the regional fire services.

The general inspectors are responsible for the protection of particular categories of cultural property, including stained-glass windows, carillons, bells, clock towers and organs, as well as for fire prevention in protected buildings. They also advise the provincial and regional inspectors and the owners or managers of cultural property.<sup>177</sup>

- 5.31. The Netherlands Ministry of Defence retains, of course, the primary responsibility for military defence measures, but again a sensible, imaginative, and inexpensive system of support for cultural protection has been developed. This is based on a network of volunteer cultural protection officers attached to the armed forces, either retired regular officers with a special interest, or civilian experts again, who have are part of the Army Reserve, with exactly the same status as any other reserve officer. They are, of course, subject to call-up to the army in the event of actual or threatened armed conflict, (or indeed to assist in any major civil or natural disaster emergency in which the national defence forces come to the aid of the civilian authorities).
- 5.32. The role of the Ministry of Defence's cultural protection officers in relation to actual or threatened armed conflict is again summarised very clearly in the cultural protection handbook:

In addition to the inspectors, there are a number of cultural protection officers. These officers, appointed pursuant to the Royal Decree of 16 May 1953 (Bulletin of Acts, Orders and Decrees, no. 31), belong to the Army reserve.

- preventing as far as possible damage to or destruction of buildings, museums, libraries, archives etc. that are protected by the blue and white shield;
- preventing the theft of cultural property;
- taking steps to ensure that historical buildings containing cultural treasures and which bear the blue and white shield are not used as billets for military personnel or for other military purposes;
- providing support for the transport of cultural property.<sup>178</sup>

- 5.33. The Netherlands has a long-established system of listing buildings and other structures of great cultural value under the Monuments and Historic Buildings Act (which now has 43,000 listings), important collections in about 800 museums, libraries and archives, and a system for listing particularly important items of movable cultural property outside museums, such as church fittings. More recently the Government has drawn up a list of the 'Top Hundred' monuments and buildings. All are being progressively marked with the *Hague Convention* shield. Action to improve the protection of all three categories, whether in public or private ownership, can be assisted with grants from the Culture ministry (often supplemented by funds from the regional and local authorities as well). The regional Cultural Protection Inspectors are the front line in developing cultural protection, advising on practical protection measures

---

<sup>177</sup> Government of the Netherlands, 1991, p. 4.

<sup>178</sup> Government of the Netherlands, 1991, p. 5.

against military, civil and natural disaster threats, security (especially fire) protection measures, liaison with provincial and local emergency services, especially the sixty-seven fire and rescue services, making recommendations on the allocation of funds for protection measures, and arranging for the display on each protected building or monument the *Hague Convention* official emblem.

- 5.34. The Dutch protection arrangements are summarised in the excellent, well-illustrated, 1991 *Handbook*, published for the information of owners or managers of the cultural property protected with the official emblem, of provincial and local authorities - including the emergency services, disaster relief organisations, the national and provincial military commands, and officials responsible for the management and supervision of protected features<sup>179</sup>. The 'Top 100' listed buildings and the 'Top 10' objects of cultural interest in each of four categories (stained glass windows, church bells, clocks and chimes, and organs) are also individually listed in the handbook.
- 5.35. The Dutch *Handbook*, and the practical arrangements it describes, could well serve as a model for other High Contracting Parties, so an English translation of the full text of this (except for the captions to the illustrations) is printed as Appendix IX of this Report.
- 5.36. In accordance with Article 7 the authorities for all the Netherlands armed services have taken measures to ensure that the provisions and obligations of the 1954 *Hague Convention* are included in military training and operational manuals and instructions. However, the principal emphasis in this area seems to be on the protection of the national patrimony during defensive operations inside national territory. With the Royal Netherlands services playing an increasingly important and highly respected role in international peace-keeping and peace-making operations, especially with the United Nations, the implications of the *Hague Convention* in relation to external operations should perhaps be given greater prominence in international humanitarian law training.
- 5.37. Looking at the world in general, at both the national and international levels there is growing concern that only a very small proportion of monuments, museums and other cultural institutions have any sort of emergency and disaster preparedness plans for even natural or civil disasters - which are comparatively common, let alone for times of war or other armed conflict. In discussions with the hazard assessment and planning staff in the United Nations Disaster Relief Organisation (UNDRO) it was pointed out that in most of the countries of the which UNDRO is called on to advise, (mainly in the developing world), natural disasters - particularly hurricanes, earthquakes, tsunamis, other flooding, and volcanic eruptions are by far the most frequent causes of major losses of life and property. UNDRO reports that the agency has rarely if ever been approached for advice concerning the protection of cultural property either specifically or as part of a wider disaster preparedness scheme. (The Head of Disaster Mitigation further points out that as most kinds of natural disaster as cyclical or otherwise recurring, at least in relation to older monuments and sites in regions prone to regular natural disasters a kind of natural selection has taken place, with only those able to withstand such events surviving to the present day. Consequently, if they have survived previous earthquakes, storms, floods etc. over the centuries they are probably reasonably stable and likely to survive future disasters. In terms of e.g. the risk of loss of life and property due to building collapse old buildings and monuments may be much less at risk than some new museum or similar buildings.)<sup>180</sup>

---

<sup>179</sup> Government of the Netherlands, 1991, p. 1.

<sup>180</sup> Interview with John Tomblin, Head of Disaster Mitigation Branch, UNDRO, Geneva, on 15 April 1993.

## Peacetime Preparation

- 5.38. The balance is probably somewhat different in the more developed countries located in temperate, and seismologically more stable areas of the world, where fire is probably the greatest threat, followed by water damage of various kinds: natural flooding, technical failures of engineering systems such as plumbing and air conditioning, and - not least - water necessarily used by the emergency services in fighting fire.
- 5.39. In terms of their impact on buildings and collections a high proportion of the actual damage that occurs in war is not very different from that resulting from natural or civil disasters. Direct parallels between the effects of war damage and those of civil or natural disasters include: fire, structural collapse of roofs and walls, ingress of water whether through holes in roofs or from damaged building services, interruption of essential services, especially gas (leading to fire and explosion and loss of heating), surface drainage (resulting in flooding) and electricity (with consequent shut-down of building services, such as air conditioning, security and information systems), and criminal acts against cultural property, such as casual theft, more extensive and organised looting and vandalism.
- 5.40. Not the least of the problems in the aftermath of any kind of disaster is the reconstruction of lost records - whether of vital structural, past conservation, and maintenance data in the case of monuments and other buildings, and catalogues and indexes of collections in the case of movable cultural property. My own experience in 1964 to 1968 in trying to reconstruct the catalogue and other scientific data for the less than 1% of the collections of the Hull Museums, following the museum's destruction by incendiary bombing in May 1943, gave me a vivid personal insight into the devastating implications of the loss of such records, and though the remarkable 1989 'Phoenix Project'<sup>181</sup> recovered several thousand more specimens again, in the absence of any catalogue data or specimen labels, hardly any of the rescued items could be identified. Thus their historic or scientific interest was very greatly reduced.
- 5.41. It has to be recognised that in some countries despite the obligations and undertakings in the 1954 *Convention* in relation to peacetime preparation for safeguarding cultural property in the event of armed conflict, such overt measures may be regarded as politically undesirable due to an unwillingness of the national authorities to even contemplate the possibility of international war or serious internal armed conflict. In such cases a fully integrated approach to emergency planning and disaster preparedness will be particularly valuable, since, as indicated above, at least at the level of the individual monument, museum or other cultural institution most of the practical measures for risk reduction and disaster mitigation can be of equal value in relation to natural and civil disasters as to armed conflict.
- 5.42. Consequently it is strongly **RECOMMENDED** that all responsible at any level for monuments, museums, libraries and archive repositories etc. (governments, regional and local authorities, the civil and military emergency services and the

---

<sup>181</sup>

An full archaeological-style excavation was carried out on the site of the former Hull Museum during a seven month period in the summer of 1989, prior to the construction of a new commercial building on the site, at a cost of over £200,000. This 'Phoenix Project' recovered a substantial amount of additional material deep in the former basements of the museum which, in the emergency conditions of wartime, had been bulldozed flat for safety reasons following only a brief search to recover the lost collections. (It is to be hoped that in due course a full report of this remarkable exercise will be published, not least so that the techniques developed in it could be applied elsewhere in attempting to recover material from the ruins of museums devastated by disasters, whether natural or humanly made.

management of the cultural monuments and institutions themselves) should adopt an integrated approach to peacetime planning for the possible consequences of all disasters and serious emergencies, including natural disasters, civil disasters and armed conflicts (including terrorist attacks).

5.43. Although it is recognised that measures to save human life are inevitably going to be the over-riding concern of both international and national authorities in development and execution of emergency plans, it is **RECOMMENDED** that public authorities and organisations at the international, national, regional and local levels should always include due provision for the protection of cultural property, especially important monuments, museums, and other collections in their disaster preparedness and disaster relief plans.

5.44. A number of important non-governmental organisations, at both the international and national levels are already actively involved in developing awareness of the need for emergency planning and of practical advice on planning and protection techniques. These include at the International Council of Monuments and Sites (ICOMOS)<sup>182</sup>, the International Council of Museums (ICOM)<sup>183</sup> and the Getty Foundation<sup>184</sup> at the international level and bodies such as the United States National Fire Protection Association, 1991A & B, 1992.<sup>185</sup> It is **RECOMMENDED** that such initiatives by the non-governmental sector to develop and promote integrated emergency and disaster-preparedness plans and arrangements should be strongly encouraged.

5.45. There must, however, be concern that many important cultural institutions are not keeping up with the new threats presented by technological change in both their own operations and practices and in weapons technology<sup>186</sup>. Museums, libraries and archive repositories are increasingly dependent on computer and other electronic data systems which may be particularly vulnerable in both civil disasters and war, particularly fire. (In the UK it is estimated that about one third of businesses suffering serious damage to their computer and other record systems in workplace fires never start up again.)

5.46. The development of new weapons such as electronic pulse or electronic field weapons designed to disable and destroy all kinds of computer-based systems could present a completely new potential threat to essential cultural data held on computers or in other electronic storage forms. A rapidly growing proportion of the security and environmental control systems of monuments, museums, libraries and archives which are computer based and hence potentially vulnerable

---

<sup>182</sup> Discussions with Leo Van Nispen, Secretary-General and the Secretariat of US-ICOMOS.

<sup>183</sup> Particularly through its International Committee for Museum Security (discussions with and documents from its Secretary, David Liston, Smithsonian Institution, Washington, USA) and Ad Hoc Working Group on Disaster Preparedness (discussions with and documents from its Convenor, Ms Barbara Roberts, Museum Consultant, Seattle, USA).

<sup>184</sup> Discussions with Mrs Marta De La Torre and Ms Jane Siena, Getty Conservation Institute, and Wilbur Falk, Director of Security for the J. Paul Getty Museum, Malibu, for which he has prepared an outstanding *Emergency Planning Handbook* and a staff training video: *The John Paul Getty Museum Emergency Drill*. (On 1 March 1993 Wilbur Falk was promoted to Director of Security for the Getty Foundation overall, and all its subsidiary divisions.)

<sup>185</sup> For example, the National Fire Protection Association produces excellent guides to the required standards of protection for Libraries, Museums and 'Historic Structures and Sites', (National Fire Protection Association 1991A, 1991B and 1992 respectively) in association with the American National Standards Institute, (ANSI).

<sup>186</sup> A good brief survey of current weapons research and development has recently been published by Doswald-Beck and Cauderey (1990) of the International Committee of the Red Cross.

### Peacetime Preparation

to such new types of weapon systems, whether used in an offensive or defensive mode.

- 5.47. Some High Contracting Parties have reported on taking protective measures in relation to cultural property information, such as microfilming programmes for collections, and the photogrammetric recording of monuments. It is **RECOMMENDED** that these essential measures should be extended to the duplication and storage in safe locations remote from the cultural institutions concerned duplicate copies of all computer and other electronic records of cultural property. It is further **RECOMMENDED** that in any future revision of, or Additional Protocol to, the 1954 *Convention*, the definition of 'cultural property' in Article 1 (a) the phrase 'or of reproductions of the property defined above' be replaced by '*or of paper, microform or electronic catalogues, documentation, or copies of the property defined above*'.
- 5.48. Finally, but by no means least in relation to the issue of peacetime preparations, from the information gathered for this study no High Contracting Party appears to have set up the national advisory committee recommended by the 1954 Intergovernmental Conference:

The Conference expresses the hope that each of the High Contracting Parties, on acceding to the Convention, should set up, within the framework of its constitutional and administrative system, a national advisory committee consisting of a small number of distinguished persons: for example, senior officials of archaeological services, museums, etc., a representative of the military general staff, a representative of the Ministry of Foreign Affairs a specialist in international law and two or three other members whose official duties or specialized knowledge are related to the fields covered by the Convention. The Committee should be under the authority of the minister of State or senior official responsible for the national service chiefly concerned with the care of cultural property. Its chief functions would be:

- (a) to advise the government concerning the measures required for the implementation of the Convention in its legislative, technical or military aspects, both in time of peace and during an armed conflict;
- (b) to approach its government in the event of an armed conflict or when such a conflict appears imminent, with a view to ensuring that cultural property situated within its own territory or within that of other countries is known to, and respected and protected by the armed forces of the country, in accordance with the provisions of the Convention;
- (c) to arrange, in agreement with its government, for liaison and co-operation with other similar national committees and with any competent international authority.<sup>187</sup>

Such national advisory committees could play an important role in developing practical means of implementing the *Convention* and *Protocol* at the practical level, and all States Parties are **RECOMMENDED** to establish such an advisory committee.

---

<sup>187</sup>

1954 Hague Intergovernmental Conference, Resolution II annexed to the 1954 *Hague Convention* and *Protocol*.



## Special Protection

### CHAPTER 6.

#### THE CONCEPT AND APPLICATION OF 'SPECIAL PROTECTION' AND ITS INTERNATIONAL REGISTER

6. 1. The earlier ratified International Instruments, particularly the 1899 and 1907 *Hague Conventions* and the 1935 Washington (Roerich) Pact, relied on the principle of absolute protection for all monuments and cultural institutions, (as defined - in practice - by the defending States Parties) providing these were not being used for any military purpose, and subject to the doctrine of 'military necessity'.
6. 2. The 1936 International Museums Office draft convention had proposed in addition arrangements for the designation, special identification and international inspection of temporary refuges or shelters for movable cultural property, located at least 20 km. from likely theatres of military operations, from any military, economic or communications target. In addition to its proposed absolute obligation to 'spare' all monuments of artistic or historic interest in time of war, it introduced the term 'Special Protection' for all monuments or groups of monuments at least 500 metres from any military objective, providing there has been prior notification of these, that they were not being used for any direct or indirect defence purpose, and that they were open to international inspection during hostilities<sup>188</sup>.
6. 3. The final version of the 1954 *Hague Convention* merged the two separate concepts (and Articles) of the Washington Pact - the remote temporary shelters or refuges for movable cultural property and 'centres containing monuments...' into a single provision for 'Special Protection':
  1. There may be placed under special protection a limited number of refuges intended to shelter movable cultural property in the event of armed conflict, of centres containing monuments and other immovable cultural property of very great importance, provided that they:
    - (a) are situated at an adequate distance from any large industrial centre or from any important military objective constituting a vulnerable point, such as, for example, an aerodrome, broadcasting station, establishment engaged upon work of national defence, a port or railway station of relative importance or a main line of communication;
    - (b) are not used for military purposes.
  2. A refuge for movable cultural property may also be placed under special protection, whatever its location, if it is so constructed that, in all probability, it will not be damaged by bombs.
  3. A centre containing monuments shall be deemed to be used for military purposes whenever it is used for the movement of military personnel or material, even in transit. The same shall apply whenever activities directly connected with military operations, the stationing of military personnel, or the production of war material are carried on within the centre.
  4. The guarding of cultural property mentioned in paragraph I above by armed custodians specially empowered to do so, or the presence, in the vicinity of such cultural property, of police forces normally responsible for the maintenance of public order shall

<sup>188</sup>

International Museums Office, October 1936, Preliminary Draft Convention for the Protection of Historic Buildings and Works of Art in Time of War, paras. 4 and 5: see Appendix V of this Report.

not be deemed to be used for military purposes. Protection of cultural property in the event of armed conflict

5. If any cultural property mentioned in paragraph I of the present Article is situated near an important military objective as defined in the said paragraph, it may nevertheless be placed under special protection if the High Contracting Party asking for that protection undertakes, in the event of armed conflict, to make no use of the objective and particularly, in the case of a port, railway station or aerodrome, to divert all traffic therefrom. In that event, such diversion shall be prepared in time of peace.<sup>189</sup>

6. 4. Even accepting the problems involved in trying to deal with two very different concepts within a single definition of Special Protection and a single set of rules, one other very obvious weakness is that it offers no possibility of Special Protection for even the greatest museums of undisputable world importance. Their collections can be given Special Protection if evacuated from the museum itself to a shelter or refuge under Special Protection but museums as integrated, working, institutions in their own premises cannot achieve this, unless by chance they themselves occupy 'monuments' of great importance which are themselves located in a 'centre' containing immovable property of very great importance.
6. 5. With such a narrow definition it is not surprising that in the thirty-seven years since the *Convention* came into effect, the only museum in the world to achieve designation for Special Protection is the Vatican Museum, and only then because of its location within the designated Vatican City 'centre containing monuments and other immovable property of very great importance'.
6. 6. It is **RECOMMENDED** that in any future updating of, or Additional Protocol to, the 1954 *Hague Convention*, provision should be made for the granting of Special Protection, under the procedures laid down in the *Convention*, to the most important museums, galleries, special libraries and archive repositories, on the basis of an assessment of the quality and international importance of their collections, regardless of the nature of the museum building and its situation in location relative to 'centres containing monuments of great importance'.
6. 7. Special Protection is granted to cultural property when it is entered in the official, and publicly accessible, 'International Register of Cultural Property under Special Protection', which is maintained on behalf of the High Contracting Parties by the Director-General of UNESCO, and in a form specified in practical rules laid down by the Director-General<sup>190</sup>. All entries in Register this are communicated to each High Contracting Party, (and, in practice, to the Secretary-General of the United Nations though this is not a specific provision of the *Convention* itself).
6. 8. The normal procedure for entry on the Register is through an application to the Director-General, which is circulated to all other States Parties for consultation, each of which has the right to object on specified grounds. In essence these are: either that the subject of the requested entry is not cultural property (or a *bona fide* refuge or shelter for the purpose of protecting cultural property, or that it is too close to a legitimate non-neutralised military etc. target<sup>191</sup>. However, there is also provision for a Commissioner-General appointed under the *Convention* to authorize immediate 'special protection' of a temporary refuge, but the Protecting

<sup>189</sup> 1954 *Convention*, Article 8.

<sup>190</sup> 1954 *Convention*, Article 8 (6) and *Regulations*, Article 12.

<sup>191</sup> *Regulations*, Article 14.

## Special Protection

Power for any of the belligerents may order the *Convention's* official emblem to be removed immediately if it considers that there is a valid objection to this<sup>192</sup>.

6. 9. The Director-General formally approved the required practical rules for the form of the International Register on 18 August 1956, requiring the registering of each entry under the name of the High Contracting Party, and sub-divided into three categories: (1) Refuges, (2) Centres containing monuments and (3) Other immovable cultural property. These rules were promulgated to High Contracting Parties (and, of course, more widely) the following month<sup>193</sup>.
- 6.10. In the thirty-six years since the establishment of the International Register only three High Contracting Parties have registered 'Refuges'. On 12 May 1969, on the application of The Netherlands and after the required consultation, a total of six shelters and refuges for movable cultural property in the Provinces of North Holland (four), Overijssel (one) and Limburg (one). On 17 November 1969 the Alt-Aussee complex of five disused salt mines near Steinberg in Upper Austria was registered as a national refuge, and on 24 April 1978 the West German 'Central Refuge', comprising about half a kilometre of underground galleries quarried out of crystalline gneiss near Oberried in the Black Forest was added.<sup>194</sup>
- 6.10. Since 1978 no proposals for the registration of refuges have been proposed. This is clearly in part because many - probably the majority - of High Contracting Parties have made little or no progress in establishing shelters and refuges for their movable cultural property at all. In some cases - especially in some European States belonging to one or other of the Cold War alliances - it may have been felt that the threatened use by each side of high yield thermonuclear weapons, capable of devastating many tens of square kilometres under the M.A.D. (Mutually Assured Destruction) defence strategy would make such protection measures pointless. In particular, especially in densely populated States, it may be felt that faced with such weapons there are no areas of the country that could reasonably be considered sufficiently remote from legitimate military, industrial or communications targets.
6. 11. However, as recent discussions about new the generation of 'smart weapons' have stressed, probably more than 97% of recent (and foreseeable) armed conflict is based on weapons technology several weapons generations older - often of the generation of the Second World War - or even earlier. Consequently in most countries there is still an entirely valid role for comparatively traditional means of protection such as the use of shelters, refuges and temporary strengthening, as developed in the Spanish Civil War and - especially - during the Second World War.
- 6.12. Another, and perhaps more significant, problem is that several States Parties to the *Convention* which are known to have established refuges and shelters and plans for the evacuation of the most important movable national treasures to these regard the location of these and the plans for their use as important state secrets. Such States argue that despite the protection in international law given

---

<sup>192</sup> *Regulations*, Article 11.

<sup>193</sup> *Rules Established by the Director-General of the United Nations Educational, Scientific and Cultural Organization, 18 August 1956, concerning the International Register of Cultural Property under Special Protection*. UNESCO Doc. No. CL/ 1136(G).

<sup>194</sup> International Register for The Netherlands, Austria, German Federal Republic: UNESCO Doc. No. MUS/ BC/ 8 (20)

by registration for Special Protection, it is highly undesirable - absurd even - to provide a potential enemy (or even national or international criminal or terrorist organisations) with details of such refuges (including the location to the nearest second of latitude and longitude, and with full descriptions for the access routes and the means of identifying eg. the surface entrance to an underground shelter or refuge).

- 6.13. In the course of the study for this Report it has been argued forcibly by senior officials from such States that past experience over many centuries demonstrates that attacking and occupying forces are very likely to deliberately target collections of especially important movable national treasures and collections. In past armed conflicts such crimes have been all too common - whether in order to destroy (or remove) symbols of national, cultural and religious identity, as State organised and authorised looting (as in Napoleon's campaigns across Europe and into Egypt or the more recent experience of the Nazi ransacking of the art collections of most of continental Europe), or as straightforward criminal theft and looting under cover of the inevitable disorder of war. The rise of both international and internal terrorism also give added force to this argument.
- 6.14. The position of States unwilling to identify their emergency plans and refuges appears to have been reinforced by what is reported to have occurred in the recent armed conflicts within the former Yugoslavia. In at least some areas of Federal (and strongly decentralised) Yugoslavia there were extensive programmes for protecting both movable and immovable cultural property in the event of armed conflict<sup>195</sup>. (This may well be true of all areas of the country, though information is no longer readily available centrally, as the implementation of this was primarily a responsibility of the individual Republics). Though not publicised or registered internationally the full details of the permanent emergency shelters and refuges for important museum, library and archive collections in each Republic were, of course, registered with the national defence forces and cultural organisations.
- 6.15. Unfortunately, it appears that this information has definitely been used improperly by belligerent forces on at least one occasion - on the fall of Vukovar, Croatia, in November 1991. The City had, amongst many other items of important cultural property, the internationally important collections of the famous medieval library of Vukovar, and the national collection of 20th century Croatian art donated by the distinguished scholar, Dr Antun Bauer, to his native city. Each of these is regarded as outstandingly important parts of the Croatian cultural patrimony, and both collections are believed to have survived the long siege of the City undamaged in their designated refuges. However, on the day that Vukovar was taken by the attacking Serb forces the shelter was immediately identified from the official records. The contents are reported to have been removed to Belgrade the same day, and the Croatian authorities have received no information about either collection<sup>196</sup>.
- 6.16. Despite such understandable worries the principle of registering refuges and shelters for Special Protection appears to be well worth retaining. However, in practical terms the facility is likely to be particularly valuable in respect of temporary refuges and other evacuation measures taken during (or immediately before) armed conflicts, as the locations of these would probably not be known to

---

<sup>195</sup> Mainly personal communications from local experts, but this is mentioned in Yugoslavia's 1979 periodic report to the Director-General of UNESCO on the implementation of the 1954 Convention: UNESCO Doc. No. CC/MD/41, 25 June 1979, p. 28 col. 2.

<sup>196</sup> Private communications; there is also some information in the Council of Europe Parliamentary Assembly Report (in sections not reproduced in Appendix XII of this Report).

## Special Protection

the attacking force, and hence unintended damage or destruction could easily occur. On the other hand, almost by definition most permanent shelters or refuges are likely to be located in areas remote from any likely military, industrial or communications target, and so are unlikely to be the subject of heavy air attacks. However, in the event of a land campaign, particularly one using heavy armour and artillery, the mutual agreement under the Special Protection rules by the attacking and defending forces to avoid any form of fighting in the vicinity of the refuge could be a valuable additional safeguard.

- 6.17. Much less understandable is the failure of High Contracting Parties to submit proposals for Special Protection under categories (2): centres containing monuments) or (3) other immovable cultural property of great importance. No proposals have been submitted in respect of the third category, and only one has been registered in respect of the second category.
- 6.18. This one case of a 'centre' achieving Special Protection is Vatican City, registered on 18 January 1960. The boundaries of the protected zone are defined as the frontiers of the State of the Holy See (Vatican City), and the area protected extends to approx. 4.4 hectares. The principal examples of important cultural property protected by the zone are stated in the International Register to include the Basilica of St Peter's and its archaeological remains, the Vatican Palace with its museums, the Vatican Library and the Archivi Segreti (Secret Archives of the Holy See)<sup>197</sup>.
- 6.19. This is a particularly interesting case on two counts. First, although widely recognised internationally as a political entity, the Holy See is not a member of either the United Nations or UNESCO, but nevertheless was allowed to become a Party to the 1954 *Hague Convention*, and hence the Vatican could be registered for Special Protection by consent of the High Contracting Parties. Second, because the territory of the State of Vatican City is so small, any protection under the 1954 *Convention*, if actually invoked, would probably have a far greater effect on the surrounding State (i.e. Italy) than the Vatican City itself. Consequently formal consultation with Italy on the implications of this and on the measures for implementation in the event of armed conflict was necessary. Italy's support for the Vatican's application was formally registered with UNESCO on 18 September 1959. Similar consultations and arrangements would clearly be needed in the event of any future proposals for registering under Special Protection any of the very many important monuments and historic zones which are close to land or river frontiers.
- 6.20. There was in fact a second proposal for the granting of Special Protection to an important cultural complex. As the Second Indo-China War (Vietnam War) threatened to spill over into neighbouring countries, the government of Cambodia (a Party to the 1954 *Convention* from April 1962 onwards) initiated a proposal for the registering under Special Protection of the archaeological and historic monument zone of Angkor Wat. The only legitimate questions that should have been considered by the High Contracting Parties during the consultation process were those specified in Article 14 of the *Regulations*, i.e. that either: '(a) the property is not cultural property' or '(b) the property does not comply with the conditions mentioned in Article 8 of the Convention' [i.e. adequate separation from a military, economic or communications centre, or use for military purposes - see quotation in para. 6.3 above].

---

<sup>197</sup>

International Register for The State of Vatican City, UNESCO Doc. No. MUS/BC/8 (20)

- 6.21. There could be no doubt about the outstanding international cultural value of Angkor Wat, and it was common ground that there were no legitimate military etc. targets in the vicinity, so its entry on the International Register should have been almost automatic. Unfortunately the socialist countries objected on grounds quite outside the terms of the *Convention* - in effect that they did not recognise the legitimacy of the then Cambodian government which had made the application.
- 6.22. As the application was submitted by the government currently recognised by the United Nations, and hence by UNESCO, this was clearly not an admissible ground for objection, but most regrettably the then Director-General of UNESCO decided to suspend indefinitely (in practice, permanently) all proceedings in relation to the Cambodian application. In fact, despite the failure of the 1954 *Convention* Special Protection procedure, when the Indo-China War spread to Cambodia the United States military authorities sought advice from American experts on the archaeology and monuments of the region, and as a result issued command orders strictly prohibiting both air and ground operations throughout a protection zone defined by the United States military authorities around the Angkor complex.<sup>198</sup>
- 6.23. Since the failed proposal in relation to Angkor Wat there appear to have been no formal proposals for the granting of Special Protection. This seems strange, as many of the subsequent periodic reports from States Parties refer to work on the preparation of Schedule 2 lists, and it is clear that many such lists are now in use at the national level, especially in relation to decisions on matters such as urban planning, conservation and restoration programmes etc. Even The Netherlands, probably the most active High Contracting Party at the national level, has not yet initiated Special Protection listing in respect of its defined 'Top 100' monuments<sup>199</sup>, even though a significant proportion of these would probably meet the criteria in respect of both their cultural importance and their distance from legitimate military targets.
- 6.24. It may well be that some States Parties chose to switch their priority to the promotion of their proposals for the World Heritage List following the adoption UNESCO of the *World Heritage Convention* at the 1972 General Conference of UNESCO - a point discussed further in Chapter 12 of this Report (below). However, the concept of Special Protection remains a valid and valuable one in relation to outstanding individual monuments, 'centres containing monuments or other immovable cultural property...' and indeed outstanding museums, (if this category is added in a future amendment or addition to the *Convention* (as proposed in 6.4 - 6.6 of this Report).
- 6.25. Consequently, all High Contracting Parties are **RECOMMENDED** to review their policies and priorities, particularly in the light of existing national schedules and lists for the protection of important cultural property, and to submit to the Director-General of UNESCO proposals for additions to the International Register of Cultural Property under Special Protection.
- 6.26. The Special Protection concept and practical arrangements also apply in respect of one other area - the authorised and externally supervised transport of cultural property, e.g. to or from national refuges, shelters etc. or even to a foreign place of safety - provided for in the *Convention* and detailed further in *Regulations*:

---

<sup>198</sup> UNESCO administrative files; private communications; interview with W. Hays Parks, Chief, International Law Branch, Office of Judge Advocate General of the US Army, 1 March 1993.

<sup>199</sup> See paras. 5.33 - 5.36 above; also Appendix IX.

## Special Protection

1. Transport exclusively engaged in the transfer of cultural property, whether within a territory or to another territory, may, at the request of the High Contracting Party concerned, take place under special protection in accordance with the conditions specified in the Regulations for the execution of the Convention.
2. Transport under special protection shall take place under the international supervision provided for in the aforesaid Regulations and shall display the distinctive emblem described in Article 16.
3. The High Contracting Parties shall refrain from any act of hostility directed against transport under special protection.<sup>200</sup>

6.27. There is also provision for the claiming of 'Special Protection' in cases of special urgency, and for the right of searching of the transport etc., and prohibiting the seizure, capture or prize of all cultural property granted immunity under the Transport provisions.<sup>201</sup>

6.28. There are no obvious problems with either the principles or the details of the provisions for 'special protection' of the transport of cultural property, though appears to have been no case in which these have been invoked. Perhaps the nearest case was the transport of the collections of the Kuwait National Museum to Baghdad by the Iraqi authorities in 1990. Kuwait condemned this, claiming that Iraq had engaged in state-inspired looting. Iraq, a High Contracting Party to both the *Hague Convention* and *Protocol*, defended itself with a counter-claim that faced with the very real prospect of military action to expel Iraq from the capture territory, it was under a clear obligation under the 1954 *Convention* to take necessary measures to protect these collections, and hence had moved them to a place of safety, outside the likely zone of future military operations should the counter-invasion take place. Iraq's claimed objective is in fact a defensible position under the *Convention*, but the actual method and timing of the removal failed to comply with the provisions of the *Convention*. In particular there were no moves to appoint a Commissioner-General (or representative for cultural property) - the normal first preliminary to any such transfer of cultural property, nor to involve the Director-General of UNESCO as an alternative, in the absence of a Commissioner-General appointment.

---

<sup>200</sup> 1954 *Convention*, Article 12; *Regulations*, Chapter III (Articles 17 - 19).

<sup>201</sup> 1954 *Convention*, Articles 13 and 14.

## CHAPTER 7

### PRACTICAL APPLICATION OF THE 1954 CONVENTION: OFFICIAL EMBLEM, SCOPE AND ROLE OF PROTECTING POWERS, UNESCO, AND COMMISSIONERS-GENERAL

7. 1. The provisions in relation to the new blue and white shield emblem, as the successor to the official emblems of the *Hague Conventions* and the *Roerich Pact* are set out in Chapter V of the *Convention* itself:

#### Article 16. Emblem of the Convention

1. The distinctive emblem of the Convention shall take the form of a shield, pointed below, per saltire blue and white (a shield consisting of a royal-blue square, one of the angles of which forms the point of the shield, and of a royal-blue triangle above the square, the space on either side being taken up by a white triangle).
2. The emblem shall be used alone, or repeated three times in a triangular formation (one shield below), under the conditions provided for in Article 17.

#### Article 17. Use of the emblem

1. The distinctive emblem repeated three times may be used only as a means of identification of:
    - (a) immovable cultural property under special protection;
    - (b) the transport of cultural property under the conditions provided for in Articles 12 and 13;
    - (c) improvised refuges, under the conditions provided for in the Regulations for the execution of the Convention.
  2. The distinctive emblem may be used alone only as a means of identification of:
    - (a) cultural property not under special protection;
    - (b) the persons responsible for the duties of control in accordance with the Regulations for the execution of the Convention;
    - (c) the personnel engaged in the protection of cultural property;
    - (d) the identity cards mentioned in the Regulations for the execution of the Convention.
  3. During an armed conflict, the use of the distinctive emblem in any other cases than those mentioned in the preceding paragraphs of the present Article, and the use for any purpose whatever of a sign resembling the distinctive emblem, shall be forbidden.
  4. The distinctive emblem may not be placed on any immovable cultural property unless at the same time there is displayed an authorization duly dated and signed by the competent authority of the High Contracting Party.
7. 2. In the case of 'ordinary' cultural property, including monuments, archaeological and historic sites, and buildings such as museums, libraries and archives holding collections of cultural property, the official emblem is to be displayed singly, while in the case of buildings and locations under Special Protection the emblem is to be repeated three times in the form of a triangle. The *Regulations* offer a wide choice of options for the displaying of the official emblem: the possibilities suggested include painting it directly on the building, or display on flags or on armlets of authorized cultural protection personnel. In the case of the military action in Croatia in 1991 and 1992 a standard pattern of painted shield approximately two metres high manufactured from wooden board was used on many hundreds of monuments and institutions protected under national laws.
7. 3. Whether the property is marked in times of peace is a matter for the discretion of the Contracting Party. However, the *Regulations* provide that in times of armed conflict:



## Practical application of the 1954 Convention

However, without prejudice to any possible fuller markings, the emblem shall, in the event of armed conflict and in the cases mentioned in Articles 12 and 13 of the Convention, be placed on the vehicles of transport so as to be clearly visible in daylight from the air as well as from the ground. The emblem shall be visible from the ground:

- (a) at regular intervals sufficient to indicate clearly the perimeter of a centre containing monuments under special protection;
- (b) at the entrance to other immovable cultural property under special protection.<sup>202</sup>

7. 4. Again there seem to be no problems of principle in relation to this aspect of the *Convention* and *Regulations*. However, it is very desirable that the emblem should be widely used in order to make both specialists and non-specialists (including not least military personnel of all ranks) familiar with it in peacetime, and hence to engender curiosity and understanding. In this, as in other respects, the current programme of the Netherlands to affix the emblem to all protected monuments and major museums is a commendable model for other countries.

7. 5. There is a clear assumption within the 1954 *Convention* that in the event of a war between two or more High Contracting Parties the general laws and procedures of war would be in operation, and in particular that each party would have designated a Protecting Power in accordance with the principles of the Hague and Geneva Conventions. It was envisaged that the designated Protecting Power for each party would generally represent and safeguard the interests of that State throughout the armed conflict, and would help with negotiations and conciliation whether initiated by one or more of the Parties themselves, by a Protecting Power on its own initiative, or by the Director-general of UNESCO<sup>203</sup>. There is however a limited reserve provision which provides that:

a neutral State may be asked to undertake those functions of a Protecting Power which concerns the appointment of a Commissioner-General for Cultural Property...<sup>204</sup>

but this is completely silent on the question of who is to ask the neutral State to take on this role. In practice, it is extremely difficult if not impossible to make progress with the formal procedures of the *Convention* where one or both of the belligerents declines to nominate Protecting Powers. This seems to have been very much the case in, for example, the 1980s Iran - Iraq War, in which each side appeared to claim that the conflict was a matter of armed border incursions, and refused to concede that they were fighting a true war within the normal conventions of international war. Consequently, all efforts by UNESCO to try to arrange the appointment of Commissioners-General were rebuffed. Similarly, no Protecting Powers have been appointed in any of the recent and current conflicts in the former Yugoslavia. (One obvious reason for this was that these were regarded technically internal conflicts within Yugoslavia when they began, only becoming international conflicts when the world community recognised the independence of first Croatia and then Bosnia. It is not clear whether either Croatia or Bosnia have attempted to initiate the appointment of Protecting Powers, but even if they have this would presumably be a fruitless exercise while the administrations of the residual Yugoslavia/ Serbia refuses to recognise the new States as independent.)

---

<sup>202</sup> *Regulations*, Article 20 (2).

<sup>203</sup> 1954 *Convention*, Articles 20 and 21; *Regulations*, Articles 2 - 8.

<sup>204</sup> *Regulations*, Article 9: Substitutes for Protecting Powers.

7. 6. The *Regulations* provide for the Director-General of UNESCO to draw up an international list of experts, each nominated by a High Contracting Party, suitable and appropriately qualified to serve as a Commissioner-General for Cultural Property, in order to supervise the practical arrangements for the protection of cultural property in accordance with the obligations of the respective States Parties to the *Convention* and to act as a mediator in the event of disputes<sup>205</sup>. The arrangements are detailed in the *Regulations* and are quite clear and straightforward:

**Article 2. Organization of control**

As soon as any High Contracting Party is engaged in an armed conflict to which Article 18 of the *Convention* applies:

- (a) It shall appoint a representative for cultural property situated in its territory; if it is in occupation of another territory, it shall appoint a special representative for cultural property situated in that territory;
- (b) The Protecting Power acting for each of the Parties in conflict with such High Contracting Party shall appoint delegates accredited to the latter in conformity with Article 3 below;
- (c) A Commissioner-General for Cultural Property shall be appointed to such High Contracting Party in accordance with Article 4.

**Article 3. Appointment of delegates of Protecting Powers**

The Protecting Power shall appoint its delegates from among the members of its diplomatic or consular staff or, with the approval of the Party to which they will be accredited, from among other persons.

**Article 4. Appointment of Commissioner-General**

1. The Commissioner-General for Cultural Property shall be chosen from the international list of persons by joint agreement between the Party to which he will be accredited and the Protecting Powers acting on behalf of the opposing Parties.
2. Should the Parties fail to reach agreement within three weeks from the beginning of their discussions on this point, they shall request the President of the International Court of Justice to appoint the Commissioner-General, who shall not take up his duties until the Party to which he is accredited has approved his appointment.

**Article 5. Functions of delegates**

The delegates of the Protecting Powers shall take note of violations of the *Convention*, investigate, with the approval of the Party to which they are accredited, the circumstances in which they have occurred, make representations locally to secure their cessation and, if necessary, notify the Commissioner-General of such violations. They shall keep him informed of their activities.

**Article 6. Functions of the Commissioner-General**

1. The Commissioner-General for Cultural Property shall deal with all matters referred to him in connection with the application of the *Convention*, in conjunction with the representative of the Party to which he is accredited and with the delegates concerned.
2. He shall have powers of decision and appointment in the cases specified in the present *Regulations*.
3. With the agreement of the Party to which he is accredited, he shall have the right to order an investigation or to conduct it himself.
4. He shall make any representations to the Parties to the conflict or to their Protecting Powers which he deems useful for the application of the *Convention*.

---

<sup>205</sup>

*Regulations*, Article 1.

## Practical application of the 1954 Convention

5. He shall draw up such reports as may be necessary on the application of the Convention and communicate them to the Parties concerned and to their Protecting Powers. He shall send copies to the Director-General of the United Nations Educational, Scientific and Cultural Organization, who may make use only of their technical contents.

6. If there is no Protecting Power, the Commissioner-General shall exercise the functions of the Protecting Power as laid down in Articles 21 and 22 of the Convention.<sup>206</sup>

7. 7. The practical procedures and arrangements for the work of Commissioners-General and the representatives (delegates) of the Protecting Powers seem entirely logical and reasonable, though there has been hardly any testing of them in practice, because in only one case (the Arab - Israeli conflict of 1967<sup>207</sup>) has an appointment been made. In no other armed conflicts involving High Contracting Parties it has not proved possible to reach agreement on the appointment of Commissioners-General. It is **RECOMMENDED** that in any revision of the 1954 *Convention*, or any Additional Protocol to it, the legal provisions and arrangements for the appointing of Commissioners-General be reviewed, in order to make these more effective. On the other hand it has to be recognised that in times of armed conflict for all practical purposes it is impossible for any outside power (with the possible exception of the United Nations Security Council) to impose on a High Contracting State any Commissioner-General which the belligerent party is unwilling to recognise and cooperate with.

7. 8. A much more successful course of action over the past decades has been the practice of UNESCO to intervene through the offices of a Special Representative of the Director-General, under the provisions of the *Convention*:

1. The High Contracting Parties may call upon the United Nations Educational, Scientific and Cultural Organization for technical assistance in organizing the protection of their cultural property, or in connection with any other problem arising out of the application of the present Convention or the Regulations for its execution. The Organization shall accord such assistance within the limits fixed by its programme and by its resources.

2. The Organization is authorized to make, on its own initiative, proposals on this matter to the High Contracting Parties.<sup>208</sup>

7. 9. Indeed in the case of situations where there is not a clear and unambiguous international conflict between two well defined States with well organised and controlled military forces there is in practical terms no alternative. The provisions for the appointment of Commissioners-General working with Protecting Powers do not apply at all in the case of irregular internal wars, so less formal methods are necessary in this case. Good examples of initiatives by successive Directors-General include the fact-

---

<sup>206</sup> *Regulations*, Articles 2 - 6.

<sup>207</sup> See Director-General's compilation of periodic reports of High Contracting Parties, 1970: UNESCO Doc. No. SCH/MD/6 for an outline of the action taken: this also has a full list of references to UNESCO Executive Board papers and resolutions relating to this.

<sup>208</sup> 1954 *Convention*, Article 23: Assistance of UNESCO.

finding efforts in Cyprus both in advance of and after the *de facto* partitioning of 1972, action to promote the safeguarding of the historic Mediterranean city of Tyre following the Israeli occupation of southern Lebanon in 1982<sup>209</sup>, and most recently UNESCO's various initiatives in relation to ex-Yugoslavia and especially the World Heritage List city of Dubrovnik, Croatia.

- 7.10. UNESCO has also a long tradition of taking an active moral lead of the world community through effective publicity and public relations in times of conflict. For example, between 17 September 1991 and the end of the year the Director-General intervene publicly or at the diplomatic level at least nine times, including making a public joint appeal with the Secretary-General of the United Nations, Mr Boutros-Ghali, and arranged two missions of UNESCO officials and other experts as observers and personal representatives, while the General Conference of UNESCO, meeting in October and November passed two resolutions appealing for all parties to comply with the requirements of the 1954 *Convention*.

---

<sup>209</sup>

Tyre presented a particularly complex situation, with long-term occupation of the unfinished archaeological excavations themselves by Palestinian groups for at least four years before the Israeli invasion, and a well-organised and well-armed though irregular south Lebanon militia outside the control of the Lebanese government and army by allied with Israel also involved.

## Periodic Reports of States Parties

### CHAPTER 8

#### *PERIODIC REPORTS OF HIGH CONTRACTING PARTIES*

8. 1. An apparently very minor, but in fact highly important, part of the 1954 *Hague Convention* is the provision that:

... at least once every four years, they [the High Contracting Parties] shall forward to the Director-General a report giving whatever information they think suitable concerning any measures being taken, prepared or contemplated by their respective administrations in fulfilment of the present Convention and of the Regulations for its execution.<sup>210</sup>
8. 2. As indicated above, these reports are of considerable importance and value and it is **RECOMMENDED** that all High Contracting Parties be reminded of their undertaking to present periodic reports, and asked to ensure their submission.
8. 3. Although technically these reports are submitted to the Director-General only, and publication is not required, all have been placed in the public domain by UNESCO. The first set of reports, with the Director-General's analysis of these, was not produced until July 1962<sup>211</sup> - eight years after the 1954 Intergovernmental Conference, and six years after the *Convention* came into effect with the depositing of the fifth ratification - and was then only presented in the form of a working paper for the first (and only) periodic Conference of the High Contracting Parties<sup>212</sup>. The cycle of reporting continued to be somewhat erratic, with - apparently - no further reports being received by the Director-General until 1967, followed then by some in 1970, then nothing until 1979, followed by more in 1984 and 1989.<sup>213</sup>
8. 4. The purpose and value of these reports is two-fold. First, they enable the Director-General to present an analysis and overview of the progress of implementing the *Convention* both in peacetime and any recent or current armed conflicts. Second, as they are distributed to all States Parties and made available more widely, they are an extremely valuable means of sharing the experience of different States with many very different circumstances, and hence to offer useful models of practice to other High Contracting Parties on successful ways of meeting the obligations under the *Convention*.
8. 5. On the negative side, the submission of periodic reports by States Parties has been very uneven and erratic. An analysis of the six periodic report compilations shows that not one High Contracting Parties has submitted reports each time. Germany (Federal Republic) is the only State with a 100% record (i.e. it has contributed to each of the five reports compiled and used since it ratified the *Convention* in 1967. Poland has also submitted five reports (out of a

---

<sup>210</sup> 1954 *Convention*, Article 26 (2).

<sup>211</sup> UNESCO Doc. No. WS/0562.68, dated 15 June 1962.

<sup>212</sup> As provided for in the *Convention*, Article 27 (1).

<sup>213</sup> 1962 Report: UNESCO Doc. No. WS/0562.68 of 15 June 1962; 1967 Report: UNESCO Doc. No. SCH/MD/1 of 19 May 1967; 1970 Report: UNESCO Doc. No. SCH/MD/6 OF 30 April 1970; 1979 Report: UNESCO Doc. No. CC/MD/41 of 25 June 1979; 1984 Report: Doc. No. CLT/MD/3 of 3 December 1984; 1989 Report: UNESCO Doc. No. CC/MD-11, December 1989.

possible six), the Holy See, The Netherlands, Switzerland and Syria have each submitted four (out of a possible six).

8. 6. On the other hand thirty-nine States have never submitted a report (though it should be noted that several of these have become parties to the *Convention* by accession or succession since the last compilation of national reports was prepared in 1989). It is difficult to calculate the exact number of periodic reports that should have been submitted, because of the different rates of completion of the ratification process, but it appears that only about 20% of those that should have been prepared by States Parties according to the requirements of the *Convention* have actually been submitted.
8. 7. Details of the submission of periodic reports by High Contracting Parties has been analyzed, and this is presented in Appendix VIII of this Report.
8. 8. It is further **RECOMMENDED** that means be found to ensure the wider dissemination and publicising of these reports, and for their more detailed consideration, particularly by the proposed new Intergovernmental Advisory Committee on the Protection of Cultural Property in the Event of Armed Conflict.<sup>214</sup>

---

<sup>214</sup>

Since reaching this view, Prof. Dr.Jur. Josef Partsch, Professor Emeritus, University of Bonn, Germany, and an eminent legal expert in the field, has written to me making a similar proposal, which he and Prof. Stanislav Nahlik have previously proposed at meetings of experts on the 1954 *Hague Convention*.

## Legal Enforcement and Sanctions

### CHAPTER 9

#### LEGAL ENFORCEMENT AND SANCTIONS

9. 1. In relation to implementing international humanitarian law Sadoz argues very persuasively that this has to be based on balancing 'means of prevention' - preparation and avoidance measures in peacetime etc., 'means of control' - constant supervision to ensure compliance in times of conflict, and 'means of repression' - which he describes as 'important because penalties are an integral part of any sound legal system, and mainly because they should be an valuable deterrent'<sup>215</sup>. It is now well established that deliberate or reckless destruction or damage of cultural property, and the looting or theft of such property, in the course of war constitute war crimes within all international definitions. If there was any doubt about this the issue was resolved in the 1945 *London Treaty* principles, based on the *Hague Conventions* of 1907 and on Customary International Law, and the subsequent Nuremberg War Crimes trials. Further, such offences are now regarded by the world community as falling clearly within the mainstream of war crimes, and are not merely some form of extension of breaches of property law<sup>216</sup>. This position has been substantially reinforced by the 1954 *Hague Convention for the Protection of Cultural Property in the Event of Armed Conflict*, and by the subsequent explicit incorporation of offences under this within the into the detailing of breaches of International Humanitarian Law in the *First Additional Geneva Protocol of 1977*<sup>217</sup>.
9. 2. Most recently in February 1993 the United Nations Commission of Experts appointed under U.N. Security Council resolution 780 (1992) to investigate and report on 'the evidence of grave breaches of the Geneva Conventions and other violation of international humanitarian law committed in the territory of former Yugoslavia' issued its first report through the Secretary-General to the Security Council. In this, the Commission of Experts discuss in detail the applicable rules of international law, defining these as having:
- ... the same meaning as 'rules of international law applicable in armed conflict' as defined in article 2 (h) of Additional Protocol I to the Geneva Conventions.<sup>218</sup>
9. 3. The Commission of Experts also specifically list the 1954 *Hague Convention* as part of applicable 'customary international law'<sup>219</sup>, and later again specifically identify both the 1949 *Geneva Conventions* and the 1954 *Hague Convention* as 'applicable to the entirety of the conflicts in ex-Yugoslavia'<sup>220</sup>.

---

<sup>215</sup> Sandoz, 1988.

<sup>216</sup> See in particular para. 2.50 of this Report and O'Brien, 1972, pp. 195 - 195.

<sup>217</sup> *Geneva Protocol I of 1977*, Article 53.

<sup>218</sup> Interim Report of Commission, p. 13, para. 37, annexed to report of Secretary-General to Security Council dated 9 February 1993, U.N. Doc. No. S/ 2574.

<sup>219</sup> Report of Commission of Experts (see note 4 above), p. 13, paras. 39 - 40.

<sup>220</sup> Report of Commission of Experts (see note 4 above), p. 14, paras. 43 - 45.

9. 4. The Security Council had previously (on 13 July 1992) re-stated the established position in relation to individual responsibility:

Reaffirms that all parties are bound to comply with the obligations under international humanitarian law and in particular the Geneva | Conventions of 12 August 1949, and that persons who commit or order the commission of grave breaches of the Convention are individually responsible in respect of such breaches.<sup>221</sup>

9. 5. The Commission of Experts further reviewed and re-affirmed the customary international law in relation to individual responsibility as confirmed by the Nuremberg principles, and they confirmed that command responsibility applies not just to the person giving explicit orders, but:

52. Superiors are moreover individually responsible for a war crime or a crime against humanity committed by a subordinate if they knew, or had information which should have enabled them to conclude, in the circumstances of the time, that the subordinate was committing or was going to commit such an act, and that they did not take all feasible measures within their power to prevent or repress the act.

53. Military commanders are under a special obligation with respect to members of the armed forces under their control, to prevent and, where necessary, to suppress such acts and to report them to competent authorities.<sup>222</sup>

9. 5. The Commission also discussed the activities which have become known as 'ethnic cleansing', and among the list of activities which they define as 'ethnic cleansing', they include the 'wanton destruction of property', continuing:

These practices constitute crimes against humanity and can be assimilated to specific war crimes. Furthermore such acts could also fall within the meaning of the Genocide Convention<sup>223</sup>.

9. 6. The Interim Report of the Commission of Experts was adopted by the Security Council in its Resolution 808 (1993)<sup>224</sup>, thus giving even greater weight to its position, not least since these principles will be incorporated into the applicable rules of law to be applied in any future war crimes trials relating to recent events in the former Yugoslavia.

9. 7. In relation to the application of the 1954 *Hague Convention* specifically, the issue of international jurisdiction, even in civil cases let alone criminal ones, was and remains extremely difficult and controversial. Though an international war crimes tribunal under the authority of the Security Council is now being contemplated in relation to ex-Yugoslavia this is the first such proposal to be pursued at an international level since the Nuremberg and Tokyo trials of German and Japanese war criminals at the end of the Second World War. It is important that there is close liaison between the United Nations and UNESCO in relation to the investigation and preparation of the cases for the proposed war

<sup>221</sup> Security Council Resolution No. 764 of 13 July 1992, U.N. Doc. No. S/RES/764.

<sup>222</sup> Report of Commission of Experts Report (see note 4 above), pp. 15 - 16, paras. 52 - 53. The United States of America experts assisting in the preparation of evidence for the proposed United Nations war crimes actions are also convinced that the issue of command responsibility must encompass any failure of local and regional military commanders in occupied areas to exercise adequate military control over both irregular forces and the civilian population responsible for individual war crimes: interview with W. Hays Parks, United States Department of Defense, and Edward R. Cummings, Department of State, 1 March 1993.

<sup>223</sup> Report of Commission of Experts, (see note 4), p. 16, para. 56.

<sup>224</sup> United Nations Security Council Resolution 808 (U.N. Doc. Ref. S/RES/808 (1993), adopted by the 3175th meeting of the Security Council, 22 February 1993.



## Legal Enforcement and Sanctions

crimes trials. As a first step, the United Nations should accept the offer of the Director-General of UNESCO to nominate an appropriate expert in cultural property law relating to armed conflicts to assist in the war crimes investigations.

9. 8. It seems clear that the States represented at the 1954 Intergovernmental Conference were reluctant to create a precedent by developing any explicit international criminal measures. Consequently, in the 1954 *Convention*, the High Contracting Parties entered into an obligation in relation to breaches in very general, and imprecise, terms:

The High Contracting Parties undertake to take, within the framework of their ordinary criminal jurisdiction, all necessary steps to prosecute and impose penal or disciplinary sanctions upon those persons, of whatever nationality, who commit or order to be committed a breach of the present Convention.<sup>225</sup>

9. 9. One of the most obvious weaknesses is that while the provision 'of what ever nationality' is a good one, the text is completely silent as to jurisdiction in relation to the geographical location where the offence is alleged to have taken place. The usual criminal jurisdiction for offences of destruction of or damage to property would be either that of the country where the alleged offence took place, or of either the military or civilian criminal system of the country of nationality of the accused person. (The latter is the usual arrangement in respect of serving armed forces, whether fighting over an other territory, operating as part of an occupying or peace-keeping force, and frequently even in the case of friendly visits. Such arrangements may even extend to the families of service personnel abroad through bilateral agreements, as in the case of the residual British, French and United States forces in the former West German occupation zones).
- 9.10. In a strongly decentralised federal state the constitution may even provide that offences of this category are the exclusive responsibility of decentralised regional criminal justice systems, and constitutionally outside the jurisdiction of the federal courts, as for example in the United States of America where even homicide and its punishment is a crime of State rather than Federal jurisdiction. Even in unitary states without such internal complications of jurisdiction, can a Contracting Party bring a criminal prosecution against even one of its own national for an offence alleged to have been committed in another country, let alone bring before its own courts a foreign national accused of 'cultural war crimes' in a third, unconnected, country? The 1948 *Genocide Convention* and 1949 *Geneva Conventions* both adopted substantially wider provisions in respect of the obligations of States Parties in relation to jurisdiction and prosecution. In particular the *Geneva Conventions* define as 'grave breaches' a wide range of actions, including (amongst other things), wilful killing, torture or inhuman treatment, and the destruction and the large-scale illegal appropriation of property not justified by military necessity. This is very much a matter for expert legal investigation and negotiation.
- 9.11. However, the crucial need is to ensure that in all appropriate cases there is proper and effective prosecution through some appropriate legal process, not least in order to send clear signals to both military personnel and civilians throughout the world that there are clear limits to both personal and collective conduct. In the case of any of the defined 'grave breaches', States Parties undertake to provide effective penal sanctions, to search out alleged transgressors (including those who fail to act to prevent war crimes when under an obligation to do so), and to positively assist in bringing them to trial wherever the alleged crimes took place and regardless of the current domicile or location of

---

<sup>225</sup>

1954 *Convention*, Article 28.

the person accused. In practice, criminal proceedings could be brought in and by any State holding the alleged war crime regardless of the place where this took place. If proceedings are not instituted by the State, it would be required to assist with extradition to a jurisdiction willing to bring the case to trial<sup>226</sup>.

- 9.12. It is clear that the weak wording of the 1954 *Convention* was the result of the reluctance of the States at the 1954 Intergovernmental Conference to bring in tougher sanctions in relation to crimes against cultural property. Despite the undertaking to do so in Article 22 of the *Convention* few of the High Contracting Parties have subsequently legislated within national law for specific criminal action in relation to crimes against cultural property in times of armed conflict, though many have included provisions in national military regulations and codes. (For example, those of the United States Army ultimately derive from the original Lieber Code of 1963). Where this is not the case, or in the case of action by civilians and irregular forces, any action might have to rely on general criminal provisions against damage to property, or against nationally protected monuments and collections. However, the latter frequently carry only nominal penalties as a breach of administrative law - often just a fine, or at the most a short period of imprisonment<sup>227</sup>.
- 9.13. However, more effective action in terms of both jurisdiction and the level of penalties may be possible in the case of States which have enacted specific war crimes law, especially those which have ratified the 1977 *Geneva Protocols* and supported these with national penal legislation. On the other hand the view of the United Nations and United States of America (and other) military law experts that the 1954 *Convention* is now so well established in international humanitarian law as to be customary international law, binding on even non-Parties to the *Convention* in general principle (if not in specific administrative detail) is a particularly important advance in terms of enforcement.
- 9.14. The United States and other Member States are known to be gathering evidence on a number of specific cases concerning specific field commanders and other named individuals, and Dr Colin Kaiser's detailed report to the Council of Europe Parliamentary Assembly<sup>228</sup> also names individuals reported to have been responsible for various serious atrocities. Other obvious cases deserving detailed investigation are those of the commanding officers of the two Yugoslav Navy vessels responsible for the notorious heavy shelling of the undefended historic (and World Heritage Site) Old Town of Dubrovnik on St. Nicholas Day (26 December) 1991, in breach of every relevant international humanitarian law from the 1899 *Hague Naval Bombardment* treaty onwards.
- 9.15. The moves of the Security Council in Resolution 808 of 22 February 1993 to institute an international war crimes tribunal to investigate and prosecute war crimes alleged to have been committed since 1991 in the former Yugoslavia is a most important step, as is the decision of the Commission of Experts to seek to

<sup>226</sup> 1949 *Geneva Convention I*, articles 49 and 50; 1949 *Geneva Convention II*, articles 50 and 51. Under the United Nations General Assembly Resolution 2391 of 26 November 1968 (*Convention on the Non-Applicability of Statutory Limitations to War Crimes and Crimes Against Humanity*), war crimes are deemed to be imprescriptible and punishable everywhere. Though General Assembly resolutions are not in themselves binding, the same principle was subsequently incorporated in Article 85 of *Additional Protocol I* of 1977, and hence applicable, at least in the case of the States parties to *Additional Protocol I*: see the discussion of Sandoz (1988) generally, and especially p. 277.

<sup>227</sup> Examples of the penal sanctions of different countries under cultural protection law are detailed in the two volume UNESCO Compendium of legislative texts (UNESCO 1984).

<sup>228</sup> Appendix C: War damage to the cultural heritage in Croatia and Bosnia-Herzegovina in Council of Europe Doc. 6756, Parliamentary Assembly, 2 February 1993: Information Report on the destruction by war of the cultural heritage in Croatia and Bosnia-Herzegovina.

## Legal Enforcement and Sanctions

include what could be highly important test cases in relation to the application of the 1954 *Hague Convention*.

- 9.16. In relation to the issue of possible 'cultural' war crimes in the former Yugoslavia, it is **RECOMMENDED** that the Secretary-General of the United Nations should accept the offer of the Director-General of UNESCO to assist in this investigation of possible war crimes. In particular it is most desirable that the United Nations' team of experts investigating the complaints and allegations in respect of ex-Yugoslavia should be augmented by the appointment of at least one expert in relevant cultural property issues.
- 9.17. It is **RECOMMENDED** that the United Nations be urged to develop and present to the proposed international War Crimes Tribunal on cases relating to the former Yugoslavia<sup>229</sup> some test cases in relation to war crimes against cultural property in violation of the provisions of the 1954 *Convention*, in order to determine the extent of the application and effectiveness of international law in such matters, and to establish precedents and examples in this respect.
- 9.18. One other significant problem raised by representatives of some High Contracting Parties is that the 1954 *Convention* has no effective provision for resolving serious differences between States Parties in relation to the application of either the *Convention* or the *Protocol*.<sup>230</sup> Over the centuries, in cases where wars have ended with a formal peace treaty, issues relating to important appropriated, looted, destroyed or damaged cultural property have often been the subject of specific provisions and conditions of the peace. Examples have included the restitution and reparations at the end of the adventures of Napoleon I and in the Treaty of Versailles of 1919.
- 9.19. Most recently the Security Council's ceasefire conditions accepted by Iraq at the end of the Second Gulf War (1990 - 1991) included express conditions for the return of cultural property removed to Baghdad and the payment of reparations in respect of other destroyed and damaged cultural property. However, in the frequent case of a less decisive victory or defeat - perhaps involving long-term *de facto* occupation and annexation of territory with important monuments and collections, which is not generally recognised by the international community there can easily be a situation of indefinite stalemate.
- 9.20. Where there are Protecting Powers there is the possibility for conciliation between the belligerents under the 1954 *Convention*:

1. The Protecting Powers shall lend their good offices in all cases where they may deem it useful in the interests of cultural property, particularly if there is disagreement between the Parties to the conflict as to the application or interpretation of the provisions of the present Convention or the Regulations for its execution.

---

<sup>229</sup>

Under Security Council Resolution 808 of February 1993. In view of the confused status of the disintegrating former Yugoslavia during at least part of the period during which the various reported serious outrages took place within an international conflict, the Security Council's decisions are especially important. If such crimes occurred during an international conflict then they could be considered as 'grave breaches' of the *Geneva Conventions*, and hence subject to possible international jurisdiction, while if the conflicts are classified as non-international conflicts at the relevant time then the 'grave breaches' provisions are not applicable, hence excluding the possibility of international jurisdiction.

<sup>230</sup>

Examples of important issues still outstanding include disputes between Jordan and Israel, Lebanon and Israel and Cyprus and Turkey, (as the State regarded internationally as responsible for northern Cyprus). (Another example - that between Panama and the United States of America over damage to and looting from the national museums in the 1989 operation - appears to have been abandoned following the change of government in Panama.)

2. For this purpose, each of the Protecting Powers may, either at the invitation of one Party, of the Director-General of the United Nations Educational, Scientific and Cultural Organization, or on its own initiative, propose to the Parties to the conflict a meeting of their representatives, and in particular of the authorities responsible for the protection of cultural property, if considered appropriate on suitably chosen neutral territory. The Parties to the conflict shall be bound to give effect to the proposals for meeting made to them. The Protecting Powers shall propose for approval by the Parties to the conflict a person belonging to a neutral Power or a person presented by the Director-General of the United Nations Educational, Scientific and Cultural Organization, which person shall be invited to take part in such a meeting in the capacity of Chairman.<sup>231</sup>

9.21. Where for any reason there are no Protecting Powers it would seem to be difficult if not impossible to make progress under the 1954 *Convention* itself even with conciliation, let alone any form of binding arbitration. However, the 1977 *Additional Protocol I* to the Geneva Conventions in effect incorporates the 1954 *Hague Convention* through its Article 53. Thus, in the case of international armed conflicts where both parties have ratified *Additional Protocol I* but conciliation under the 1954 *Convention* is rejected, it may be possible to make progress in resolving the dispute through the appointment of a fact-finding commission established under the *Additional Protocol*<sup>232</sup>. However, this does not provide binding resolution or arbitration of international disputes. Perhaps the nearest that current international law comes to offering a possible route for binding action in respect of what are termed 'serious violations of the Conventions of this Protocol' is the obligation of High Contracting Parties to the 1977 *Protocol I*:

to act, jointly or individually, in co-operation with the United Nations and in conformity with the United Nations Charter.<sup>233</sup>

---

<sup>231</sup> 1954 *Hague Convention*, Article 22.

<sup>232</sup> 1977 *Additional Protocol I*, Article 90.

<sup>233</sup> *Additional Protocol I* of 1977, Article 89.

## Legal Enforcement and Sanctions

9.22. However, the wording of this Article is extraordinarily delphic, with no explanation of what kind of action or co-operation is envisaged, as Sandoz has commented<sup>234</sup>. Presumably in the absence of a negotiated bilateral resolution of the dispute, the only way forward would be by means of a formal Security Council Resolution, binding on the High Contracting Parties (assuming that they are members on the United Nations) under the terms of the U.N. Charter, so it is difficult to see how this adds to the general provisions of international law.

9.23. All High Contracting Parties should note that in the absence of specific provisions for the resolution or enforcement of disputes between States Parties or complaints concerning the interpretation and application of the 1954 *Convention and Protocol*, such matters may be referred to the International Court of Justice under Chapter XIV of the *Charter of the United Nations*, and specifically under Chapter II of the Statutes of the International Court of Justice annexed to the United Nations *Charter* relating to the role of the International Court in determining the interpretation of international treaties and conventions, and cases deriving from these<sup>235</sup>. Even here there may be problems, since despite their clear obligations under the United Nations Charter historically not all States have been prepared to accept the jurisdiction of the International Court in such issues. For example, during the Cold War the socialist countries routinely refused to recognise or cooperate with the International Court, while in 1987 the United States of America attempted to denounce its acceptance of the Court's jurisdiction when the Sandinista government of Nicaragua initiated proceedings against it in the International Court of Justice over the laying of sea mines in Nicaraguan waters.

9.24. A key requirement for the effective application of the 1954 *Hague Convention* is the establishment of realistic practical measures for its enforcement, in terms of both the criminal jurisdiction, i.e. the prosecution of 'cultural' war crimes, and the international civil jurisdiction, i.e. the resolution of complaints by aggrieved parties, both States and individuals. A leading academic discussion of the legal issues by Prof. M. Cherif Bassiouni criticises both the 1949 *Geneva Conventions* and the 1954 *Hague Convention* for their lack of explicit provisions concerning their jurisdictional bases:

Therefore states-parties [*sic*] to these conventions are left with whatever guidance customary international law and private international law may offer in that respect. This leaves the potential for jurisdictional conflict without effective sources of resolution.<sup>236</sup>

Bassiouni comes down firmly on the side of the right of jurisdiction and prosecution being universal, i.e. that any State may bring both civil and criminal proceedings in respect of alleged breaches regardless of the place of the alleged breach, and regardless also of the citizenship of those accused:

The historical development of the law of armed conflict makes it clear that damage and confiscation of cultural property is a war crime. Such conduct was prosecuted under the universality theory at the Nuremberg trials.<sup>237</sup>

---

<sup>234</sup> Sandoz, 1988, p. 279.

<sup>235</sup> United Nations, 1990, (Doc. DPI/ 511).

<sup>236</sup> Bassiouni, 1983, p. 297.

<sup>237</sup> Bassiouni, 1983, p. 308.

- 9.25. However, there is no established single view on these issues, and the problem of enforcement still involves unresolved issues as to jurisdiction and enforcement which are common to most if not all international criminal offences and civil disputes between States. From the time of the 1945 London Treaty on German Second World War crimes and through the Nuremberg trials there was concern within at least parts of the English Bar (and more widely) at the dominant role of specialists in international law (in the strict sense) rather than criminal law and military law, and of the English and American Common Law tradition, in relation to allegations of straightforward criminal behaviour (by individuals and within territories traditionally subject to Roman Law principles). There were of course a number of distinguished experts in criminal law involved at Nuremberg as prosecutors, but the overall balance of legal expertise in the Nuremberg process (and perhaps even more so in respect of the parallel Tokyo war crimes trials) has continued to be a matter of adverse comment from time to time subsequently. The issues of appropriate balance of law and jurisdictional systems need to be studied closely by experts in both international and criminal law before proposals could be made for a text to give competence to a court to prosecute offenders specifically under the provisions of the 1954 *Convention*.<sup>238</sup>

---

<sup>238</sup>

In addition to the specific study of Bassiouni, 1983 on general criminal jurisdiction issues in relation to cultural property, Toman, 1984, and Merryman, 1986 also considers related issues, (see particularly Merryman, 1986, pp. 833 - 842) in respect of the 1954 *Hague Convention*. The need for a joint approach between international lawyers and criminal lawyers must be stressed; one of the significant and recurring criticisms of the 1945 *London Treaty* and the Nuremberg war crimes trials following the *London* principles over the past forty year or more was that the whole exercise was dominated by experts in, and by the philosophy of, public international law, rather than criminal law. In relation to Nuremberg I am much indebted to Prof. Charles Arnold-Baker, Barrister of the Middle Temple, who was with the British occupying forces in Germany at the end of the War and subsequently, for much information on the internal debate amongst British lawyers at the time.

## Legal Enforcement and Sanctions

### CHAPTER 10.

#### MOVABLE PROPERTY IN TIMES OF ARMED CONFLICT: THE 1954 HAGUE PROTOCOL AND THE 1970 UNESCO CONVENTION

10. 1. There is not the slightest doubt that the instability and confusion that is inevitable in times of both international war and serious internal armed conflict adds greatly to the risk of smuggling and other criminal activity against both movable cultural property and removable features of monuments and other immovable cultural property, such as important architectural details, affixed sculptures and works of art etc.
10. 2. The breakdown of normal law and order can also lead to the necessary diversion of both expert and security personnel to other duties, or may make it impossible (or at least too dangerous) for them to travel to their normal place of work. Also, quite apart from any organised looting or other misappropriation of cultural property by the invading or occupying military force<sup>239</sup>, there is a much greater opportunity for both freelance operations by members of the armed forces, whether regular or irregular, and by both organised and opportunist criminal elements.
10. 3. Recognising this, the 1954 Intergovernmental Conference wanted to incorporate firm action in the *Hague Convention* to prohibit all trafficking of movable cultural property from occupied territories. However, a number of States objected strongly to this<sup>240</sup>, and the matter was finally dealt with in the form of a separate Protocol<sup>241</sup>.
10. 4. The key provisions of this were very clear, with each Party to the Protocol pledging to 'prevent' exportation for occupied territories, to seize temporarily anything imported from such territories, and to guarantee the eventual return of such cultural property at the end of hostilities:
1. Each High Contracting Party undertakes to prevent the exportation, from a territory occupied by it during an armed conflict, of cultural property as defined in Article I of the Convention for the Protection of Cultural Property in the Event of Armed Conflict, signed at The Hague on 14 May, 1954,
  2. Each High Contracting Party undertakes to take into its custody cultural property imported into its territory either directly or indirectly from any occupied territory, This shall either be effected automatically upon the importation of the property or, failing this, at the request of the authorities of that territory.
  3. Each High Contracting Party undertakes to return, at the close of hostilities, to the competent authorities of the territory previously occupied, cultural property which is in

---

<sup>239</sup> This is problem is not confined to belligerent troops: foreign forces giving international assistance, whether in a bilateral or United Nations monitoring, peace-keeping or peacemaking role, also present a significant threat in terms of smuggling and other illicit trafficking, not least because they usually have access to their own international transportation facilities outside normal national regulation.

<sup>240</sup> Nine States attending the Conference signed the *Convention* but refused to sign the *Protocol*: Andorra, Australia, Hungary, Ireland, Israel, New Zealand, Portugal, Romania, United Kingdom and the United States of America.

<sup>241</sup> *Protocol for the Protection of Cultural Property in the Event of Armed Conflict, The Hague, 1954.*

its territory, if such property has been exported in contravention of the principle laid down in the first paragraph. Such property shall never be retained as war reparations.<sup>242</sup>

10. 5. Though the terms are rather imprecise, the intention is very straightforward. However, there are potential problems in the wording, especially in relation to the interpretation and definition of the word 'occupied', and no protection is offered to movable cultural property in the event of internal armed conflict. Unfortunately all the evidence suggests that the provisions are almost totally ineffective in practice. The haemorrhage of cultural property of all kinds from areas both international and civil war zones has been on an enormous scale for decades. Obvious examples have included much of Indo-China through the 1960s and 1970s, and the 'leakage' of archaeological material, antiquities and works of art from occupied north Cyprus. There are also persistent reports of large-scale losses from both public collections and protected monuments during both the Iran - Iraq War of the 1980s, and in the Shiite cultural regions of southern Iraq in the internal offensive of 1991 and still continuing. Few identifiable items have appeared in the international art markets so far, but this may simply be due to stock-piling in intermediate countries with short statute of limitation periods, after which the rightful owner can no longer reclaim their stolen or smuggled property<sup>243</sup>.

10. 6. The *Protocol* also provides a guarantee of the return of cultural property removed to another State for protection during, or in anticipation of, a conflict:

Cultural property coming from the territory of a High Contracting Party and deposited by it in the territory of another High Contracting Party for the purpose of protecting such property against the dangers of an armed conflict, shall be returned by the latter, at the end of hostilities, to the competent authorities of the territory from which it came.<sup>244</sup>

10. 7. There is also a provision requiring the payment of compensation by the occupying State in the event of the recovery of illicitly exported from an innocent third party:

The High Contracting Party whose obligation it was to prevent the exportation of cultural property from the territory occupied by it, shall pay an indemnity to the holders in good faith of any cultural property which has to be returned in accordance with the preceding paragraph.<sup>245</sup>

10. 8. In 1970, after many years of discussion at both the professional and inter-governmental levels, the General Conference of UNESCO adopted the *Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property*<sup>246</sup>. This does not have any cross-reference at all to the *Hague Protocol's* provisions in relation to the illicit exports and imports from war zones which are prohibited by the 1954 *Protocol*, though the 1970 *Convention* does provide that:

---

<sup>242</sup> Hague Convention, 1954, Articles 1 - 3.

<sup>243</sup> The legal aspects of this problem is discussed in detail by Lyndel Prott (1989), while the same author, jointly with Patrick O'Keefe, has in progress the encyclopedic 5 volume *Law and the Cultural Heritage*: of the volumes published so far Vol. III - Movement (O'Keefe and Prott, 1989) is particularly relevant.

<sup>244</sup> *Hague Protocol* 1954, Article 5.

<sup>245</sup> *Hague Protocol* 1954, Article 4.

<sup>246</sup> For purposes of comparison with adherence to the 1954 *Hague Protocol* the list of States Parties to the 1971 *Convention* as at April 1993 is incorporated in the tabulation in Appendix II of this Report.



## Legal Enforcement and Sanctions

The export and transfer of ownership of cultural property under compulsion arising directly or indirectly from the occupation of a country by a foreign power shall be regarded as illicit.<sup>247</sup>

However, this falls well short of the freeze of almost all movements of cultural property required by the *Hague Protocol*: this weakness should be remedied in any future revision of the 1970 *Convention*, by including specific provisions in the same terms as those of the 1954 *Protocol*.

10. 9. Although I may have missed some positive examples, during the course of this study I have not seen or received evidence of a single example of States Parties to the *Protocol* taking action of any kind in order to bring its provisions into practical effect in order to 'freeze' trade in, or other transfers or movements of, cultural property from areas affected by either international or internal armed conflicts. On the contrary, regularly over the past few decades the showrooms of dealers and auction salerooms on the major art 'importing' nations have seemed to be full of material that should have raised grave suspicions that they had originated from countries and regions of the world afflicted by international and civil wars. The almost universal ignoring by actual or potential 'importing' countries of the principles of the 1954 *Hague Protocol* is one of the most serious breaches of the fundamental principles and objectives of the 1954 *Convention*, and all High Contracting Parties should be asked to review their policy and practice in this respect. In particular as a very minimum all States Parties to the *Protocol* ought to impose an almost automatic embargo on all imports of cultural property from, or reasonably suspected to be from, countries and regions suffering armed conflicts<sup>248</sup>.
- 10.10. Indeed, in cases where the United Nations becomes involved in conflicts in a peace-keeping or peace-making role, serious consideration should be given to including a ban on outwards movement of cultural property as part of an Security Council sanctions or authorization Resolution. Similarly, the Security Council's action in relation to the restitution of Kuwaiti cultural property transferred to Iraq in 1990 was an important modern precedent, (re-establishing the principles last used in the Treaty of Versailles)<sup>249</sup>. Such restitutions should in future be routinely required in Security Council Resolutions imposing, or confirming, peace settlements.

---

<sup>247</sup> 1970 UNESCO Illicit Import, Export and Transfer of Ownership *Convention*, Article 11.

<sup>248</sup> Except, of course, for legitimate temporary transfers of cultural property under proper authorization and supervision, e.g. by Commissioners-General, to refugees and other places of safety outside the war zone.

<sup>249</sup> See para. 2.3 of this Report.



## Adoption of the Convention and Protocol

### CHAPTER 11.

#### ADOPTION OF THE 1954 CONVENTION AND PROTOCOL BY STATES

11. 1. Appendix II of this Report lists the 180 members of the United Nations as at April 1993 (plus 12 non-U.N. member States which are nevertheless members of UNESCO and/or States Parties to one or more of the UNESCO Conventions), and indicates for each their position in relation to the 1954 *Convention*, *Protocol*, the 1970 Illicit Import, Export and Transfer of Ownership Convention, and the World Heritage Convention. This shows that currently there are currently 82 States Parties to the *Hague Convention* and 68 States Parties to the *Protocol*.
11. 2. Ultimately the credibility of any international instrument or programme of action depends very largely on it having the widest possible degree of acceptance - the principle of universality. Against that test the original 1954 Intergovernmental Conference which drew up the 1954 *Hague Convention* and *Hague Protocol* achieved a more than satisfactory degree of support, since it was attended by a high proportion of the independent States of the world at that time.
11. 3. The one region of the world that was significantly under-represented at the 1954 Conference was Latin America, though the reason for this is not clear. Possibly most States in central and south America considered that with the Washington ('Roerich') regional Pact in operation a further international instrument in the form of the proposed *Hague Convention* was not a particularly high priority. Also, with the long-standing informal agreement amongst Latin-American States to retain and respect former colonial frontiers throughout the region, States presumably considered that there was only a very low probability of their being involved in international armed conflicts, while few governments anywhere in the world are happy about even the vaguest speculation that their State might one day face serious internal armed conflict.
11. 4. In terms of the influence of the *Convention* on the world scale, however, a more serious blow to the principle of universality and progress with ratifications occurred in 1958, when the United States of America, the United Kingdom and Canada, decided against ratification. The United States of America had signed the *Convention* (only, i.e., excluding the *Protocol*) at the closing ceremony of the Intergovernmental Conference on 14 May 1954, and the United Kingdom had followed suit on 30 December 1954, though Canada never signed either.
11. 5. Now that the United States internal documentation of the period is available for study the sequence of events which led to this turn-about are at known at last, and confirm what has long been suspected. In accordance with normal United States practice the *Convention* was sent to all the appropriate arms of government, including the Joint Chiefs of Staff, for consideration before submission by the Secretary of State to the Senate for approval.
11. 6. The Army Chief of Staff of the time is believe to have reported to his fellow members of the Joint Chiefs of Staff that the Army saw no serious problem with the *Convention*. The fundamental principles of the it were already binding on the United States through the formal ratification of the Washington ('Roerich') Pact in 1935. (This was certainly applicable to any armed conflict within the Americas, but in fact included no territorial or bilateral limitations - nor even a 'military necessity' exception - so it was at least arguable that the Roerich Pact

was universally binding on the United States government and military.) Of even greater immediate significance the principles of 1954 *Hague Convention* are very much in line with the widely circulated and published Staff Orders of December 1943 and May 1944<sup>250</sup>, still in force, and issued by General Eisenhower, who was by now the President. However, the other Chiefs of Staff were hostile to the *Convention*. Consequently, as the Joint Chiefs of Staff could not present a unanimous position, the Secretary of State decided that no further progress could be made with ratification. It also appears that the United Kingdom and Canada also refuse to ratify the *Convention* at the request of the United States<sup>251</sup>.

11. 6. The exact details of the objections of the Chiefs of the other United States services are apparently not explicitly recorded. However, there seems little doubt that the *Convention's* attempt to protect 'centres containing large amounts of cultural property' was regarded by the Strategic Air Command in particular as threatening an unacceptable constraint on the use of the high yield nuclear weapons of mass destruction then being introduced<sup>252</sup>. It is also conceivable that the possible conflict between the outstanding historic interest versus the politico-military use of the extremely important architectural complex of the Moscow Kremlin may also have been an issue, or at least a psychological factor. In the 1950s the area within the walls of the Kremlin was being extensively developed for as the political and administrative heart of the U.S.S.R., and as a consequence the Kremlin was certain to have been a key primary target in any nuclear exchange. However, if that was a factor in the Strategic Air Command's position this was a serious misunderstanding: the Kremlin would not have been eligible for protection under the *Hague Convention* unless all of its politico-military functions use had been totally neutralised or transferred elsewhere in advance of the hostilities.)
11. 7. Nevertheless, despite the failure to formally ratify it, both the principles and detailed obligations of the 1954 *Hague Convention* have for many years been actively taught and promoted within United States military training and field command practice. It has long been recognised by the U.S. military as the applicable international humanitarian law for most of the territory of the potential theatres of war for which the various United States defence forces are prepared, particularly the majority of NATO and Warsaw Pact countries, and as applicable law for the defence forces of most of the United States' most important allies, as well as for the Warsaw Pact armed forces.
11. 8. The current legal position of the U.S. military authorities in their training programmes is that the provisions of the *Hague Convention* are now so well established as to be Customary International Law, and hence binding on all States and military personnel, whether or not their own country is formally a party to the *Convention*. The United States has also attempted to apply the 1954 *Convention* principles in its own military operations, even in the absence of the publication or exchange of data on protected monuments and other sites of cultural importance from the defending governments. For example, during the Second Indo-China (Vietnam) War, the outstanding historic zone of Angkor Wat in Cambodia was declared by the United States High Command to be absolutely 'off limits' for both aerial and land operations of any kind, while the historic Citadel at Hué, Vietnam, was to be similarly protected.

---

<sup>250</sup> See para. 2.40, and Chapter 13 of this Report.

<sup>251</sup> I am greatly indebted to W. Hays Parks, Chief, International Law Branch, Office of Judge Advocate General of the Army, U.S. Department of Defense for his historical analysis of this important matter; see also the brief comment on this in the January 1993 Department of Defense report to Congress reproduced as Appendix VIII to this Report.

<sup>252</sup> Information from W. Hays Parks, see note 2 above.

## Adoption of the Convention and Protocol

- 11.9. More recently, in 1990, in preparation for the 'Desert Storm' campaign to expel Iraq from occupied Kuwait, the Defense Department consulted many leading academic experts on the region, including for example the Secretary of the Smithsonian Institution - a leading academic authority on Mesopotamian archaeology, in carrying out extremely detailed assessments of many thousands of sites, monuments and museums across Iraq and Kuwait. From this information very many areas and locations of cultural importance were identified for explicit protection in both the air target and ground attack plans. Further, the protection of these key areas was maintained even when reconnaissance revealed that Iraq had located what were legitimate military targets within these, as in the case of the identification of anti-aircraft defences on the fortification of Ninevah and of two MiG aircraft placed inside the walls of Ur<sup>253</sup>. The United States also has very closely defined systems in relation to both target selection and identification in relation to air attacks aimed at avoiding both direct and accidental damage to historic monuments and other cultural property, (as well as other protected and non-military localities within the target area<sup>254</sup>).
- 11.10. However, even though the United States, which has never ratified the 1954 *Convention*, appears to have done more to comply with its principles and requirements than many States that have ratified it, there was much academic, public, and some political, concern within the United States during the 1991 Desert Storm campaign that whilst the great majority of combatants (including Iraq) were Parties to it, the United States was not. Consequently, the Senate requested:
- that the Department of Defense, in conjunction with the Department of State, convene a panel to examine 'international policies and procedures regarding the protection of natural and cultural resources during times of war.' The Senate Report also requested that specific recommendations be provided to the Secretary of Defense and to the House and Senate Committees on Appropriations as to ways in which 'collateral damage to natural and cultural resources can continue to be minimized.'<sup>255</sup>
- 11.11. An informal review of the various Services carried out in 1992 showed that the 1958 objections are no longer considered to be applicable, and this change of view has also been communicated at an informal level to the United Kingdom Ministry of Defence<sup>256</sup>. Following this, in the joint report of 19 January 1993 of the Defense and State Departments to the Appropriation Committees of the

---

<sup>253</sup> January 1993 U.S. Defense Department report, see note 3, and information from W. Hays Parks, see note 2.

<sup>254</sup> W. Hays Parks of the U.S. Department of Defense has explained the formalised United States procedure in some detail in discussions and correspondence, and this procedure ought to be more widely known and generally adopted. In strike planning, the target provisionally selected is identified and located, as are the defences surrounding it and on the likely routes of ingress and egress to the target. A large area surrounding the target is then searched by map, aerial photograph and other information sources (such as academic information in the case of features of possible cultural interest), and areas of civilian population, schools, hospitals, religious sites and cultural property. All such features are thereafter identified as 'no bomb' areas, and if there is something of special significance and importance this is highlighted. The next stage in the process is the selection of the weapons system to be used: for example it was decided that only precision guided weapons should be used in the Baghdad area during the Desert Storm campaign. The actual training of the aircrew concerned in relation to the attack then focuses on the strict requirement that in the absence of positive identification of the allotted target the ordnance may not be released.

<sup>255</sup> January 1993 Department of Defense Report - see Appendix VIII.

<sup>256</sup> Information from W. Hays Parks, see note 2 above.

Senate and the House of Representatives a more formal review by the Joint Chief of Staff of the question of ratification of the 1954 *Hague Convention* is now promised.

- 11.12. Consequently, there now seems to be a very real possibility that the United States will consider ratifying it within the foreseeable future - a move that would have enormous significance in terms of achieving the vitally needed universality of acceptance in view of the importance of the United States in the new world order in political, economic and military terms.
- 11.13. However, one very important note of caution must be sounded. In the course of a briefing in connection with this study and Report, the Assistant Legal Adviser, Politico-Legal Affairs, of the United States Department of State reported that successive Administrations and the U.S. Senate (which must approve any proposal for ratification), have been very reluctant to proceed during period of uncertainty about the future of any International Instrument to which it is not yet a Party, and tends to stand back from any review or revision process and await the outcome of this. Consequently, in the State Department's view, any proposal of UNESCO and/or the present High Contracting Parties to initiate a formal revision of the 1954 *Hague Convention* at the present time could very well result in the current moves towards ratification being stalled indefinitely in the U.S. Senate awaiting the outcome of any such review<sup>257</sup>.
- 11.14. The large gap between the 82 States Parties to the 1954 *Convention* and the 180 Member States of the United Nations is by no means accounted for by the substantial under-representation of Latin American countries among the signatories, and the non-ratification of the 1954 *Convention* by the United States, United Kingdom and Canada (nor by China - another nuclear power)<sup>258</sup>.
- 11.15. As is noted above, the level of adoption of the *Convention* amongst Latin American countries is low, and hence a matter for concern. However, much the largest number of States that are not Parties to the *Convention* is found amongst those countries of Africa, Asia, the Caribbean and the Pacific Islands which achieved independence through decolonisation from the mid 1950s onwards - more than doubling the membership of the United Nations and UNESCO.
- 11.16. In recent years when welcoming new States into membership of UNESCO it has been the invariable practice of the Director-General on behalf of the Executive Board to invite them to adopt the 1954 *Convention* and *Protocol*, and the other key UNESCO Conventions (including the 1970 Convention on illicit traffic etc. in cultural property and the 1972 World Heritage Convention). The response of recently admitted new member States has been quite encouraging, especially in the case of the newly independent States of the former Soviet Union and Yugoslavia, some which have already adopted the *Hague Convention* and *Protocol* by succession. These are Azerbaijan, Georgia, Tadjikistan and Russia, while Belarus and Ukraine, which had the constitutional right to enter into international treaties in their own right under the USSR constitution were already parties to the *Convention*). However, eight of the former Soviet Union republics,

---

<sup>257</sup> Discussion with Edward R. Cummings, Assistant Legal Adviser, Politico-Legal Affairs, U.S. Department of State.

<sup>258</sup> Though the Republic of China administration of Chiang Kai-shek, based in Taiwan, attended the 1954 Intergovernmental Conference and signed both the *Convention* and *Protocol* on 14 May 1954, when the People's Republic of China replaced the Nationalist government in the United Nations and its various organisations in 1971 it repudiated all treaties and agreements signed in the name of China from 1949 onwards, pending a review of whether China should formally succeed to these, (UNESCO, 1985, pp. 53 - 54). The People's Republic has not yet agreed to adopt the 1954 *Convention* and *Protocol*.

## Adoption of the Convention and Protocol

within several of which there are significant internal tensions and conflicts, are still considering the Director-General's request.<sup>259</sup>

- 11.17. However, for reasons that are not clear, during a period of at least two decades, perhaps longer, there seems to have been much less effort to try to persuade new Member States of UNESCO to adopt the *Hague Convention and Protocol*. Some close observers of UNESCO during the period in question have pointed to the times in the 1960s in particular when the *Convention* became a highly contentious political issue among certain groups of Member States, and between some States and UNESCO itself, particularly with Israel, many Arab States and United States over Jerusalem and the Occupied Territories during and after the 1967 Arab - Israeli War, and with the Socialist states in relation to Indo-China, and particularly the proposal from the Cambodian Government for the designation of Angkor Wat under the provisions for Special Protection. There is therefore some speculation that UNESCO drew back from actively promoting a Convention that was seen as exacerbating these differences and which, it was felt, might damage the wider interests of UNESCO and its relations with Member States<sup>260</sup>.
- 11.18. The current policy of the Director-General of urging newly admitted Member States to adopt without delay (*inter alia*) the 1954 *Hague Convention and Protocol* is welcomed, and it is **STRONGLY RECOMMENDED** that this should be continued.
- 11.19. In addition, as more than 100 Member States have still not formally adopted them, it is **RECOMMENDED** that the Executive Board should immediately request Director-General to approach again every other non-signatory sovereign States recognised by the United Nations and/or UNESCO, whether or not they are UNESCO members, in accordance with Articles 31 and 32 of the *Convention*, urging them to adopt the *Convention and Protocol*.
- 11.20. It is also **RECOMMENDED** that since such international instruments ultimately derive their authority from their universal acceptance by the world community, all States which previously decided not to ratify or accede to the 1954 *Convention and Protocol*, or which have so far not considered accession to it should review their position in relation to the *Convention and Protocol* as a matter of urgency.
- 11.21. It is further **RECOMMENDED** that the relevant international, regional and national non-governmental organisations, together with National Commissions of UNESCO, should take an active role in promoting knowledge and acceptance of the 1954 *Convention and Protocol* among their members and their governments, urging their adoption and active implementation in countries which have not yet adopted both the *Convention and Protocol*.

---

<sup>259</sup> For a full list of the present position in relation to the *Convention and Protocol* for these (and all other) States in membership of the United Nations is given in Appendix 2 of this Report.

<sup>260</sup> Private communications. (However, those who harbour such suspicions can point to the documentary evidence that more than 15 years later the various right wing organisations in the United States campaigning for the withdrawal of the U.S.A. from UNESCO were still attacking UNESCO's (entirely legitimate and proper) attempts to apply the 1954 in the Arab - Israeli conflicts as evidence of alleged anti-Israeli and anti-American bias and hence a reason for the United States to leave the world body.)





## World Heritage Convention

### CHAPTER 12.

#### WORLD HERITAGE CONVENTION AND LIST

12. 1. At its 1972 General Conference, UNESCO adopted a comprehensive resolution calling on the world to introduce wide-ranging measures at the international, national and local levels concerning the protection of both the cultural and natural heritage, and introducing a *Convention concerning the Protection of the World Cultural and Natural Heritage*<sup>261</sup>.

12. 2. Part I of the *World Heritage Convention* adopted a much wider and more comprehensive UNESCO definition of the 'cultural heritage'<sup>262</sup>, a new definition of the 'natural heritage' and an obligation each State Party to 'identify and delineate different properties situated on its territory' qualifying under the *Convention*. Part II continued with an undertaking by States Parties to recognise an obligation to identify, protect, conserve, present to the public and transmit 'to future generations' the cultural and natural heritage situated in their territories, and to take 'effective measures' for the protection, conservation and presentation of this, and to participate in a new system of international co-operation<sup>263</sup>.

12. 3. Part III established the 'World Heritage Committee', organised within UNESCO but funded by the States Parties to the *Convention*, originally comprising fifteen participating States (now twenty States) elected during a general assembly of High Contracting Parties held during each UNESCO General Conference<sup>264</sup>, and with representatives from relevant international expert bodies, particularly the International Centre for the Study of the Preservation and Restoration of Cultural Property (ICCROM), the International Council of Monuments and Sites (ICOMOS), and the International Union for the Conservation of Nature and Natural Resources (IUCN).

12. 4. One of the main responsibilities of the World Heritage Committee is to receive and consider and evaluate national inventories to be submitted by each State Party of 'property forming part of the cultural and natural heritage, situated in its territory and suitable for inclusion in' the *World Heritage List* established under the 1972 *Convention*, and to add to the *List* those 'which it considers as having outstanding universal value'. There is also provision for a *List of World*

---

<sup>261</sup> Adopted by 17th General Conference of UNESCO in Paris, 16 November 1972: the full text has been widely published, e.g UNESCO, 1985, pp. 77 - 98.

<sup>262</sup> Articles I - 3 of the *World Heritage Convention* 1972; see also Chapter 4 and Appendix VI of this Report.

<sup>263</sup> Articles 4 - 7 of the *World Heritage Convention*, 1972.

<sup>264</sup> Articles 8 - 10: officially the 'Intergovernmental Committee for the Protection of the Cultural and Natural Heritage of Outstanding Universal Value'. There is provision for increases in the number of States elected to the Committee according to the number of States Parties, and for the rotation of membership on a six year cycle.

*Heritage in Danger*, for which both expert and financial assistance may be requested under the 1972 *Convention* both in immediate emergencies and in respect of longer-term protection and conservation etc.<sup>265</sup>. The *Convention* also provides for the establishment and funding by States Parties of a World Heritage Committee Secretariat, appointed by the Director-General of UNESCO<sup>266</sup>.

12. 5. Part IV of the 1972 *Convention* established a trust fund - the World Heritage Fund - to finance both the regular work of implementing the *Convention* (the Secretariat, the World Heritage Committee etc.) and for specific projects. There are three different sources of finance for the Fund: (1) compulsory and voluntary contributions by States Parties to the *Convention* fixed by the periodic general assemblies, (but not exceeding 1% of each state's UNESCO compulsory contribution), (2) additional voluntary contributions by States Parties, UNESCO, United Nations Development Programme (UNDP) and any other international organisation, and (3) moneys from other sources, including donations from private foundations and individuals and other fund-raising etc.<sup>267</sup>
12. 6. Part V of the 1972 *Convention* sets out the principles and procedures for giving and administering international assistance<sup>268</sup>, and the last main sections, Parts VI and VII, provided for educational programmes, campaigns and publicity, and for the preparation and submission of regular reports by States Parties to the World Heritage Committee<sup>269</sup>.
12. 7. There is no doubt that the *World Heritage Convention* has been one of the outstanding achievements and successes of UNESCO in the whole of the cultural field. The concept of World Heritage Sites has clearly captured the attention and imagination of not only governments and across the world, but also of the general public. More than 130 States are now parties to it, including a number of major states which are not parties to the 1954 *Hague Convention*, including China, Japan, the United Kingdom and the United States of America.
12. 8. The *World Heritage Convention* came into effect on 17 December 1975, three months after the depositing of the twentieth instrument of ratification or accession, and in the 18 years since then 378 World Heritage List sites and monuments have now been designated by the World Heritage Committee. This is, of course, in marked contrast with the single designation (the Vatican City) of 'centres containing monuments' under Special Protection under the provisions of the 1954 *Hague Convention*.
12. 9. Clearly there are lessons to be learned from the success of the listing under the more recent *Convention* compared with the earlier one. Partly this must be due to the less political and more positive nature of World Heritage designation (which primarily affects the site itself and the State where it is located) compared with protection under the 1954 *Hague Convention* against the threat of war or other armed conflicts, (which has at least as great, if not greater, an impact on other States Parties - hence the right of all High Contracting Parties to object to a 'Special Protection' proposal. However, there are a number of other features of the *World Heritage Convention* and its procedures which have probably helped

---

<sup>265</sup> Articles 11 - 13.

<sup>266</sup> Article 14.

<sup>267</sup> Articles 15 - 18.

<sup>268</sup> Articles 29 - 26.

<sup>269</sup> Articles 27 29.

## World Heritage Convention

considerably. The existence of the World Heritage Committee assists considerably in developing a feeling of 'ownership' and mutual assistance of its *Convention*. In particular, the fact that States Parties know that the national schedules of important cultural and natural heritage sites that they prepare, will be submitted to the regular meetings of the World Heritage Committee probably give these additional weight, and hence greatly encourage participation and compliance. (Unfortunately, the provision of the *World Heritage Convention* calling for the submission of periodic reports on the action taken to implement the *Convention* seems to be largely ignored by States Parties.) The existence of a modest supporting budget for the *Convention* from the contributions of the States Parties is also a considerable help in developing and promoting the it.

- 12.10. There has been much discussion recently about the possibility of integrating more closely the *Hague* and *World Heritage Conventions*. In particular, those particularly alarmed by serious losses of the world's natural environment in the devastation of war consider that the *Hague Convention* (or some similar international instrument) ought to be available to give protection to natural habitats and ecosystems in times of armed conflict.<sup>270</sup>
- 12.11. There are of course a number of areas in which their objectives meet or even overlap. However, it would be wrong to minimise the differences between the fundamentals of each, not least at the level of the basic definitions. In particular, the *World Heritage Convention* deals specifically with geographical locations of great cultural or natural interest, but does not extend in any way to the important movable cultural property that the *Hague Convention* and *Protocol* aims to protect equally alongside immovable cultural property. Conversely, *Hague* deals only with cultural property, while the *World Heritage Convention* give equal weight to the natural heritage as well.
- 12.12. From the point of view of the acceptance and promotion of the *Hague Convention* in many ways it would be a good thing to link the two Instruments more closely, not least in view of the outstanding success of the *World Heritage Convention* in terms of international acceptance, recognition and application. Nevertheless, no reasonable interpretation of the 1954 *Convention*, which deals specifically and exclusively with *cultural* heritage property of importance to humanity, would permit its extension to include *natural* heritage property of similar importance. Incorporating the natural heritage in the *Hague* provisions would require fundamental amendments to its basic objectives or, more likely, a completely new treaty.
- 12.13. Some of the most important provisions of the 1954 *Convention* - those relating to the concept of pre-registered and internationally notified 'special protection' of localities of pre-eminent world cultural importance - have clearly not been effective because of the almost total failure of High Contracting Parties to submit proposals for 'special protection'. However, many of these very same States Parties have prepared and submitted cases for the inscription of important cultural sites on the World Heritage List.
- 12.14. By no means all World Heritage List cultural sites and monuments could meet the requirements for 'Special Protection', regardless of their outstanding

<sup>270</sup>

Particularly interested parties include the International Union for the Conservation of Nature (IUCN), the World Travel and Tourism Council (WTTC), the International Committee of the Red Cross and, of course UNESCO. These four held a joint meeting of Senior Legal Experts on the Protection of Cultural and Natural Heritage Sites in Times of Armed Conflict in Amsterdam from 16th to 18th December 1992, (Final Report: prepared by the IUCN Commission on Environmental Law, Bonn, Germany, dated 27 January 1993).

importance because of their proximity to what would in wartime be legitimate military targets. To take just one example, on the south coast of England the historic naval complex at Portsmouth has outstanding naval fortifications and other monuments of great archaeological, architectural and technological importance dating from medieval times to the 19th century which could very well meet the World Heritage List standard. However, it is right in the centre of the country's largest present-day naval base which could never be replaced and demilitarised in the event of armed conflict.

- 12.15. The *World Heritage Convention* also has a valuable provision for the designation of World Heritage List sites on a special list of 'World Heritage Sites in Danger', affording them additional protection at least in terms of publicity and emergency assistance<sup>271</sup>. For example, in anticipation of formal action, and in accordance with his responsibilities in support of the requirements of the *Hague Convention*, the Director-General of UNESCO, Dr Frederico Mayor, made vigorous attempts to try to achieve 'respect' in accordance with the requirements of the 1954 *Hague Convention* for Dubrovnik.
- 12.16. Under the World Heritage in Danger provision the December 1991 meeting of the World Heritage Committee in Carthage placed the Old Town of Dubrovnik (one of nine World Heritage Sites in the former Yugoslavia) on the 'Danger' list, thus supporting and reinforcing the various urgent efforts being made by the Director-General. The Assistant Director-General for Culture, M. Henri Lopes represented UNESCO at the 31 December 1991 'Concert for Peace' in Dubrovnik, and two weeks later the Director-General announced an emergency allocation of \$200,000 US to start emergency work on the war-damaged buildings and monuments in the Old Town, with Mme Giselle Hyvert of the Physical Heritage Division of UNESCO establishing a long-term mission in Dubrovnik itself.
- 12.17. It is recommended elsewhere in his Report<sup>272</sup> that high priority needs to be given to establishing a substantial, but realistic, list of monuments etc. granted Special Protection under the 1954 *Convention*. One way of making rapid progress in this would be for High Contracting Parties to the 1954 *Convention* to submit potentially eligible World Heritage Convention cultural sites for 'special protection' designation as 'centres containing monuments and other immovable cultural property of great importance', where there are no problems of conflict with potential legitimate military targets.
- 12.18. All States Parties to the 1954 *Hague Convention* should therefore be **RECOMMENDED** to review all of their important cultural sites and monuments inscribed on the World Heritage List, or proposed by them for inclusion, and consider proposing them for 'Special Protection' under the *Hague Convention* as well, where the other criteria, such as their adequate separation from potential legitimate military targets can be met.

---

<sup>271</sup> *World Heritage Convention*, Article 11 (4).

<sup>272</sup> Para. 6.25.

## **World Heritage Convention**



## Non-International Conflicts

### CHAPTER 13.

#### NON-INTERNATIONAL CONFLICTS: NATIONAL, REGIONAL, ETHNIC AND RELIGIOUS CONFLICTS

13. 1. All four *Geneva Conventions* of 1949 for the first time extended the principles of the rule of fundamental international humanitarian law to non-international armed conflicts. Common Article 3 of these aims to protect persons taking no part in the hostilities, including members of the armed forces who have laid down their arms and those who are *hors de combat* for any other reason. In particular Common Article 3 is also particularly important in that it places an absolute prohibition at all times and all places certain defined acts, including violence to life and person, especially murder, mutilation and torture, the taking of hostages, 'humiliating and degraded treatment', and the passing of sentences and the carrying out of executions without due legal process in a properly constituted court<sup>273</sup>.
13. 2. In a direct parallel with the 1948 *Genocide Convention*, in the application of which it is necessary to recognise that the killing of large number of people is not as such proof of the crime of genocide, the mere occurrence of armed fighting due to lawlessness or unorganised terrorism may not constitute 'armed conflict' for the purposes of the *Geneva Conventions* within a particular territory. The International Committee of the Red Cross guidance on defining the applicable circumstances is clear:
- a. any situation where, within a State's territory, clear and unmistakable hostilities between the armed forces and organised armed groups...;
  - b. any situation where dissident forces are organized under the leadership of a responsible command and exercise such control over a part of the territory as to enable them to conduct sustained and concerted military operations (intensive fighting)<sup>274</sup>.

Common Article 3 also declares that applying the conditions of the Article for humanitarian reasons cannot be used as evidence in relation to the legal status of the parties to the conflict: a most important - indeed essential - practical condition.

13. 3. Following the precedent of the *Geneva Conventions* the 1954 Intergovernmental Conference made a comparable provision for the protection of cultural property during non-international conflicts:

#### **Article 19. Conflicts not of an international character**

1. In the event of an armed conflict not of an international character occurring within the territory of one of the High Contracting Parties, each party to the conflict shall

<sup>273</sup>

1949 Geneva Conventions I, II, III and IV, Article 3 in each case. It is important to note that these do not allow any exception for 'military necessity', nor do they permit justification by reason of reprisal.

<sup>274</sup>

International Committee of the Red Cross, 1987, p. 52.

be bound to apply, as a minimum, the provisions of the present Convention which relate to respect for cultural property.

2. The parties to the conflict shall endeavour to bring into force, by means of special agreements, all or part of the other provisions of the present Convention.

3. The United Nations Educational, Scientific and Cultural Organization may offer its services to the parties to the conflict.

4. The application of the preceding provisions shall not affect the legal status of the parties to the conflict.<sup>275</sup>

13. 4. Those drafting the 1954 *Convention* probably envisaged war in terms of well-defined international conflicts between structured and well-disciplined military commands on the pattern of the two World Wars. However, looking back over history this was probably a mistake: more than half of all the armed conflicts resulting in fatalities that occurred between 1820 and 1945 were mainly internal rather than external conflicts, or mixed conflicts<sup>276</sup>, and the great majority of the perhaps almost two hundred armed conflicts that have occurred in the world since 1954 have been anything but traditional, well-organised and -commanded traditional international wars. As long ago as 1972 a leading legal expert commented:

... sub-conventional and guerrilla warfare... has become the central form of contemporary armed conflict.... there is a very real problem here that needs more clarification in positive international law on the one hand and more imagination and restraint on the part of belligerents on the other.<sup>277</sup>

Formal declarations of war are almost unheard of, as are formal exchanges of the respective rules of engagement. Protecting Powers are rarely nominated and agreed and only a very small proportion of the fighting in the many armed conflicts of the past forty years have consisted of organised set-piece fighting, whether by land, sea or air, between two well-defined States.

13. 5. In contrast with what seems to have been expected in 1954, since the *Hague Convention* came into effect, perhaps only the 1956 Suez operation and the two subsequent Arab - Israeli Wars, and the two Gulf Wars of the past decade (Iraq - Iran, and the Iraq invasion of, and subsequent 'Desert Storm' expulsion from, Kuwait) were conducted along traditional lines, (though even in these cases they were significant complications in the form of internal uprisings by racial, cultural or religious minorities, as with e.g. the Kurdish and Shiite uprisings in the north and south of Iraq respectively). Most wars have had a major element of internal armed conflict even where there was a substantial international involvement as well, as with the Vietnam and Afghanistan conflicts.

13. 6. One of the most marked features of the past quarter century has been the steady resurgence of internal conflicts of all kinds. At one extreme these include quasi-military operations by secret, irregular, terrorist campaigns by extremely small groups of political or religious extremists with little or no popular support from the population at large, and which almost certainly do not meet the Red

<sup>275</sup> 1954 *Hague Convention*, Article 19.

<sup>276</sup> Little (1975, pp. 202), quoting L.F. Richardson's *The Statistics of Deadly Quarrels*, give the figures as up 112 mainly internal, 33 mixed and 137 mainly external. According to these estimates, though the numbers of casualties were greatest in the two World Wars, (3 million to 30 million fatalities - within a logarithmic scale) the next five in terms of the number of fatalities (between 300,000 and 3 million casualties each) were all internal or mixed, while within the 30,000 to 300,000 fatalities range the internal and mixed outnumbered international wars by 14 conflicts to 10.

<sup>277</sup> O'Brien, 1972, p. 230.



## Non-International Conflicts

Cross definitions of armed conflicts, and hence should probably be classed as simple criminal acts. For example, despite their self-declared title of the 'Irish Republican Army' the losses of and damage to important historic monuments in the 1992 and 1993 car-bombings of the City of London and the 1992 fire-bombing of the important regional military history museum in Shrewsbury Castle, also in England, could not be claimed as resulting from 'armed conflict', nor could the serious damage to Argentina's leading Hispano-American art museum (and national historic monument), the Fernando Blanco Museum in Buenos Aires, also in 1992, in the murderous car-bombing of the nearby Israeli Embassy by an unidentified terrorist group. The term 'armed conflict' is equally inapplicable to the cultural atrocity (accompanied by tragic loss of life) when religious fundamentalists tore down with their bare hands the historic Mogul period Great Mosque at Ayodhya, India, in December 1992.

13. 7. However, from events such as these ranges a full spectrum of internal conflicts with a political, regional, cultural or religious basis, right through to full-scale civil wars, independence uprisings, and - increasingly frequently - mixed conflicts with either international intervention within a pre-existing internal conflict on the one hand, or a planned or opportunistic internal uprising by dissident groups or regions taking advantage of the country's involvement in an international conflict.
13. 8. With hindsight it is easy to say that the events of the past forty years ought to have been predicted. The 1945 United Nations *Charter* in its very first Article introduced an inherent ambiguity between the guarantee of the stability of, and non-intervention in, sovereign states, while simultaneously guaranteeing the 'right' of self-determination to the (undefined) entity of a 'people'. As P. E. Corbett points out in his study of the international law of civil wars of independence and self-determination, 'since revolution is a normal mode of self-determination' the U.N. Charter in effect purports to confer on 'peoples' a legal right to seize their independence by force if necessary<sup>278</sup>. The Charter was of course adopted in 1945 at a time when well over half the population of the world were under colonial or military occupation, (or reverting to a bitter civil war following the ending of the war with Japan, in the case of China). To take just one example, it is surprising that the 1954 Conference did not see as a warning of possible grave problems to come as colonial empires broke up the extensive loss of both life and physical symbols of cultural and religious identity that had occurred in the partitioning of British India in 1947, and then current internal uprisings occurring in the French colonies of both Indo-China and north Africa.
13. 9. The predominant viewpoints of so much of the world's current military and cultural leaders are Eurocentric - North Atlantic. Both experts and the general public have been first stunned, and then outraged, by events such as the current, highly publicised, wars in the former Yugoslavia (and the far less publicised ethnic conflicts in many regions of the sixteen newly independent republics of the former Soviet Union). In particular, deliberate destruction of cultural property in the former Yugoslavia has been on a horrendous scale. Expert assessments indicated that the cultural damage and loss in the first seven months of the 1991 Yugoslav/Serb fighting in Croatia was of a different order of magnitude from that of the devastating 1979 Montenegro earthquake, and greater than in the four years of the Yugoslav campaign of the Second World War<sup>279</sup>.

---

<sup>278</sup> United Nations Charter Articles 1 and 55; Corbett, 1971, pp. 369 - 370.

<sup>279</sup> Information from Prof. Dr. Ivo Maroevic, University of Zagreb (a member of the Commission for the restoration of Dalmatian monuments after the 1979 earthquake).

- 13.10. It has to be recognised that the deliberate targeting and destruction of important monuments and collections have become increasingly common features of both internal and international conflicts in many part of the world. Only when this has ben seen by the international news media, especially television, to be happening in internationally famous tourist centres such as the World Heritage List city of Dubrovnik have non-specialists become aware of, and outraged by, this.
- 13.11. However, events such as these ought not to have been such a surprise. For at least two decades there has been a growing amount of research and published information on the rise of ethnic, racial and religious tensions in many parts of the world and of the parallel rise of `internal' nationalisms in many parts of the world - not least in many countries of Europe - suggesting a long term threat to world stability through the breakdown of present patterns of comparatively large, often multi-national and multi-ethnic political sovereign States, very largely created between about 1870 and 1920, (including of course most of the ex-colonial national frontiers in Africa and Asia).<sup>280</sup> Against less than 200 sovereign states in the world even after the recent fragmentation of the former Socialist Block of Europe and Soviet Asia, across the world there are many thousands of geographical, ethnic and cultural `peoples' who could claim (and in a growing number of cases are demanding) the status of `nations' in the traditional rather than modern political sense, though increasingly the United Nations Charter's `right of self-determination' following the principles and guarantees of Article 1 of the United Nations Charter is being claimed as well)<sup>281</sup>.
- 13.12. Far too little attention was paid to the implications of either overt or suppressed expressions of national or ethnic identity - at least until the explosions in the former Yugoslavia and the fragmentation of the former U.S.S.R. (and now Czechoslovakia), all along ethnic lines. One of the leading academic (and later in his career political) exceptions was Daniel Moynihan who as early as 1979 predicted the disintegration of the Soviet Union along ethnic lines:
- Now the nationality strains begin. Whatever Marxism may have meant to intellectuals, it is ethnic identity that has stirred the masses in the twentieth century, and they are stirring near the Russia borders.... Since 1920 the Communists have rather encouraged ethnic culture, while ruthlessly suppressing ethnic politics. It won't work.<sup>282</sup>
- 13.13. These discussions are not, of course, new. Arguments about the nature of social groups up to the political level go back at least to Plato and Aristotle, who recognised the way in which society is built up from the *(koinonia = association or household)*, into the  $\mu$  (*Komé = village or community*) and then into the *(Polis = literally the city, but in Classical Greek times meaning the independent political state)*. Aristotle also recognised that whatever the level of the group conflicts leading to strife and bloodshed lead in turn to further division and fragmentation<sup>283</sup>. Similarly, bonds of blood in terms of race and common

<sup>280</sup> Even at this level there have of course been many violent changes: Daniel P. Moynihan (1993, p. 10 - 11, claims that there are only eight sovereign states in the world which have not suffered some form of violent change of structure or government since 1914, but even this may be an exaggeration, since he includes the United Kingdom in his list, overlooking both the 1921 partition of Ireland to create the Irish Free State - now the Republic of Ireland - and the German invasion and occupation of the Channel Islands in the Second World War.

<sup>281</sup> Arguably, out of the almost fifty Sovereign States of the `new' Europe only Iceland is mono-ethnic and mono-cultural: even in the case of the United Kingdom, despite recent vehement government declarations that it is a `unitary state', it is arguably a state of nine distinct nations, and has no less than five indigenous languages.

<sup>282</sup> Article `Will Russia Blow Up?' in *Newsweek*, 1979, quoted in Moynihan, 1993, pp. 39 - 40.

<sup>283</sup> Aristotle *Politics*, § 1252; also Bradfield, 1973, pp. 1 - 3.

## Non-International Conflicts

family descent, of language, religion, class (or caste) or a mixture of some or all of these - a common culture or ethnicity - are increasingly powerful factors in the self-selection of peoples into ethnic or cultural units. These typically have shared underlying assumptions of the group regarding the physical and spiritual nature of the world, and their place in it - in geographical and social terms. The shared understanding of the values, conventions and sense of place of the group is an enormously important factor in creating the cohesion and the emergence of distinct ethnic or cultural 'peoples' in sense that the authors of the United Nations Charter appear to have intended. The very concept of 'culture', as well as any definition of it, is therefore far from an absolute one, but on the contrary is very much a product of the culture and values of those making the various self-definitions of it:

The idealist expropriation of culture is thus not a matter of whim or taste (who cares what you call it), but an emergent production of definite structural and infrastructural conditions.<sup>284</sup>

- 13.14. It is in principle easy to distinguish between natural groupings: blood-relation groupings - from families to kinsmen and ultimately to the concept of the race, and artificial groupings: voluntary associations of peoples, such as groups based on religion, distinct (and perhaps isolated or otherwise) clearly defined geographical territory, language, or cultural practices, which together create distinct ethnic units. However, these are far from fixed in either space or time: discussing the 'Idea of Race', Michael Banton commented:

As peoples can understand their history only through the concepts of their own time, it is continually necessary to rewrite history in the light of new concerns and understandings. Equally, people interpret their own time in the light of their beliefs about the past, and if they misunderstand their past they cannot properly understand their present.<sup>285</sup>

- 13.15. Claude Lévi-Strauss in his now classic *Race et Histoire* of 1961 argued that:

Humanity ends at the frontiers of the tribe, the linguistic group, sometimes even those of the village, at the point that a substantial number of the so-called primitive populations designate with a name that signifies 'human beings' (or sometimes speaking with greater discretion 'the good peoples' 'the excellent peoples', 'the complete peoples', implying also that the other tribes, groups or villagers do not possess some of the virtues, or the same human nature, but are, more or less composed of 'bad people', 'evil people' 'ape-men'...<sup>286</sup>.

- 13.16. In fact, following the wanton destruction of physical symbols of 'the other' in the religious wars starting with the Crusades and continuing intermittently through to those of the Protestant Reformation and on into the 17th century, there was a degree of stability and respect for peoples, at least within Europe. However, old divisions and conflicts in new bottles began to arise and accelerate from the early years of the 19th century:

The modern ideas of race, class, and of nation, arose from the same European milieu and share many points of similarity. All three were exported to the furthest points of the globe and have flourished in many foreign soils. In so far as men have believed that it was right to align themselves on the basis of race, class and nation, or have believe that these would become the major lines of division, so these ideas have proved their own justification. But events have not borne out the prediction very closely. Nation has been the most

---

<sup>284</sup> Marvin Harris, 1980: History and Ideological Significance of the Separation of Social and Cultural Anthropology, p. 404 (in Ross, 1980).

<sup>285</sup> Banton, 1977, p. 3.

<sup>286</sup> Quoted by Jean-Marie Benoist in Lévi-Strauss, 1977, p. 21.

successful of the three. The idea promised that every man possessed a nationality as a natural attribute and that he had the right to be ruled only as a member of his own nation. This implied that a State must coincide with a nation and that minorities must separate and join up with their fellow nationals... The sentiment of nationality is obviously influenced by the natural boundaries of geography by shared language, outward appearance, and culture.<sup>287</sup>

- 13.17. At the very moment that modern nationalism was beginning to emerge, C. Franz warned:

Germany has never been a 'State', and it should never become one, because it would then no longer be Germany. It must overcome the idea of statehood, and conceive the idea of a totally different kind of community, destined for a much higher purpose - that is the precondition for a resolution of the German problem, for Germany is, in itself and for itself, an international being. It must elevate itself from both the political and quasi-political points of view.<sup>288</sup>

- 13.18. One of the most remarkable features of the past half-century has been the enormous expansion in the preservation and presentation of physical symbols and evidence of cultural identity<sup>289</sup>. Though there have been museums for more than four centuries, it is estimated that around 95% of all the world's present-day museums have been established since the end of the Second World War, and over the same period the number of legally protected and preserved monuments, historic buildings and sites in the world has risen from a matter of a few thousands to perhaps as many millions.

- 13.19. There has, however, been a potentially negative counterpart to this, in that the heritage and museum professions, governments etc., have in recent years constantly stressed the central importance of both immovable and movable cultural property as vital symbols of cultural identity, whether at the community, regional or national levels. While it would be ludicrous to suggest that the many hundreds of recent outrages in the former Yugoslavia against important monuments and collections particularly associated with the various 'enemy' ethnic or religious groups<sup>290</sup>, it is at least arguable that the very success of the 'heritage industry' over the past few decades has played a significant part in identifying the key targets for such violent acts in breach of not just the 1954 *Hague Convention* both equally of national criminal law.

- 13.20. One highly complex issue of international humanitarian law that needs to be considered by appropriate experts, and perhaps eventually by the International Court of Justice by way of a formal Opinion, is the question, increasingly posed in lay circles, as to whether the deliberate obliteration of all evidence of the existence of an ethnic, religious or other group identity of a racial group through destruction of their physical symbols of identity could *in extremis* fall within the definition of the crime of genocide under the 1948 Genocide Convention. Although in its final form this Convention was adopted primarily to prohibit the physical elimination of a racial group by the killing its members, either directly (through mass murders) or by deliberate indirect methods such as starvation, the Secretariat draft proposed a specific extension for what was termed 'cultural genocide', including:

---

<sup>287</sup> Banton, 1977, pp. 3 - 4.

<sup>288</sup> C. Frantz, 1874. *Die Preussische Intelligenz und ihre Grenzen*. (Muenchen), p. 63, quoted by Poliakov, 1987, p. 349. (Author's translation)

<sup>289</sup> Boylan, 1989.

<sup>290</sup> See, for example, the Council of Europe's report No. 6756 to the Parliamentary Assembly, 2 February 1993: extracts are reproduced as Appendix XII to this Report.

## Non-International Conflicts

(e) systematic destruction of historic or religious monuments or their diversion to alien uses, destruction or dispersal of documents and objects of historical, artistic or religious value and of objects used in religious worship.<sup>291</sup>

The actual definition of prohibited acts in the final text of the Genocide Convention excluded 'cultural genocide' as such but did include a prohibition on 'Causing serious ... mental harm to members of the group'<sup>292</sup>. Could, for example, it extend to the elimination of racial groups by means of deliberate assimilation through the forced suppression of identity or the institutionalised destruction of the racial group's sacred or other key cultural property constitute 'causing serious mental harm' to the group? In the absence of any definitive ruling or agreed position on including 'cultural genocide' within the current definition a number of workers in the field have begun to use the term 'ethnocide' for the process by which a distinct ethnic group loses its racial, ethnic or cultural identity as the result of official policies intended to erode and eliminate its territorial, economic, linguistic and cultural base<sup>293</sup>.

- 13.21. Non-international conflicts present many serious practical problems to all parties trying to minimise the destruction of cultural property, whether through internal or international measures. Specifically in relation to implementing the 1954 *Hague Convention and Protocol* in wholly internal (or indeed in part internal - part external) armed conflicts, in the great majority of such cases there is a serious organisational and command imbalance, with what is at the very least a tolerably and well-organised government force facing a largely or wholly unorganised military opposition. Indeed, by definition if one side or the other lacks any form of discernible organisation the conflict may fall completely outside the laws of war, and hence the *Hague Convention* may be regarded as inapplicable. Even where a government and its defence force faces what is clearly an organised internal military force, governments may still refuse to acknowledge the fact.
- 13.22. In the case of the former Yugoslavia, long after the European Community, and soon afterwards the United Nations, had formally recognised the independence of Slovenia and Croatia the rump Yugoslav and the Serbian government continued to refuse to recognise these as independent states, and hence considered the military operations to be on the one hand internal actions against illegal uprisings, or on the other hand spontaneous defensive measures and reprisals by the civilian population, frightened for their own lives in the face of what Serb propaganda claimed were racially inspired attacks by Catholic 'neo-nazis' within the Croat population or 'Islamic fundamentalist' Muslims in Bosnia-Herzegovina. In response the victims of Serb 'Chetnik' atrocities insist that all casualties of the war, whether human or property, are the victims of deliberate genocide.
- 13.23. The power of the media, especially when controlled or manipulated by either official or unofficial groups with a political, religious or other factional motive should not be underestimated. Though not classifiable as occurring in the course of an armed conflict, with the story of the Hindu epic, the *Ramayana*, being followed on television by an estimated one-quarter of the whole Indian

---

<sup>291</sup> Secretary-General's Draft Convention, Article 1, UN Doc. E/447, 1947. Thornberry (1991, pp. 70 - 75) gives a good summary of the evolution the Genocide Convention in relation to the 'cultural genocide' concept.

<sup>292</sup> United Nations *Genocide Convention*, 1948, Article II (b).

<sup>293</sup> See for example Stavenhagen, 1990, especially pp. 83 - 92.

population it was probably not difficult for extremists with a combination of party political and religious motives to provoke the attack on the Ayodhya mosque, built nearly four centuries earlier on the site of a temple honouring what Hindu tradition identifies as the birthplace of the deity, Lord Rama, the central figure of the *Ramayana*.

- 13.24. In the context of what is quite clearly an armed conflict, the BBC World Service's Central Europe correspondent, Mischa Glenny, also discusses the central role of propaganda in his recent book on the current Yugoslav war:

[all the] media in Yugoslavia, with a few dazzling exceptions, ... is a vital accomplice in the dissemination of falsehoods and the perpetuation of divisive myth which had turned one hapless *narod* against another equally innocent one. The only truth in the Yugoslav war is the lie.<sup>294</sup>

- 13.25. Some of the examples of Glenny's 'divisive myth' are utterly bizarre, and yet are repeated with great confidence by not only the politically controlled official Serbian media, but by distinguished academics and leading cultural sector professionals. Among many such examples is the frequently repeated summer 1992 myth (or perhaps deliberate fabrication) claiming 'on the highest authority' that the Government of Hungary had banned all archaeological excavations within its country, following the 'discovery' on a pre-Roman site in central Hungary that the whole of the Hungary is really part of Serbia in historic and cultural terms. In such an atmosphere the independent, more rational media, if it is allowed to exist at all is routinely disadvantaged and starved of all practical resources.
- 13.26. Throughout the current wars in former Yugoslavia some local, independent, broadcasting stations have survived, and try to present a more balanced, and peace-promoting, position than the official mass media, but lack modern technical resources. However, in one recent case where, with the permission of the United Nations Sanctions Committee, modern, more powerful, transmitting, news-gathering and studio equipment was donated and despatched to such an independent anti-war station operating in Belgrade, it was all stolen by uniformed armed forces just minutes after the convoy carrying it entering Serbia, and is reported to have been used to set up an official television station serving the Serbian occupied areas of north-eastern Bosnia<sup>295</sup>.
- 13.27. Consequently, one of the most valuable roles that international organisations, such as UNESCO can undertake in such ethnic conflicts is to try to present independent, unbiased, news and other sources of information. In relation to the current Yugoslav conflicts in September 1992 UNESCO Radio prepared and distributed widely an excellent 41 minute English language radio programme on the destruction of Dubrovnik '*Back to Dubrovnik: The Blood of the Stones*', prepared and co-presented by UNESCO's Executive Radio Producer, Mrs Erin Faherty-Mella. This set out clearly its background, importance, the issues of international law, and including interviews with local people who were the victims of the unprovoked attacks on the undefended World Heritage List city, with journalists of several nationalities who had witnessed attacks, with cultural protection experts, and with the Director-General of UNESCO. With the co-operation of sympathetic transmission stations around the world (including an Italian station whose signal is received clearly in the former Yugoslavia, this was broadcast many times.

---

<sup>294</sup> Glenny, 1992, p. 21.

<sup>295</sup> Various press cuttings and information from Prof. Miléna Dragicevic-Secic, Belgrade, who also generously allowed me to see in advance of publication her recent study '*Populist War Culture: Kitsch Patriotism*'.

## Non-International Conflicts

- 13.28. It is **RECOMMENDED** that in times of war and other armed conflict UNESCO should put additional resources into attempting to counter by all practicable means the prevailing negative cultural propaganda, particularly through the presentation of unbiased radio and television programmes both from ground stations and satellite.
- 13.29. Both UNESCO and the United Nations have a long and distinguished tradition of trying to develop respect for all peoples, in accordance with the founding principles of the United Nations and UNESCO Charters, and the Universal declaration of Human Rights. An important further milestone in this process was the 1986 decision of the United Nations Commission on Human Rights to initiate further practical measures against racial or ethnic exclusiveness or intolerance, hatred and terror, and for the development of respect for human rights, and the International Covenants on Human Rights, and called on all States to take the measures necessary to ensure the thorough investigation and the detection, arrest, extradition and punishment of all war criminals and persons guilty of crimes against humanity<sup>296</sup>. The Commission further urged all States to take all appropriate measures to combat intolerance and to encourage understanding, tolerance and respect in matters relating to the freedom of religion or belief<sup>297</sup>. In view of the horrendous events of the past 2½ years it is most ironic that the core of the Commission's original (and continuing) work through the Sub-Commission on Prevention of Discrimination and Protection of Minorities was a draft declaration on the rights of persons belonging to national, ethnic, religious and linguistic minorities, prepared and submitted by Yugoslavia<sup>298</sup>.
- 13.30. In response to this initiative the December 1986 meeting of the U.N. General Assembly condemned 'all ideologies and practices based on racial, ethnic or other exclusiveness or intolerance, hatred and terror'<sup>299</sup> while, as indicated above, UNESCO has active specialist and cross-sectoral programmes working in the area as well.
- 13.31. Most recently, on 18 December 1992 the United Nations General Assembly adopted a far-reaching *Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities*<sup>300</sup>. The key responsibility is that:
1. States shall protect the existence and the national or ethnic, cultural, religious and linguistic identity of minorities within their respective territories, and shall encourage conditions for the promotion of that identity.
  2. States shall adopt appropriate legislative and other measures to achieve these ends.<sup>301</sup>

---

<sup>296</sup> Resolution No. 1986/61 of 13 March 1986; U.N. Doc. No. E/1986/22.

<sup>297</sup> Resolution No. 1986/19. U.N. Doc. No. E/1986/22 also.

<sup>298</sup> Detailed progress reports were submitted to the Economic and Social Council's 1992 sessions, including the 10th report on discrimination against indigenous peoples (U.N. Doc. No. E/CN.4/Sub.2/1992/33 dated 20 August 1992) and on ways of facilitating peaceful and constructive solution of problems involving minorities (of all kinds), (U.N. Doc. No. E/CN.4/Sub.2/1992/37, dated 1 July 1992).

<sup>299</sup> General Assembly Res. 41/160 of Dec. 1986, (U.N. Doc. A/41/53 Supplement No. 53).

<sup>300</sup> General Assembly Resolution No. 47/135 of 18 December 1992, (U.N. Doc. Refs.: General Assembly Minutes pp. 365 - 368, and Report A/47/678/Add.2).

13.32. The Declaration specifically invites all 'the relevant organisations and bodies of the United Nations ... to give due regard to the Declaration within their mandates', and later declares that:

the specialized agencies and other organisations of the United Nations system shall contribute to the full realization ... within their respective fields of competence<sup>302</sup>.

13.33. One of the highest priorities for all international and national bodies in relation to both immovable and movable cultural property, and especially for UNESCO, must be to develop greater understanding of, and respect for, the great many different cultures and traditions of the different peoples of the world: majorities, minorities, home and foreign. Work towards this should include additional programmes of education and information for peoples of all ages, and especially within multi-ethnic and multicultural societies.

13.34. Some of the greatest losses in recent armed conflicts have been the result of deliberate damage and destruction of the cultural evidence of the existence of enemy, or indeed just different, peoples. UNESCO is therefore **RECOMMENDED** to develop further its measures for the promotion of mutual understanding of and of tolerance between all peoples, and to integrate within these the active promotion of respect for the cultures and cultural property of all peoples.

13.35. Though non-international armed conflicts fall quite unambiguously within the scope of the 1954 *Hague Convention* - and almost certainly under the restrictions on movement of cultural property under the 1954 *Protocol* as well, actually applying these provisions in such circumstances presents many practical problems.

13.36. First, there is the issue of definition: is there an 'armed conflict' as defined or recognised under international humanitarian law at all? The experience of the past four decades (and indeed longer) shows that few governments are likely to rush to admit that their territory is subject to an 'armed conflict' as defined in international law. Instead they argue that the problems are questions of lawlessness, internal or international terrorism and subversion of the legitimate power, requiring repression by the use of the full force of national law, and with the national defence forces, if they are involved, acting in support of the civil power rather than engaging in an 'armed conflict'. This is especially so where a government faces a civil war of secession from the State, as with Nigeria in the 1970s, or over the past two years in Yugoslavia, where large sections of the rump Yugoslavia/ Serb governments basically refuse to accept the legitimacy of the withdrawal of Slovenia, Croatia and Bosnia - Herzegovina from the former federal Republic of Yugoslavia, and hence the break-up and collapse of the once powerful Yugoslav State.

13.37. A second problem in trying to apply international humanitarian law, such as the *Hague Convention* of 1954, in such internal armed conflicts is the unbalanced nature of whatever military command or control structure as may exist. In particular there are frequently serious - perhaps insurmountable - practical and/or legal problems for international organisations, such as UNESCO, in attempting to communicate with the irregular force, and certainly there will be no possibility of working through Protecting Powers, let alone the appointment of Commissioners-General for Cultural Property. For example, UNESCO, not only as part of the United Nations system but also as an organisation ultimately governed by its Member States, cannot be seen to give any kind of *de facto*

---

<sup>301</sup> *Declaration* (see note 21 above), Article 1.

<sup>302</sup> *Declaration* (see note 21 above), Article 9.



### **Non-International Conflicts**

recognition to what the international community regards as an illegal or usurping regime.

- 13.38. To give just one example, on entirely understandable and justifiable grounds of international law, over a period of more than twenty years now UNESCO has found it impossible to make any significant progress in achieving the protection of important sites, monuments and collections in the northern part of Cyprus, where the self-proclaimed republic. This is still recognised only by Turkey, and the leader,

Dr Rauf Denktash, demands some degree of formal recognition of his state and his government from the international community as the price of allowing any official international inspection or assistance. This is a condition that no organisation of the United Nations system could possibly agree to, so there must be a very real risk of an indefinite prolonging of the present stalemate.

13.39. There seem to be only two possible ways of breaking out of the present deadlock. The first would be for the initiative to be taken by a non-governmental organisation, so that a political construction could not be placed on the external involvement. (At the present time a study is in progress on the possibility of developing some kind of a '*Patrimoine sans Frontières*'<sup>303</sup> or 'Red Cross for Culture' new international humanitarian organisation that could offer such assistance without any implication of international recognition of an outlawed regime.) The second possibility would be to take the view that the culture, and especially the physical symbols of it, is now such a key part of the identity of peoples that urgent assistance to protect this should be regarded as legitimate humanitarian aid, which might be offered and received, even from international organisations such as UNESCO, on a purely humanitarian basis, without any implication of recognition of the administration of the country or region assisted. Indeed, at an even more philosophical level, it could be argued that the only grounds for any international involvement in the protection of the immovable and movable cultural property within the territory of a Sovereign State is that such property is regarded as part of the patrimony of all of humanity, not just of that State. On that basis essential urgent assistance should be viewed as serving all the peoples of the world and not just those of the State in question, whether or not its current Administration is recognised internationally.

---

<sup>303</sup>

Modelled on the Paris-based *Médecins sans Frontières*: the study is being carried out from the Paris headquarters of the International Council for Monuments and Sites (ICOMOS), though it is not yet clear whether there would be a more formal link with ICOMOS if the project was developed further.

## Role of UNESCO

### CHAPTER 14.

#### ROLE OF UNESCO

14. 1. UNESCO quite plainly has the central role in relation to the both the development and application of the 1954 *Hague Convention* and that position should be retained and, if possible, strengthened. Its parallel positions of leadership in relation to both the 1970 *Convention* on movable cultural property and the 1972 *World Heritage Convention* offer further possibility for an integrated approach at the level of practical application in times of threatened or actual armed conflict. UNESCO's efforts in relation to the protection of the World Heritage Site Old Town of Dubrovnik in the current conflicts in ex-Yugoslavia is an excellent model for future action, despite the totally irrational (and criminal) behaviour of some of the parties involved.
14. 2. There is a clear parallel role that could be developed by UNESCO in relation to illicit movement of cultural property out of war zones and other areas of armed conflict, integrating the provisions of the 1954 *Hague Protocol* and the 1970 movable property *Convention*. Unfortunately, the case in which UNESCO might in principle have been able to take a more interventionist role, that of the occupied areas of northern Cyprus, from which there has clearly been very great losses as a result of looting and unlawful exports, has proved much more difficult. It is clear that almost any practical measures taken by UNESCO will be used by the leader of the Turkish ethnic community in northern Cyprus as a significant step towards at least *de facto* if not *de jure* recognition of a the north Cyprus state by a key international body.
14. 3. Despite such problems, and the failure of States Parties to agree to implement the 1954 *Convention's* provisions for the appointment of Commissioners-General for Cultural Property during the many international conflicts of the past four decades, UNESCO has been able to make a significant contribution to reducing the loss of the physical heritage during armed conflicts of all kinds, not least by means of the flexible use of the Director-General's extensive discretionary powers under his general mandate, as well as under Articles 22 and 23 of the *Hague Convention* itself.
14. 4. In many ways it is a good thing that very many people interested in the heritage of the peoples of the world feel and publicly express deep anger and shock at the numerous outrages perpetrated in gross defiance of the *Hague Convention* and of other instruments of international humanitarian law, and indeed contrary to well-established principles of customary international law. It is perhaps understandable, though very unfortunate, that the feeling of helplessness in the face of such grave crimes against the patrimony of all the peoples of the world that some should relieve their anger by criticising UNESCO for its alleged failure to somehow put a stop to such international crimes.
14. 5. However, to deliberately mis-quote Stalin's alleged aphorism about Pope Pius XII, 'How many Divisions has the Director-General of UNESCO?'. To take the current case of the former Yugoslavia, it has been estimated that in less than three years many tens of thousands of unarmed civilians have been slaughtered in acts of genocide, outside assessors have estimated that perhaps as many as 20,000 women and young girls have been subjected to rape as a deliberate act of war, in gross breach of not only the local criminal law but also the *Geneva Conventions*, and that displaced and homeless victims of genocidal 'ethnic cleansing' total millions. Compared with these statistics, in numerical terms the

few thousands of possible war crimes against important cultural property are inevitably going to be seen as almost marginal to the totality of the war crimes, even allowing for the extremely grave, wanton, attacks on the defenceless Old Town of Dubrovnik, the virtual obliteration of the physical heritage of whole regions such as those of Vukovar, Osijek, and the Konvale part of the rural area of the Dubrovnik commune<sup>304</sup>. It has to be recognised that these losses have been due in most cases to the failure of parties in the various international and internal armed conflicts to comply with international law, and to both respect and positively safeguard physical evidence of the local, regional, national and international heritage.

14. 6. As a first step in achieving greater recognition and more effective implementation of the 1954 *Convention*, it is essential that the number of States Party to it be greatly increased, since the effectiveness of any international law ultimately depends on the principle of universal acceptance<sup>305</sup>. UNESCO should take the lead in a new campaign to actively promote the *Convention's* adoption. So far as specific measures are concerned, the current policy of the Director-General of urging newly admitted Member States to adopt without delay (*inter alia*) the 1954 *Hague Convention* and *Protocol* is welcomed, and should be continued. In addition the Executive Board should immediately request Director-General to approach again every other non-signatory sovereign States recognised by the United Nations and/ or UNESCO, whether or not they are UNESCO members, in accordance with Articles 31 and 32 of the *Convention*, urging them to adopt the *Convention*.
14. 7. In addition to taking action in times of armed conflict either through the appointment of Commissioners-General or Special Representatives of the Director General, UNESCO should appoint or nominate experts to serve as liaison and advisory officers in the field to commanders of United Nations Peace-keeping Forces in support of UN peacekeeping and peacemaking operations.
14. 8. It probably inevitable that in times of actual or threatened armed conflict international public opinion will focus attention on particularly famous and important sites: Angkor Wat in Cambodia, Dubrovnik in Croatia, Tyre in Lebanon. While World Heritage and other famous sites should certainly never be neglected, UNESCO and other international organisations, when under such pressure, should not restrict their actions and practical measures to such sites at the expense of more broadly based support for the wider cultural patrimony suffering serious damage or under threat in the region concerned.
14. 9. There is a considerable body of practical information and experience, dating from at least the period of the Spanish Civil War and the Second World War onwards, on practical measures for the protection of monuments, museums, libraries, archive repositories etc. in the face of the prospect of armed conflict. For example, the International Museums Office prepared for UNESCO's the League of Nations predecessor, the International Institute of Intellectual Cooperation, a very substantial practical handbook in the Autumn of 1939, and - especially UNESCO's own substantial Museums and Monuments Series handbook by A. Noblecourt published in 1954 (French edition) and 1958 (English edition).

---

<sup>304</sup> Information for Prof. Ivo Maroevic and Dr Colin Kaiser; see also Dr Kaiser's Council of Europe report, of which an extract is included as Appendix XII of this Report.

<sup>305</sup> Though there are now grounds for regarding the 1954 *Convention* as so well established that it can now be regarded as Customary International Law (see for example the views of the United States of America Department of Defense in its submission to Congress, 19 January 1993 - Appendix VIII of this Report), also paras 9.1 - 9.7 above, formal ratification or accession and legislative implementation at the national level is clearly desirable, if only for the avoidance of doubt on its applicability.

### Role of UNESCO

UNESCO should commission and publish up-to-date research and advice on practical protection measures, integrating this advice with recommendations on necessary practical measures for the prevention and mitigation of natural and civil disasters. In this, UNESCO should work closely with all relevant non-governmental international organisations, including all of the NGOs associated with UNESCO working in the field of the material heritage, and with the International Committee of the Red Cross, in both developing and actively promoting such professional and technical advice.

- 14.10. One of the highest priorities for all international and national bodies in relation to both immovable and movable cultural property, and especially for UNESCO, must be to develop greater understanding of, and respect for, the great many different cultures and traditions of the different peoples of the world. UNESCO already has an admirable record in this field, but should take the opportunity presented by the recent adoption by the United Nations of its *Declaration on the Rights of Persons belonging to National, or Ethnic, religious and Linguistic Minorities*<sup>306</sup> to develop its work in this area. This should include additional programmes of education and information for peoples of all ages, and especially within multi-ethnic and multicultural societies aimed at developing respect and understanding, as some of the greatest losses in recent armed conflicts have been the result of deliberate damage and destruction of the cultural evidence of the existence of enemy, or indeed just different, peoples.
- 14.11. In times of war and other armed conflict UNESCO should put additional resources into attempting to counter by all practicable means the prevailing negative cultural propaganda, particularly through the presentation of unbiased radio and television programmes both from ground stations and satellite.
- 14.12. Pending any future decision by the High Contracting Parties as to whether a majority wish to begin the process of revising the 1954 *Convention and Protocol* or of developing an Additional Protocol, it is strongly recommended that the next General Conference of UNESCO should be asked to consider and adopt a substantial composite Resolution incorporating a series of practical Recommendations in relation to the Protection of Cultural Property in the Event of Armed Conflict, and in particular aimed at greatly improving the effectiveness and practical application of the 1954 *Convention* including:
1. a Recommendation urging all non-signatory Sovereign States of the world to adopt and implement in terms of national legislation and administrative procedures both the *Convention on the Protection of Cultural Property in the Event of Armed Conflict, The Hague, 1954*, and its *Protocol* without delay;
  2. a Resolution urging that in view of the alarming scale of loss of movable cultural property from monuments, museums, libraries, archives and other depositories of cultural property in times of both international and internal armed conflict, all High Contracting Parties to the 1954 *Convention* be urged to adopt both the 1954 *Hague Protocol* and the 1970 UNESCO *Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property*, and to institute effective national and international measures to prevent trafficking in cultural material from war zones;
  3. a Resolution establishing a UNESCO Intergovernmental Advisory Committee on the Protection of Cultural Property in the Event of Armed Conflict, constituted under Category II (Articles 18 - 20) of the UNESCO *Regulations*

<sup>306</sup>

for the general classification of the various categories of meetings convened by UNESCO. The Committee should follow in general terms the model of the World Heritage Committee, though it would not have executive powers. The main purpose would be keep under review the effectiveness and implementation of the 1954 *Convention* and *Protocol*, to advise the Director General, the General Conference, States Party to the Convention, as well as non-signatory sovereign states, on appropriate practice in relation to all aspects of the implementation of the *Convention* and more generally on the Protection of Cultural Property in times of Armed Conflict. The Intergovernmental Advisory Committee would in particular receive, review and formally publish the periodic reports of High Contracting Parties specified in Article 26(2) of the 1954 *Convention*, and would assist the Director General in relation to the training and education programmes referred to below. (In the longer term it would be desirable to re-constitute such a Committee under the *Hague Convention* itself, but more urgent action is needed in order to bring the *Convention* and the progress (or lack of progress) in its implementation more directly to the attention of the governments of the High Contracting Parties. Draft terms of reference and outline rules of procedure for the proposed Advisory Committee are set out in Appendix X of this Report;

4. authorization of plans for UNESCO to establish a programme of regional intergovernmental information/ training seminars for both High Contracting Parties and non-signatory States in different parts of the world (perhaps one per year for five or six years), as it is clear that many of the non-signatory Member States of UNESCO and some High Contracting Parties are uncertain about what adopting and implementing 1954 *Convention* would mean in practical terms. This is particularly true of the large number of States in the Americas which in 1954 were already parties to the 1935 'Roerich Pact', and of the many Member States in Africa, Asia and the Caribbean which became independent during the period of de-colonisation during the third quarter of the century ;
5. a Resolution reminding all High Contracting Parties to the 1954 *Convention* of the importance of their obligation under Article 26 of the *Convention* to forward four-yearly reports to the Director-General on the 'measures being taken, prepared or contemplated... in fulfilment of...' the *Convention* and Regulations.
6. a Recommendation proposing urgent new programmes of action to improve public understanding and tolerance in relation to the values of cultural property and cultural diversity, at both the international level through both UNESCO and relevant Non-Governmental Organisations, and at national, regional and local levels, through Member States, National Commissions for UNESCO, and educational and non-governmental organisations;
7. proposals for additions to UNESCO's Third Medium Term Plan, especially Programmes III.3 (Preservation and enhancement of the cultural heritage), VII.1 (Peace in the minds of men) and VII.2 (Human rights), to provide additional staff and financial resources for necessary urgent action to enable UNESCO to respond more effectively to current crises, and the establish the proposed new arrangements for increasing its activities in this field, including the proposed programmes of regional intergovernmental information/ training seminars and of public information and education;
8. authorization for UNESCO support of United Nations peacemaking and peacekeeping operations in areas of cultural importance through the appointment or nomination of appropriate experts to liaise with United Nations force commanders in the field;

### **Role of UNESCO**

9. a Resolution calling on the United Nations to take appropriate action through the General Assembly, Security Council, Military Staff Committee and Secretary-General respectively to adopt the policies and role proposed for the United Nations in Section 3 of these Recommendations.





## Role of the United Nations

### CHAPTER 15.

#### ROLE OF THE UNITED NATIONS

15. 1. In contrast with UNESCO, the United Nations, and especially the Security Council, does not have the necessary constitutional powers under its *Charter* to enforce its decisions, though through the long years of the Cold War the Security Council was deadlocked. In contrast with the 300 vetoes used by the five Permanent Members of the United Nations to block proposals across the whole range of peacemaking, peace-keeping and other proposals to the Security Council during its first 45 years, there has not been a single veto since 1990.
15. 2. Within this greatly changed world order both the Secretary-General, Boutros Boutros-Ghali in his 1992 *An Agenda for Peace: Preventive Diplomacy, Peacemaking and Peace-keeping*<sup>307</sup>, and independent experts,<sup>308</sup> have begun to examine the possible ways in which the United Nations could begin to operate more effectively in the way that its founders at Dumbarton Oaks in 1944 and at San Francisco in 1945 originally intended.
15. 3. Despite the severe limitations placed on the operation of the United Nations in the service of peace through the long years of the Cold War, much was in fact done, as the latest edition of the United Nations' official history and current status of its many peace-making and peace-keeping demonstrates.<sup>309</sup>
15. 4. The resources of the United Nations in this area depend entirely on what service personnel and materiel the Member States are willing to allocate to a particular operation: the United Nations standing force of seconded military units envisaged in the *Charter* has never been established. In most if not all peace-keeping operations the resources of the United Nations have been and remain far below the strength considered desirable. As a consequence there have never been any spare resources for anything other than the most urgent humanitarian, monitoring and peace-keeping activities focused on the most fundamental human survival needs. Certainly there has never been the military resources available in any sphere of operation to enable U.N. 'blue helmets' to undertake the physical guarding of e.g. important monuments, museums etc., nor is this a realistic prospect for the foreseeable future.
15. 5. On the other hand the United Nations forces have from time to time given invaluable assistance in support of UNESCO initiatives in times of armed conflict. Examples have included providing assistance to UNESCO's expert consultant, M. Jacques Dallibard, to travel freely across the 'blue line' in Cyprus while preparing his study of damage to cultural property in both north and south Cyprus, while during the Israeli invasion of South Lebanon in 1982, which affected directly the highly important historic site of Tyre, particularly in helping UNESCO experts to enter and travel within occupied country in general, and the important cultural monuments in particular. The senior U.N. officials consulted stress that

---

<sup>307</sup> Boutros-Ghali, 1992.

<sup>308</sup> For example, Berridge, 1991; Moynihan, 1993.

<sup>309</sup> United Nations, 1990B.

- wherever practicable the U.N. security forces will always make every effort to assist and support such expert missions of UNESCO, though they see little prospect of the United Nations itself being able to supervise and finance from central U.N. funds any sort of standing panel or force of cultural protection officers operating in the war zone as advisers to the military commanders<sup>310</sup>.
15. 6. Historically, and even in recent times, disputes over issues relating to the physical evidence of the national, cultural and - especially - religious identities of peoples have been significant factors in the development and escalation of international disputes, and have even on occasion provided the final *casus belli* for international and civil wars. The United Nations should recognise that even in less extreme cases such issues can be potent factors in escalating conflicts, and in the promotion, spreading and reinforcing of international and inter-community fear and hatred. Actual or perceived threats against, let alone actual physical attacks on, powerful national, cultural or religious symbols can therefore be a significant threat to the maintenance of peace and of both peacemaking and peace-keeping.
  15. 7. Consequently, the implications of the possible threat to peace of such matters should be an entirely proper consideration for the Security Council under its responsibilities relating to the 'Pacific Settlement of Disputes' and 'Threats to Peace' under Chapters VI and VII of the United Nations Charter, (see also the current Secretary-General's 1992 *An Agenda for Peace*)<sup>311</sup>.
  15. 8. In accordance with these principles, the United Nations should continue to support the efforts of UNESCO and the High Contracting Parties to the 1954 Convention in relation to promoting of understanding, and should recognise the potential cultural dimension in international relations and in both international and internal armed conflicts.
  15. 9. In future the United Nations, should as a matter of routine, seek expert advice through UNESCO on the cultural protection implications of proposals for action under Chapters VI and VII of the *Charter* in relation to threats to international peace, armed conflicts and peacekeeping.
  - 15.10. In relation to the issue of possible 'cultural' war crimes in the former Yugoslavia, the Secretary-General of the United Nations should accept the offer of the Director-General of UNESCO to assist in this investigation of possible war crimes. It is also most desirable that the United Nations' team of experts investigating the complaints and allegations in respect of ex-Yugoslavia should be augmented by the appointment of at least one expert in relevant cultural property issues.
  - 15.11. The United Nations is urged to develop and present to the proposed international War Crimes Tribunal on cases relating to ex-Yugoslavia<sup>312</sup> some test cases in relation to war crimes against cultural property in violation of the provisions of the 1954 *Convention*, in order to determine the extent of the application and effectiveness of international law in such matters, and to establish precedents and examples in this respect. One obvious example that should be examined more closely is the alleged day-time 'St Nicholas Day' naval bombardment of the Old Town of Dubrovnik (26 December 1991), which *prima facie* could represent a

<sup>310</sup> The Los Angeles attorney, Charles McConney, has been campaigning for the establishment of a permanent Monuments, Fine Arts and Archives (M., F.A. & A.) cultural protection squad attached the United Nations forces, following directly the model of the M., F.A. & A. officers of the Second World War, (see also Charles McConney's summary of his proposals reproduced as Appendix XI of this Report.

<sup>311</sup> United Nations, 1990: particularly Articles 34 and 39 respectively; Boutros-Ghali, 1992 pp. 13 - 22.

<sup>312</sup> Under Security Council Resolution 808 of February 1993.

## Role of the United Nations

breach not just of the 1954 *Hague Convention*, but also every one of the codified laws and customs of naval bombardment from the 1899 Hague Conventions onwards.

- 15.12. The assistance of the United Nations in providing practical support to UNESCO official representatives undertaking duties in relation to the provisions of the 1954 *Convention* in some past peacekeeping (including Observer Mission) operations has been of great importance. The United Nations should in future provide such necessary facilities and logistical support for UNESCO-appointed or -nominated experts on a regular basis. In addition to undertaking their functions on behalf of UNESCO and in relation to the 1954 *Convention*, where appropriate such experts should also act as liaison and advisory officers in the field to commanders of United Nations Peace-keeping Forces, on the lines of the system of nominated Monuments, Fine Arts and Archives (M., F.A. & A.) Officers successfully pioneered in the later stages of the Second World War in western and central Europe.
- 15.13. It is recognised that the training and other preparation for their missions of peacekeeping etc. forces allocated to the United Nations is primarily the responsibility of the military systems of the Member States providing the forces. However, it is most important that both officers and the ordinary troops engaged on peacekeeping missions should have adequate training in relevant international and national military and civilian law relating to cultural protection, (and indeed in respect of the cultural, ethnic and religious values of the peoples of the country of the operation in question). The United Nations should develop standard minimum requirements in terms of training, briefing and/or the applicable national military operations manual, including issues relating to the protection of cultural property. Participating Member States should be requested by the U.N. to ensure that forces allocated to United Nations operations are adequately trained and briefed in such matters, and that appropriate military discipline is maintained in relation to the respect of monuments and other cultural property, and relevant cultural property export laws and codes.
- 15.14. Because important cultural monuments and collections are frequently seen as amongst the clearest expressions of the identity and values of peoples, the United Nations should recognise that providing emergency practical assistance, including the services of international experts and of essential measures such as the supply of specialised conservation materials and equipment required for the preservation of cultural property of international, national or other cultural importance damaged or threatened by armed conflict is a form of humanitarian aid. Such essential assistance should not be subjected to undue restriction or delay under any United Nations sanctions regime.
- 15.15. In the context of both the *Universal Declaration of Human Rights* (1948) and the 1992 *Declaration* of the United Nations in relation to the rights (including cultural rights) of minority peoples, and especially Articles 1, 4(2), and 4(4)<sup>313</sup>, the United Nations should support UNESCO and United Nations Member States in the development of programmes of public information and education about cultural and ethnic diversity and respect for the cultures of all peoples, especially within multi-ethnic, multi-religious and multicultural societies.

---

<sup>313</sup>

United Nations *Declaration on the Rights of Persons Belonging to National or Ethnic, Religious or Linguistic Minorities* (General Assembly Resolution 47/135, dated 18 December 1992).



## Role of States

### CHAPTER 16

#### ROLE OF STATES: BOTH HIGH CONTRACTING PARTIES AND OTHER STATES

16. 1. Ultimately, no measures aimed at protecting culture in times of war can succeed without the support of the sovereign states that make up the world community at the international level. Consequently it is vitally important that both the civil administrations and the military commands of States are fully conversant with, and supportive of, the 1954 *Hague Convention* and the *Hague Protocol*. There is little or no evidence of deliberate hostility to the high ideals and minimum standards of the *Convention*, so failure to support at least the principles of it must be the result of either ignorance or neglect.
16. 2. it is clear that there are still very many States in membership of the United Nations and UNESCO which have never given serious consideration to the possibility of adopting the *Convention* and *Protocol*, while it is time for those previously reluctant to adopt them to review their positions. In both respects the initiatives recommended for action by UNESCO in this Report should be of assistance, especially the suggestion that the Executive Board should formally request all States which have not adopted the *Hague Convention* to do so, as should the proposed increased publicity and regional training/information seminars.
16. 3. Although it has not been possible in the course of this study to calculate the possible cost of implementing the *Hague Convention's* peace-time protection and preparation measures it is clear that even in countries which have the best developed systems such as The Netherlands, the costs are so low as to be hardly identifiable: the system depends very largely on an integrated approach to the physical protection of the cultural patrimony against all threats - natural, civil and military - and on a network of volunteer experts granted the legal status of military reserve officers.
16. 4. It should also be remembered that at the height of the enormous cultural property protection programme during the final year of and just after the end of the Second World War in Europe (between April 1944 and about the end of 1947), involving many thousands of threatened and damaged monuments, and the recovery and repatriation of many tens of thousands of looted or stolen works of art etc., there were never more than six Monuments, Fine Arts, and Archives Protection Officers at any one time within the United States forces in France and northern Germany, with a roughly similar number in the British and French forces. Nevertheless, with the active involvement of professional and technical experts of the territories concerned the scale of damage and destruction of monuments, and of losses of collections was clearly greatly reduced. Certainly the claim on public resources of a reasonable level of peacetime preparedness planning and practical protection should be well within the resources of almost every State.
16. 5. Most High Contracting Parties to the 1954 Convention still have very much to do at the practical level to implement the solemn pledges they have given to the world community, and indeed to their own citizens, in their ratification of, or accession to, this important Treaty. Far more needs to be done at the practical level to meet the obligations that States party to the *Convention* have entered into

in their acceptance of it. There are however some notable exceptions to this generalisation, though perhaps four or five at the most, for example, Austria, Switzerland and The Netherlands, (and indeed in some respects the former Yugoslavia). These examples of serious and successful application of the practical provisions of the *Convention* show that the task is not a very onerous one in terms of either money or resources. However, information on the practical measures taken by such countries needs to be shared more widely, for example through the proposed new UNESCO training/information seminar and publications programmes.

16. 6. Particularly high priorities are the implementing of effective provisions within national military and civilian criminal law for the investigation and punishing of alleged 'cultural' war crimes and other offences by nationals and other residents of the State, and the establishment of active programmes of military and public education and information intended to increase knowledge and understanding of, and respect for, the protection of the cultural property and cultural values of all peoples.
16. 7. In view of the grave losses of movable cultural property from areas affected by international wars and internal armed conflicts such as civil wars and inter-communal conflicts, high priority needs to be given to effective national administrative and criminal law measures to stop the international trafficking in stolen or otherwise illicitly acquired and transported cultural property from such war zones, in accordance with the spirit of the 1954 *Protocol* and the 1970 UNESCO *Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property*.
16. 8. All High Contracting Parties should review their arrangements for the training of military personnel of all levels in relation to their obligations under the *Convention* and other relevant aspects of international law. Further, Member States participating in United Nations operations should ensure that the forces allocated to particular operations are adequately and specifically re-trained and briefed in such matters, and that appropriate military discipline is maintained in relation to the respect of monuments and other cultural property, and relevant cultural property export laws and codes.
16. 9. All High Contracting Parties which are also parties to the 1972 *World Heritage Convention* should review each of the cultural localities within the State which are inscribed on the World Heritage List and consider whether they are eligible for the granting of 'Special Protection' as 'centres containing monuments' under Article 2(c) of the 1954 Convention.
- 16.10. All States Parties should note that in the absence of specific provisions for the resolution or enforcement of inter-government disputes or complaints concerning the interpretation and application of the 1954 *Convention* and *Protocol*, such matters may be referred to the International Court of Justice under Chapter XIV of the *Charter of the United Nations*, and specifically under Chapter II of the Statutes of the International Court of Justice annexed to the United Nations *Charter*.
- 16.11. All High Contracting Parties should establish a national advisory committee to assist with the practical implementation of the 1954 *Convention* and *Protocol*, in accordance with Recommendation II of the 1954 Intergovernmental Conference.
- 16.12. All States which previously decided not to ratify or accede to the 1954 *Convention* and *Protocol*, or which have so far not considered accession to it should review their position in relation to the *Convention* as a matter of urgency, since such international instruments ultimately derive their authority from their universal acceptance by the world community.

## Role of States

- 16.13. Regardless of the decision of any State not to adopt the 1954 *Convention*, it should nevertheless be respected as Customary International Law, and as the successor and supplementary provisions and clarification of the principles established in earlier International Instruments, particularly the 1899 and 1907 *Hague Conventions* and the 1935 *Washington Treaty* ('Roerich' Pact), and also as the applicable law in many parts of the world where their armed forces may be in action, eg. as part of a United Nations peacekeeping operation.
- 16.14. Whether or not such States decide to ratify or accede to the 1954 *Convention*, they should take all necessary action to implement effective provisions within national military and civilian criminal law for the investigation and punishing of alleged 'cultural' war crimes and other offences by nationals and other residents of the State, and to establish active programmes of military and public education and information intended to increase knowledge and understanding of, and respect for, the protection of the cultural property and cultural values of all peoples.
- 16.15. In particular, Member States participating in United Nations operations should ensure that the forces allocated to particular operations are adequately and specifically trained and briefed in their obligations under Customary International Law and in the 1954 *Hague Convention* (since this could very well be applicable law in the theatre of operations), and that appropriate military discipline is maintained in relation to the respect of monuments and other cultural property, and relevant cultural property export laws and codes.





**Non-Governmental Organisations**  
**CHAPTER 17**

**NON-GOVERNMENTAL ORGANISATIONS**

17. 1. Non-Governmental Organisations also have an important role to play in promoting both understanding and the acceptance of civilised standards of conduct (particularly in this case adherence to the 1954 *Hague Convention and Protocol*). Similarly, they have a vital role in developing appropriate professional standards of protection for the practical action of both immovable cultural property and collections. Their non-governmental status can also give them a very considerable advantage over governmental and inter-governmental organisations in cases where there are serious political problems making the practical involvement of bodies such as UNESCO impossible. The most obvious examples are the cases where the territory is under the control of a regime declared to be illegal by the international community through the United Nations, (a continuing problem for nearly twenty years now in northern Cyprus in respect of the practical application of the *Hague Convention and Protocol*, and other UNESCO Instruments such as the 1970 movable cultural property and 1972 World Heritage Conventions, to give just one example).
17. 2. The relevant non-governmental organisations themselves are currently taking a considerable interest in ways of improving the effectiveness and application of the 1954 *Convention*, as for example in the various initiatives of the international Council of Monuments and Sites (ICOMOS) in exploring both the better integration of planning and preparedness for all types of disasters, including war, and in exploring the possibility of creating some form of non-governmental 'Blue Shield' international organisation for cultural property, as a direct parallel of the Red Cross in relation to other areas of humanitarian assistance.<sup>314</sup> The International Council of Museums (ICOM) is also active in this field with working groups on both Disaster Preparedness and the Application of the *Hague Convention* with cross-representation between the two groups.
17. 3. All non-governmental organisations operating in the tangible heritage sector, and especially international NGOs in relationship with UNESCO working and relevant regional organisations, should recognise the important role they can play in developing both practical advice and training procedures in relation to the protection of monuments and collections etc. within their respective fields of interest in the face of the risk of both natural and civilian disasters as well as armed conflicts. They should work closely with UNESCO in both developing and actively promoting at the professional level the measures that it is recommended to undertake under Recommendations B.2 to B.7 above.
17. 4. The relevant international, regional and national non-governmental organisations, together with National Commissions of UNESCO, should take an active role in promoting knowledge and acceptance of the 1954 *Convention and Protocol* among their members and their governments, urging both the adoption and active implementation of their provisions, especially in countries which have

---

<sup>314</sup>

Information from the Director-General of ICOMOS, Mr Leo Van Nispen, and from notes of a meeting organised by ICOMOS in Paris on 8 - 9 October 1992 on the protection of the cultural heritage in exceptional circumstances. A *Patrimoine sans Frontières* organisation has already been established under French non-profit organisation law, modelled directly on the very successful *Medécins sans Frontières*, and is researching the possibilities of practical aid programmes and campaigns in respect of international disasters of all kinds. The privately funded ARCH Foundation is also developing a role in this area, and is already active in relation to emergency measures to protect war damaged monuments and collections in the former Yugoslavia.

not yet adopted the *Convention* and/ or which have not yet taken the necessary legal and administrative measures required for its effective implementation.

17. 5. 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, eg. 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.

## Possible amendments to the 1954 Hague Convention

### CHAPTER 18.

#### POSSIBLE FUTURE AMENDMENTS OF THE 1954 CONVENTION

18. 1. Although technical improvements to the detailed provisions of the *Convention* and *Protocol*, are certainly desirable in the long term, these are less urgent at this time than the over-riding priority of achieving greater recognition, acceptance and application of their provisions in the face of current and continuing breaches on the one hand, and the comparatively low level of ratifications on the other. Nevertheless, in the course of this study significant issues have been raised, which ought to be incorporated into the provisions of the 1954 Hague Instruments as soon as circumstances permit, probably by means of an additional *Protocol*, rather than by a revision of the *Convention* itself, though that may be desirable in the future.
18. 2. The present definition of 'cultural property' in the 1954 *Convention* is rather out-of-date and very imprecise. Subsequent UNESCO international instruments, particularly the 1970 and 1972 *Conventions*, and various UNESCO *Recommendations* have adopted what are generally more comprehensive and explicit definitions (though these others are not at all consistent in their wording)<sup>315</sup>. In relation to future Instruments and policy statements it would be desirable for UNESCO to adopt a more consistent approach to definitions, subject of course to the special needs of the particular case. Also, in view of the growing importance of non-traditional catalogue and other record systems for both movable and immovable cultural property, in any future revision of, or Additional Protocol to, the 1954 *Convention*, the definition of 'cultural property' in Article 1 (a) the phrase 'or of reproductions of the property defined above' be replaced by 'or of paper, microform or electronic catalogues, documentation, or copies of the property defined above'.
18. 3. In the 1954 *Convention* legal enforcement and action in respect of eg. alleged 'cultural' war crimes, rests almost entirely with national governments and national legal systems. There is no explicit provision in the *Convention* for the resolution of inter-governmental disputes about its application and interpretation<sup>316</sup>, and it would be desirable to establish some appropriate, relatively simple and quick, means of arbitrating on inter-governmental disputes relating to the application of the 1954 *Convention*.
18. 4. Bearing in mind the precedents of the 1949 *Geneva Conventions* the inclusion of the 'military necessity' exemption was already inappropriate by the time of the 1954 Intergovernmental Conference. It is strongly recommended that in any revision of the primary text of the 1954 *Convention* or in any new Additional Protocol to it, High Contracting Parties should renounce the provisions of Article 3 (2) allowing the waiving of the provisions of the *Convention* in the case of military necessity.

---

<sup>315</sup> See the comparison of definitions used in various UNESCO and other texts in Appendix VI.

<sup>316</sup> Though there is of course always the possibility of recourse to the International Court of Justice in accordance with Chapter XIV of the United Nations *Charter*.

18. 5. It seems clear that the concept of 'Special Protection' in the *Convention* was devised primarily in order to protect a strictly limited number of permanent and temporary shelters and other 'refuges', though it is also possible for High Contracting Parties to propose for 'Special Protection' what are defined as 'centres containing monuments and other immovable cultural property of very great importance'. However, neither definition covers even the most important museums, libraries, archive repositories etc., and 'Special Protection' for these can only be applied for if these happen to be located in zones with outstanding *immovable* cultural property as well. Any future updating should provide for the granting of 'Special Protection' to the world's greatest museums and similar institutions on the basis of the pre-eminent importance of their collections, (providing, of course, it is possible to meet the other requirements for 'Special Protection' - particularly the demilitarising of the surrounding area).
18. 6. There are currently serious problems in relation to the procedures for the appointment of Commissioners-General for Cultural Property, both in general and particularly in relation to situations where there are no nominated Protecting Powers. Changes in this area are needed, with the aim of making the Commissioner-General provisions enforceable on both parties to an armed conflict. However, achieving this would require solutions to difficult problems of international law, and the matter therefore needs to be considered by appropriate experts in international law.
18. 7. In order to improve the understanding and application of the *Hague Convention* there is a need for it to be supported by an Intergovernmental Advisory Committee on the Protection of Cultural Property in the Event of Armed Conflict, modelled on the World Heritage Committee. The proposed terms of reference and composition are outlined in Appendix X of this Report.
18. 8. There are strong arguments for the granting of both 'ordinary' and 'special' protection in times of armed conflict for localities of pre-eminent importance to the natural heritage and the survival of endangered species, such as key nature reserves, conservation parks and especially important collections of live animals and plants. Amongst international organisations both the International Union for the Conservation of Nature and the International Committee of the Red Cross, to give just two examples, are very concerned about the need to provide such protection in international law. However, such sites clearly appear to be quite outside the definition, and indeed the title, of the 1954 *Convention*, and moves in this direction would require extensive international negotiation.
18. 9. Also, the amount of land, in terms of both area and type, that could be subject to protection from military activity would be of a quite different order of magnitude in many cases. While the largest entry on the current *Hague Convention* 'Special Protection' list (the Vatican City 'centre containing monuments') is just 0.44 square kilometres in extent<sup>317</sup>, very many natural sites worthy of international protection extend to many hundreds of square kilometres. If brought within the requirements of a revised *Hague Convention* the size of the areas subject to constraint on the waging of war would be greatly increased, raising the very real possibility of serious military objections, which might weaken the existing protection afforded by the 1954 *Convention*. (To give just one concrete example out of many, the World Heritage List protection of the dry tropical forest in the frontier regions of Costa Rica and Nicaragua applies to more than 80% of the land border between the two countries. Also, the nature of some of the wartime protection mechanisms and expertise and controls that would be required are in relation to natural sites are rather different, (eg. action against pollution from either the fighting forces and weapons themselves and from the destruction of e.g. oil installations, and action to protect flora and fauna

---

<sup>317</sup>

UNESCO *Official Register*, MUS/ BC/ 8 (20) 2/ ...Annexe, entry dated 18/ 1/ 1960.

### **Possible amendments to the 1954 Hague Convention**

during armed conflicts). Consequently, such a change cannot be recommended at the present time, but should instead be the subject of new international negotiations on the issues of principle involved.

- 18.10. In terms of the mechanism for making such changes, the issues relating to the definitions in the *Convention*, to enforcement measures, the extension of the concept of 'Special Protection' and the establishment of the proposed Advisory Committee as an official body under the *Convention*, could probably be dealt with by means of the adoption of an *Additional Protocol*. However, if States Parties wished to pursue the suggested extension of the 1954 *Convention* to cover the natural heritage as well as the cultural heritage, would involve a fundamental change in its underlying purpose, and would probably require a completely new international instrument.



**1954 Hague Convention and Protocol**

**APPENDIX I.**

**TEXTS OF 1954 HAGUE CONVENTION, PROTOCOL AND  
HAGUE CONFERENCE RESOLUTIONS**

**CONVENTION FOR THE PROTECTION OF CULTURAL  
PROPERTY IN THE EVENT OF ARMED CONFLICT  
(THE 'HAGUE CONVENTION')**

**[PREAMBLE]**

The High Contracting Parties,

**Recognizing** that cultural property has suffered grave damage during recent armed conflicts and that, by reason of the developments in the technique of warfare, it is in increasing danger of destruction;

**Being convinced** that damage to cultural property belonging to any people whatsoever means damage to the cultural heritage of all mankind, since each people makes its contribution to the culture of the world;

**Considering** that the preservation of the cultural heritage is of great importance for all peoples of the world and that it is important that this heritage should receive international protection;

**Guided** by the principles concerning the protection of cultural property during armed conflict, as established in the Conventions of The Hague of 1899 and of 1907 and in the Washington Pact of 15 April, 1935;

**Being of the opinion** that such protection cannot be effective unless both national and international measures have been taken to organize it in time of peace;

**Being determined** to take all possible steps to protect cultural property;

Have agreed upon the following provisions:

**Chapter I. General provisions regarding protection**

**Article 1. Definition of cultural property**

For the purposes of the present Convention, the term 'cultural property' shall cover, irrespective of origin or ownership:

- (a) movable or immovable property of great importance to the cultural heritage of every people such as monuments of architecture, art or history, whether religious or secular; archaeological sites; groups of buildings which, as a whole, are of historical or artistic interest; works of art; manuscripts, books and other objects of artistic, historical or archaeological interest; as well as scientific collections and important collections of books or archives or of reproductions of the property defined above;
- (b) buildings whose main and effective purpose is to preserve or exhibit the movable cultural property defined in sub-paragraph (a) such as museums, large libraries

- and depositories of archives, and refuges intended to shelter, in the event of armed conflict, the movable cultural property defined in sub-paragraph (a);
- (c) centres containing a large amount of cultural property as defined in sub-paragraphs (a) and (b), to be known as 'centres containing monuments'.

### **Article 2. Protection of cultural property**

For the purposes of the present Convention, the protection of cultural property shall comprise the safeguarding of and respect for such property.

### **Article 3. Safeguarding of cultural property**

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.

### **Article 4. Respect for cultural property**

1. The High Contracting Parties undertake to respect cultural property situated within their own territory as well as within the territory of other High Contracting Parties by refraining from any use of the property and its immediate surroundings or of the appliances in use for its protection for purposes which are likely to expose it to destruction or damage in the event of armed conflict; and by refraining from any act of hostility directed against such property.
2. The obligations mentioned in paragraph 1 of the present Article may be waived only in cases where military necessity imperatively requires such a waiver.
3. The High Contracting Parties further undertake to prohibit, prevent and, if necessary, put a stop to any form of theft, pillage or misappropriation of, and any acts of vandalism directed against, cultural property. They shall refrain from requisitioning movable cultural property situated in the territory of another High Contracting Party.
4. They shall refrain from any act directed by way of reprisals against cultural property.
5. No High Contracting Party may evade the obligations incumbent upon it under the present Article, in respect of another High Contracting Party, by reason of the fact that the latter has not applied the measures of safeguard referred to in Article 3.

### **Article 5. Occupation**

1. Any High Contracting Party in occupation of the whole or part of the territory of another High Contracting Party shall as far as possible support the, competent national authorities of the occupied country in safeguarding and preserving its cultural property.
2. Should it prove necessary to take measures to preserve cultural property situated in occupied territory and damaged by military operations, and should the competent national authorities be unable to take such measures, the Occupying Power shall, as far as possible, and in close co-operation with such authorities, take the most necessary measures of preservation.
3. Any High Contracting Party whose government is considered their legitimate government by members of a resistance movement, shall, if possible, draw their attention to the obligation to comply with those provisions of the Convention dealing with respect for cultural property.

### **Article 6. Distinctive marking of cultural property**



## **1954 Hague Convention and Protocol**

In accordance with the provisions of Article 16, cultural property may bear a distinctive emblem so as to facilitate its recognition.

### **Article 7. Military measures**

1. The High Contracting Parties undertake to introduce in time of peace into their military regulations or instructions such provisions as may ensure observance of the present Convention, and to foster in the members of their armed forces a spirit of respect for the culture and cultural property of all peoples.

2. The High Contracting Parties undertake to plan or establish in peace-time, within their armed forces, services or specialist personnel whose purpose will be to secure respect for cultural property and to co-operate with the civilian authorities responsible for safeguarding it.

## **Chapter II. Special protection**

### **Article 8. Granting of special protection**

1. There may be placed under special protection a limited number of refuges intended to shelter movable cultural property in the event of armed conflict, of centres containing monuments and other immovable cultural property of very great importance, provided that they:

- (a) are situated at an adequate distance from any large industrial centre or from any important military objective constituting a vulnerable point, such as, for example, an aerodrome, broadcasting station, establishment engaged upon work of national defence, a port or railway station of relative importance or a main line of communication;
- (b) are not used for military purposes.

2. A refuge for movable cultural property may also be placed under special protection, whatever its location, if it is so constructed that, in all probability, it will not be damaged by bombs.

3. A centre containing monuments shall be deemed to be used for military purposes whenever it is used for the movement of military personnel or material, even in transit. The same shall apply whenever activities directly connected with military operations, the stationing of military personnel, or the production of war material are carried on within the centre.

4. The guarding of cultural property mentioned in paragraph 1 above by armed custodians specially empowered to do so, or the presence, in the vicinity of such cultural property, of police forces normally responsible for the maintenance of public order shall not be deemed to be used for military purposes. Protection of cultural property in the event of armed conflict.

5. If any cultural property mentioned in paragraph 1 of the present Article is situated near an important military objective as defined in the said paragraph, it may nevertheless be placed under special protection if the High Contracting Party asking for that protection undertakes, in the event of armed conflict, to make no use of the objective and particularly, in the case of a port, railway station or aerodrome, to divert all traffic therefrom. In that event, such diversion shall be prepared in time of peace.

6. Special protection is granted to cultural property by its entry in the 'International Register of Cultural Property under Special Protection'. This entry shall only be made, in accordance with the provisions of the present Convention and under the conditions provided for in the Regulations for the execution of the Convention.

#### **Article 9. Immunity of cultural property under special protection**

The High Contracting Parties undertake to ensure the immunity of cultural property under special protection by refraining, from the time of entry in the International Register, from any act of hostility directed against such property and, except for the cases provided for in paragraph 5 of Article 8, from any use of such property or its surroundings for military purposes.

#### **Article 10. Identification and control**

During an armed conflict, cultural property under special protection shall be marked with the distinctive emblem described in Article 16, and shall be open to international control as provided for in the Regulations for the execution of the Convention.

#### **Article 11. Withdrawal of immunity**

1. If one of the High Contracting Parties commits, in respect of any item of cultural property under special protection a violation of the obligations under Article 9, the opposing Party shall, so long as this violation persists, be released from the obligation to ensure the immunity of the property concerned. Nevertheless, whenever possible, the latter Party shall first request the cessation of such violation within a reasonable time.

2. Apart from the case provided for in paragraph I of the present Article, immunity shall be withdrawn from cultural property under special protection only in exceptional cases of unavoidable military necessity, and only for such time as that necessity continues. Such necessity can be established only by the officer commanding a force the equivalent of a division in size or larger. Whenever circumstances permit, the opposing Party shall be notified, a reasonable time in advance, of the decision to withdraw immunity.

3. The Party withdrawing immunity shall, as soon as possible, so inform the Commissioner-General for cultural property provided for in the Regulations for the execution of the Convention, in writing, stating the reasons.

### **Chapter III. Transport of cultural property**

#### **Article 12. Transport under special protection**

1. Transport exclusively engaged in the transfer of cultural property, whether within a territory or to another territory, may, at the request of the High Contracting Party concerned, take place under special protection in accordance with the conditions specified in the Regulations for the execution of the Convention.

2. Transport under special protection shall take place under the international supervision provided for in the aforesaid Regulations and shall display the distinctive emblem described in Article 16.

3. The High Contracting Parties shall refrain from any act of hostility directed against transport under special protection.

#### **Article 13. Transport in urgent cases**

## **1954 Hague Convention and Protocol**

1. If a High Contracting Party considers that the safety of certain cultural property requires its transfer and that the matter is of such urgency that the procedure laid down in Article 12 cannot be followed, especially at the beginning of an armed conflict, the transport may display the distinctive emblem described in Article 16, provided that an application for immunity referred to in Article 12 has not already been made and refused. As far as possible, notification of transfer should be made to the opposing Parties. Nevertheless, transport conveying cultural property to the territory of another country may not display the distinctive emblem unless immunity has been expressly granted to it.

2. The High Contracting Parties shall take, so far as possible, the necessary precautions to avoid acts of hostility directed against the transport described in paragraph 1 of the present Article and displaying the distinctive emblem.

### **Article 14. Immunity from seizure, capture and prize**

1. Immunity from seizure, placing in prize, or capture shall be granted to:
  - (a) cultural property enjoying the protection provided for in Article 12 or that provided for in Article 13;
  - (b) the means of transport exclusively engaged in the transfer of such cultural property.
2. Nothing in the present Article shall limit the right of visit and search.

## **Chapter IV. Personnel**

### **Article 15. Personnel**

As far as is consistent with the interests of security, personnel engaged in the protection of cultural property shall, in the interests of such property, be respected and, if they fall into the hands of the opposing Party, shall be allowed to continue to carry out their duties whenever the cultural property for which they are responsible has also fallen into the hands of the opposing Party.

## **Chapter V. The distinctive emblem**

### **Article 16. Emblem of the Convention**

1. The distinctive emblem of the Convention shall take the form of a shield, pointed below, per saltire blue and white (a shield consisting of a royal-blue square, one of the angles of which forms the point of the shield, and of a royal-blue triangle above the square, the space on either side being taken up by a white triangle).

2. The emblem shall be used alone, or repeated three times in a triangular formation (one shield below), under the conditions provided for in Article 17.

### **Article 17. Use of the emblem**

1. The distinctive emblem repeated three times may be used only as a means of identification of:
  - (a) immovable cultural property under special protection;
  - (b) the transport of cultural property under the conditions provided for in Articles 12 and 13;

- (c) improvised refuges, under the conditions provided for in the Regulations for the execution of the Convention.
2. The distinctive emblem may be used alone only as a means of identification of:
    - (a) cultural property not under special protection;
    - (b) the persons responsible for the duties of control in accordance with the Regulations for the execution of the Convention;
    - (c) the personnel engaged in the protection of cultural property;
    - (d) the identity cards mentioned in the Regulations for the execution of the Convention.
  3. During an armed conflict, the use of the distinctive emblem in any other cases than those mentioned in the preceding paragraphs of the present Article, and the use for any purpose whatever of a sign resembling the distinctive emblem, shall be forbidden.
  4. The distinctive emblem may not be placed on any immovable cultural property unless at the same time there is displayed an authorization duly dated and signed by the competent authority of the High Contracting Party.

## **Chapter VI. Scope of application of the Convention**

### **Article 18. Application of the Convention**

1. Apart from the provisions which shall take effect in time of peace, the present Convention shall apply in the event of declared war or of any other armed conflict which may arise between two or more of the High Contracting Parties, even if the state of war is not recognized by one or more of them.
2. The Convention shall also apply to all cases of partial or total occupation of the territory of a High Contracting Party, even if the said occupation meets with no armed resistance.
3. If one of the Powers in conflict is not a Party to the present Convention, the Powers which are Parties thereto shall nevertheless remain bound by it in their mutual relations. They shall furthermore be bound by the Convention, in relation to the said Power, if the latter has declared that it accepts the provisions thereof and so long as it applies them.

### **Article 19. Conflicts not of an international character**

1. In the event of an armed conflict not of an international character occurring within the territory of one of the High Contracting Parties, each party to the conflict shall be bound to apply, as a minimum, the provisions of the present Convention which relate to respect for cultural property.
2. The parties to the conflict shall endeavour to bring into force, by means of special agreements, all or part of the other provisions of the present Convention.
3. The United Nations Educational, Scientific and Cultural Organization may offer its services to the parties to the conflict.
4. The application of the preceding provisions shall not affect the legal status of the parties to the conflict.

## **1954 Hague Convention and Protocol**

### **Chapter VII. Execution of the Convention**

#### **Article 20. Regulations for the execution of the Convention**

The procedure by which the present Convention is to be applied is defined in the Regulations for its execution, which constitute an integral part thereof.

#### **Article 21. Protecting powers**

The present Convention and the Regulations for its execution shall be applied with the co-operation of the Protecting Powers responsible for safeguarding the interests of the Parties to the conflict.

#### **Article 22. Conciliation procedure**

1. The Protecting Powers shall lend their good offices in all cases where they may deem it useful in the interests of cultural property, particularly if there is disagreement between the Parties to the conflict as to the application or interpretation of the provisions of the present Convention or the Regulations for its execution.
2. For this purpose, each of the Protecting Powers may, either at the invitation of one Party, of the Director-General of the United Nations Educational, Scientific and Cultural Organization, or on its own initiative, propose to the Parties to the conflict a meeting of their representatives, and in particular of the authorities responsible for the protection of cultural property, if considered appropriate on suitably chosen neutral territory. The Parties to the conflict shall be bound to give effect to the proposals for meeting made to them. The Protecting Powers shall propose for approval by the Parties to the conflict a person belonging to a neutral Power or a person presented by the Director-General of the United Nations Educational, Scientific and Cultural Organization, which person shall be invited to take part in such a meeting in the capacity of Chairman.

#### **Article 23. Assistance of Unesco**

1. The High Contracting Parties may call upon the United Nations Educational, Scientific and Cultural Organization for technical assistance in organizing the protection of their cultural property, or in connection with any other problem arising out of the application of the present Convention or the Regulations for its execution. The Organization shall accord such assistance within the limits fixed by its programme and by its resources.
2. The Organization is authorized to make, on its own initiative, proposals on this matter to the High Contracting Parties.

#### **Article 24. Special agreements**

1. The High Contracting Parties may conclude special agreements for all matters concerning which they deem it suitable to make separate provision.
2. No special agreement may be concluded which would diminish the protection afforded by the present Convention to cultural property and to the personnel engaged in its protection.

#### **Article 25. Dissemination of the Convention**

The High Contracting Parties undertake, in time of peace as in time of armed conflict, to disseminate the text of the present Convention and the Regulations for its execution as

widely as possible in their respective countries. They undertake, in particular, to include the study thereof in their programmes of military and, if possible, civilian training, so that its principles are made known to the whole population, especially the armed forces and personnel engaged in the protection of cultural property.

#### **Article 26. Translations reports**

1. The High Contracting Parties shall communicate to one another, through the Director-General of the United Nations Educational, Scientific and Cultural Organization, the official translations of the present Convention and of the Regulations for its execution.
2. Furthermore, at least once every four years, they shall forward to the Director-General a report giving whatever information they think suitable concerning any measures being taken, prepared or contemplated by their respective administrations in fulfilment of the present Convention and of the Regulations for its execution.

#### **Article 27. Meetings**

1. The Director-General of the United Nations Educational, Scientific and Cultural Organization may, with the approval of the Executive Board, convene meetings of representatives of the High Contracting Parties. He must convene such a meeting if at least one-fifth of the High Contracting Parties so request.
2. Without prejudice to any other functions which have been conferred on it by the present Convention or the Regulations for its execution, the purpose of the meeting will be to study problems concerning the application of the Convention and of the Regulations for its execution, and to formulate recommendations in respect thereof.
3. The meeting may further undertake a revision of the Convention or the Regulations for its execution if the majority of the High Contracting Parties are represented, and in accordance with the provisions of Article 39.

#### **Article 28. Sanctions**

The High Contracting Parties undertake to take, within the framework of their ordinary criminal jurisdiction, all necessary steps to prosecute and impose penal or disciplinary sanctions upon those persons, of whatever nationality, who commit or order to be committed a breach of the present Convention.

### **Final provisions**

#### **Article 29. Languages**

1. The present Convention is drawn up in English, French, Russian and Spanish, the four texts being equally authoritative.
2. The United Nations Educational, Scientific and Cultural Organization shall arrange for translations of the Convention into the other official languages of its General Conference.

#### **Article 30. Signature**

The present Convention shall bear the date of 14 May, 1954 and, until the date of 31 December, 1954, shall remain open for signature by all States invited to the Conference which met at The Hague from 21 April, 1954 to 14 May, 1954.

## **1954 Hague Convention and Protocol**

### **Article 31. Ratification**

1. The present Convention shall be subject to ratification by signatory States in accordance with their respective constitutional procedures.
2. The instruments of ratification shall be deposited with the Director-General of the United Nations Educational, Scientific and Cultural Organization.

### **Article 32. Accession**

From the date of its entry into force, the present Convention shall be open for accession by all States mentioned in Article 30 which have not signed it, as well as any other State invited to accede by the Executive Board of the United Nations Educational, Scientific and Cultural Organization. Accession shall be effected by the deposit of an instrument of accession with the Director-General of the United Nations Educational, Scientific and Cultural Organization.

### **Article 33. Entry into force**

1. The present Convention shall enter into force three months after five instruments of ratification have been deposited.
2. Thereafter, it shall enter into force, for each High Contracting Party, three months after the deposit of its instrument of ratification or accession.
3. The situations referred to in Articles 18 and 19 shall give immediate effect to ratifications or accessions deposited by the Parties to the conflict either before or after the beginning of hostilities or occupation. In such cases the Director-General of the United Nations Educational, Scientific and Cultural Organization shall transmit the communications referred to in Article 38 by the speediest method.

### **Article 34. Effective application**

1. Each State Party to the Convention on the date of its entry into force shall take all necessary measures to ensure its effective application within a period of six months after such entry into force.  
Protection of cultural property in the event of armed conflict
2. This period shall be six months from the date of deposit of the instruments of ratification or accession for any State which deposits its instrument of ratification or accession after the date of the entry into force of the Convention,

### **Article 35. Territorial extension of the Convention**

Any High Contracting Party may, at the time of ratification or accession, or at any time thereafter, declare by notification addressed to the Director-General of the United Nations Educational, Scientific and Cultural Organization, that the present Convention shall extend to all or any of the territories for whose international relations it is responsible, The said notification shall take effect three months after the date of its receipt.

### **Article 36. Relation to previous conventions**

1. In the relations between Powers which are bound by the Conventions of The Hague concerning the Laws and Customs of War on Land (IV) and concerning Naval Bombardment in Time of War (IX), whether those of 29 July, 1899 or those of 18 October, 1907, and which are Parties to the present Convention, this last Convention shall be supplementary to the aforementioned Convention (IX) and to the Regulations annexed to

the aforementioned Convention (IV) and shall substitute for the emblem described in Article 5 of the aforementioned Convention (IX) the emblem described in Article 16 of the present Convention. in cases in which the present Convention and the Regulations for its execution provide for the use of this distinctive emblem.

2. In the relations between Powers which are bound by the Washington Pact of 15 April, 1935 for the Protection of Artistic and Scientific Institutions and of Historic Monuments (Roerich Pact) and which are Parties to the present Convention, the latter Convention shall be supplementary to the Roerich Pact and shall substitute for the distinguishing flag described in Article III of the Pact the emblem defined in Article 16 of the present Convention, in cases in which the present Convention and the Regulations for its execution provide for the use of this distinctive emblem,

### **Article 37. Denunciation**

1. Each High Contracting Party may denounce the present Convention, on its own behalf, or on behalf of any territory for whose international relations it is responsible.
2. The denunciation shall be notified by an instrument in writing, deposited with the Director-General of the United Nations Educational, Scientific and Cultural Organization.
3. The denunciation shall take effect one year after the receipt of the instrument of denunciation. However, if, on the expiry of this period, the denouncing Party is involved in an armed conflict, the denunciation shall not take effect until the end of hostilities, or until the operations of repatriating cultural property are completed, whichever is the later.

### **Article 38. Notifications**

The Director-General of the United Nations Educational, Scientific and Cultural Organization shall inform the States referred to in Articles 30 and 32, as well as the United Nations, of the deposit of all the instruments of ratification, accession or acceptance provided for in Articles 31, 32 and 39 and of the notifications and denunciations provided for respectively in Articles 35, 37 and 39.

### **Article 39. Revision of the Convention and of the Regulations for its execution**

1. Any High Contracting Party may propose amendments to the present Convention or the Regulations for its execution. The text of any proposed amendment shall be communicated to the Director-General of the United Nations Educational, Scientific and Cultural Organization who shall transmit it to each High Contracting Party with the request that such Party reply within four months stating whether it:
  - (a) desires that a Conference be convened to consider the proposed amendment:
  - (b) favours the acceptance of the proposed amendment without a Conference; or
  - (c) favours the rejection of the proposed amendment without a Conference.
2. The Director-General shall transmit the replies, received under paragraph I of the present Article, to all High Contracting Parties.
3. If all the High Contracting Parties which have, within the prescribed time-limit, stated their views to the Director-General of the United Nations Educational, Scientific and Cultural Organization, pursuant to paragraph I(b) of this Article, inform him that they favour acceptance of the amendment without a Conference, notification of their decision shall be made by the Director-General in accordance with Article 38. The amendment shall become effective for all the High Contracting Parties on the expiry of ninety days from the date of such notification.



## **1954 Hague Convention and Protocol**

4. The Director-General shall convene a Conference of the High Contracting Parties to consider the proposed amendment if requested to do so by more than one-third of the High Contracting Parties.
5. Amendments to the Convention or to the Regulations for its execution, dealt with under the provisions of the preceding paragraph, shall enter into force only after they have been unanimously adopted by the High Contracting Parties represented at the Conference and accepted by each of the High Contracting Parties.
6. Acceptance by the High Contracting Parties of amendments to the Convention or to the Regulations for its execution, which have been adopted by the Conference mentioned in paragraphs 4 and 5, shall be effected by the deposit of a formal instrument with the Director-General of the United Nations Educational, Scientific and Cultural Organization.
7. After the entry into force of amendments to the present Convention or to the Regulations for its execution, only the text of the Convention or of the Regulations for its execution thus amended shall remain open for ratification or accession.

### **Article 40. Registration**

In accordance with Article 102 of the Charter of the United Nations, the present Convention shall be registered with the Secretariat of the United Nations at the request of the Director-General of the United Nations Educational, Scientific and Cultural Organization.

IN FAITH WHEREOF the undersigned, duly authorized, have signed the present Convention.

Done at The Hague, this fourteenth day of May, 1954, in a single copy which shall be deposited in the archives of the United Nations Educational, Scientific and Cultural Organization, and certified true copies of which shall be delivered to all the States referred to in Articles 30 and 32 as well as to the United Nations.

-----

## **Regulations for the Execution of the Convention for the Protection of Cultural Property in the Event of Armed Conflict**

### **Chapter I. Control**

#### **Article 1. International list of persons**

On the entry into force of the Convention, the Director-General of the United Nations Educational, Scientific and Cultural Organization shall compile an international list consisting of all persons nominated by the High Contracting Parties as qualified to carry out the functions of Commissioner-General for Cultural Property. On the initiative of the Director-General of the United Nations Educational, Scientific and Cultural Organization, this list shall be periodically revised on the basis of requests formulated by the High Contracting Parties.

#### **Article 2. Organization of control**

As soon as any High Contracting Party is engaged in an armed conflict to which Article 18 of the Convention applies:

- (a) It shall appoint a representative for cultural property situated in its territory; if it is in occupation of another territory, it shall appoint a special representative for cultural property situated in that territory;
- (b) The Protecting Power acting for each of the Parties in conflict with such High Contracting Party shall appoint delegates accredited to the latter in conformity with Article 3 below;
- (c) A Commissioner-General for Cultural Property shall be appointed to such High Contracting Party in accordance with Article 4.

### **Article 3. Appointment of delegates of Protecting Powers**

The Protecting Power shall appoint its delegates from among the members of its diplomatic or consular staff or, with the approval of the Party to which they will be accredited, from among other persons.

### **Article 4. Appointment of Commissioner-General**

1. The Commissioner-General for Cultural Property shall be chosen from the international list of persons by joint agreement between the Party to which he will be accredited and the Protecting Powers acting on behalf of the opposing Parties.
2. Should the Parties fail to reach agreement within three weeks from the beginning of their discussions on this point, they shall request the President of the International Court of Justice to appoint the Commissioner-General, who shall not take up his duties until the Party to which he is accredited has approved his appointment.

### **Article 5. Functions of delegates**

The delegates of the Protecting Powers shall take note of violations of the Convention, investigate, with the approval of the Party to which they are accredited, the circumstances in which they have occurred, make representations locally to secure their cessation and, if necessary, notify the Commissioner-General of such violations. They shall keep him informed of their activities.

### **Article 6. Functions of the Commissioner-General**

1. The Commissioner-General for Cultural Property shall deal with all matters referred to him in connection with the application of the Convention, in conjunction with the representative of the Party to which he is accredited and with the delegates concerned.
2. He shall have powers of decision and appointment in the cases specified in the present Regulations.
3. With the agreement of the Party to which he is accredited, he shall have the right to order an investigation or to conduct it himself.
4. He shall make any representations to the Parties to the conflict or to their Protecting Powers which he deems useful for the application of the Convention.
5. He shall draw up such reports as may be necessary on the application of the Convention and communicate them to the Parties concerned and to their Protecting Powers. He shall send copies to the Director-General of the United

## **1954 Hague Convention and Protocol**

Nations Educational, Scientific and Cultural Organization, who may make use only of their technical contents.

6. If there is no Protecting Power, the Commissioner-General shall exercise the functions of the Protecting Power as laid down in Articles 21 and 22 of the Convention.

### **Article 7. Inspectors and experts**

1. Whenever the Commissioner-General for Cultural Property considers it necessary, either at the request of the delegates concerned or after consultation with them, he shall propose, for the approval of the Party to which he is accredited, an inspector of cultural property to be charged with a specific mission. An inspector shall be responsible only to the Commissioner-General.

2. The Commissioner-General, delegates and inspectors may have recourse to the services of experts, who will also be proposed for the approval of the Party mentioned in the preceding paragraph.

### **Article 8. Discharge of the mission of control**

The Commissioners-General for Cultural Property, delegates of the Protecting Powers, inspectors and experts shall in no case exceed their mandates. In particular, they shall take account of the security needs of the High Contracting Party to which they are accredited and shall in all circumstances act in accordance with the requirements of the military situation as communicated to them by that High Contracting Party.

### **Article 9. Substitutes for Protecting Powers**

If a Party to the conflict does not benefit or ceases to benefit from the activities of a Protecting Power, a neutral State may be asked to undertake those functions of a Protecting Power which concern the appointment of a Commissioner-General for Cultural Property in accordance with the procedure laid down in Article 4 above. The Commissioner-General thus appointed shall, if need be, entrust to inspectors the functions of delegates of Protecting Powers as specified in the present Regulations.

### **Article 10. Expenses**

The remuneration and expenses of the Commissioner-General for Cultural Property, inspectors and experts shall be met by the Party to which they are accredited. Remuneration and expenses of delegates of the Protecting Powers shall be subject to agreement between those Powers and the States whose interests they are safeguarding.

## **Chapter II: Special Protection**

### **Article 11. Improvised Refuges**

1. If during an armed conflict, and High Contracting Party is induced by unforeseen circumstances to set up an improvised refuge and desires that it should be placed under special protection, it shall communicate this fact to the Commissioner-General accredited to that Party.

2. If the Commissioner-General considers that such a measure is justified by the circumstances and by the importance of the cultural property sheltered in this improvised refuge, he may authorize the High Contracting Party to display on such a refuge the distinctive emblem defined in Article 16 of the Convention. He shall communicate his

decision without delay to the delegates of the Protecting Powers who are concerned, each of whom may, within a time-limit of thirty days, order the immediate withdrawal of the emblem.

3. As soon as such delegates have signified their agreement or if the time-limit of thirty days has passed without any of the delegates concerned having made an objection, and if, in the view of the Commissioner-General, the refuge fulfils the conditions laid down in Article 8 of the Convention, the Commissioner-General shall request the Director-General of the United Nations Educational, Scientific and Cultural Organization to enter the refuge in the Register of Cultural Property under Special Protection.

#### **Article 12. International Register of Cultural Property under Special Protection**

1. An 'International Register of Cultural Property under Special Protection' shall be prepared.

2. The Director-General of the United Nations Educational, Scientific and Cultural Organization shall maintain this Register. He shall furnish copies to the Secretary-General of the United Nations and to the High Contracting Parties.

3. The Register shall be divided into sections, each in the name of a High Contracting Party. Each section shall be subdivided into three paragraphs, headed: Refuges, Centres containing Monuments, Other Immovable Cultural Property. The Director-General shall determine what details each section shall contain.

#### **Article 13. Requests for registration**

1. Any High Contracting Party may submit to the Director-General of the United Nations Educational, Scientific and Cultural Organization an application for the entry in the Register of certain refuges, centres containing monuments or other immovable cultural property situated within its territory. Such application shall contain a description of the location of such property and shall certify that the property complies with the provisions of Article 8 of the Convention.

2. In the event of occupation, the Occupying Power shall be competent to make such application.

3. The Director-General of the United Nations Educational, Scientific and Cultural Organization shall, without delay, send copies of applications for registration to each of the High Contracting Parties.

#### **Article 14. Objections**

1. Any High Contracting Party may, by letter addressed to the Director-General of the United Nations Educational, Scientific and Cultural Organization, lodge an objection to the registration of cultural property. This letter must be received by him within four months of the day on which he sent a copy of the application for registration.

2. Such objection shall state the reasons giving rise to it, the only valid grounds being that:

- (a) the property is not cultural property;
- (b) the property does not comply with the conditions mentioned in Article 8 of the Convention.

3. The Director-General shall send a copy of the letter of objection to the High Contracting Parties without delay. He shall, if necessary, seek the advice of the

## **1954 Hague Convention and Protocol**

International Committee on Monuments, Artistic and Historical Sites and Archaeological Excavations and also, if he thinks fit, of any other competent organization or person.

4. The Director-General, or the High Contracting Party requesting registration, may make whatever representations they deem necessary to the High Contracting Parties which lodged the objection, with a view to causing the objection to be withdrawn.

5. If a High Contracting Party which has made an application for registration in time of peace becomes involved in an armed conflict before the entry has been made, the cultural property concerned shall at once be provisionally entered in the Register, by the Director-General, pending the confirmation, withdrawal or cancellation of any objection that may be, or may have been, made.

6. If, within a period of six months from the date of receipt of the letter of objection, the Director-General has not received from the High Contracting Party lodging the objection a communication stating that it has been withdrawn, the High Contracting Party applying for registration may request arbitration in accordance with the procedure in the following paragraph

7. The request for arbitration shall not be made more than one year after the date of receipt by the Director-General of the letter of objection. Each of the two Parties to the dispute shall appoint an arbitrator. When more than one objection has been lodged against an application for registration, the High Contracting Parties which have lodged the objections shall, by common consent, appoint a single arbitrator. These two arbitrators shall select a chief arbitrator from the international list mentioned in Article I of the present Regulations. If such arbitrators cannot agree upon their choice, they shall ask the President of the International Court of Justice to appoint a chief arbitrator who need not necessarily be chosen from the international list. The arbitral tribunal thus constituted shall fix its own procedure. There shall be no appeal from its decisions.

8. Each of the High Contracting Parties may declare, whenever a dispute to which it is a Party arises, that it does not wish to apply the arbitration procedure provided for in the preceding paragraph. In such cases, the objection to an application for registration shall be submitted by the Director-General to the High Contracting Parties. The objection will be confirmed only if the High Contracting Parties so decide by a two-third majority of the High Contracting Parties voting. The vote shall be taken by correspondence, unless the Director-General of the United Nations Educational, Scientific and Cultural Organization deems it essential to convene a meeting under the powers conferred upon him by Article 27 of the Convention. If the Director-General decides to proceed with the vote by correspondence, he shall invite the High Contracting Parties to transmit their votes by sealed letter within six months from the day on which they were invited to do so.

### **Article 15. Registration**

1. The Director-General of the United Nations Educational, Scientific and Cultural Organization shall cause to be entered in the Register, under a serial number, each item of property for which application for registration is made, provided that he has not received an objection within the time-limit prescribed in paragraph I of Article 14.

2. If an objection has been lodged, and without prejudice to the provision of paragraph 5 of Article 14, the Director-General shall enter property in the Register only if the objection has been withdrawn or has failed to be confirmed following the procedures laid down in either paragraph 7 or paragraph 8 of Article 14.

3. Whenever paragraph 3 of Article 11 applies, the Director-General shall enter property in the Register if so requested by the Commissioner-General for Cultural Property.

4. The Director-General shall send without delay to the Secretary-General of the United Nations, to the High Contracting Parties, and, at the request of the Party applying for registration, to all other States referred to in Articles 30 and 32 of the Convention, a certified copy of each entry in the Register. Entries shall become effective thirty days after despatch of such copies.

#### **Article 16. Cancellation**

1. The Director-General of the United Nations Educational Scientific and Cultural Organization shall cause the registration of any property to be cancelled:

- (a) at the request of the High Contracting Party within whose territory the cultural property is situated;
- (b) if the High Contracting Party which requested registration has denounced the Convention, and when that denunciation has taken effect;
- (c) in the special case provided for in Article 14, paragraph 5, when an objection has been confirmed following the procedures mentioned either in paragraph 7 or in paragraph 8 or Article 14.

2. The Director-General shall send without delay, to the Secretary-General of the United Nations and to all States which received a copy of the entry in the Register, a certified copy of its cancellation. Cancellation shall take effect thirty days after the despatch of such copies.

### **Chapter III. Transport of cultural property**

#### **Article 17. Procedure to obtain immunity**

1. The request mentioned in paragraph I of Article 12 of the Convention shall be addressed to the Commissioner-General for Cultural Property. It shall mention the reasons on which it is based and specify the approximate number and the importance of the objects to be transferred, their present location, the location now envisaged, the means of transport to be used, the route to be followed, the date proposed for the transfer, and any other relevant information.

2. If the Commissioner-General, after taking such opinions as he deems fit, considers that such transfer is justified, he shall consult those delegates of the Protecting Powers who are concerned, on the measures proposed for carrying it out. Following such consultation, he shall notify the Parties to the conflict concerned of the transfer, including in such notification all useful information.

3. The Commissioner-General shall appoint one or more inspectors, who shall satisfy themselves that only the property stated in the request is to be transferred and that the transport is to be by the approved methods and bears the distinctive emblem. The inspector or inspectors shall accompany the property to its destination.

#### **Article 18. Transport abroad**

Where the transfer under special protection is to the territory of another country, it shall be governed not only by Article 12 of the Convention and by Article 17 of the present Regulations, but by the following further provisions:

- (a) while the cultural property remains on the territory of another State, that State shall be its depositary and shall extend to it as great a measure of care as that which it bestows upon its own cultural property of comparable importance;

## **1954 Hague Convention and Protocol**

- (b) the depositary State shall return the property only on the cessation of the conflict; such return shall be effected within six months from the date on which it was requested;
- (c) during the various transfer operations, and while it remains on the territory of another State, the cultural property shall be exempt from confiscation and may not be disposed of either by the depositor or by the depositary. Nevertheless, when the safety of the property requires it, the depositary may, with the assent of the depositor, have the property transported to the territory of a third country, under the conditions laid down in the present article;
- (d) the request for special protection shall indicate that the State to whose territory the property is to be transferred accepts the provisions of the present Article.

### **Article 19. Occupied territory**

Whenever a High Contracting Party occupying territory of another High Contracting Party transfers cultural property to a refuge situated elsewhere in that territory, without being able to follow the procedure provided for in Article 17 of the Regulations, the transfer in question shall not be regarded as misappropriation within the meaning of Article 4 of the Convention, provided that the Commissioner-General for Cultural Property certifies in writing, after having consulted the usual custodians, that such transfer was rendered necessary by circumstances.

## **Chapter IV. The distinctive emblem**

### **Article 20. Affixing of the emblem**

1. The placing of the distinctive emblem and its degree of visibility shall be left to the discretion of the competent authorities of each High Contracting Party. It may be displayed on flags or armlets; it may be painted on an object or represented in any other appropriate form.
2. However, without prejudice to any possible fuller markings, the emblem shall, in the event of armed conflict and in the cases mentioned in Articles 12 and 13 of the Convention, be placed on the vehicles of transport so as to be clearly visible in daylight from the air as well as from the ground. The emblem shall be visible from the ground:
  - (a) at regular intervals sufficient to indicate clearly the perimeter of a centre containing monuments under special protection;
  - (b) at the entrance to other immovable cultural property under special protection.

### **Article 21. Identification of persons**

1. The persons in Article 17, paragraph 2(b) and (c) of the Convention may wear an armlet bearing the distinctive emblem, issued and stamped by the competent authorities.
2. Such persons shall carry a special identity card bearing the distinctive emblem. This card shall mention at least the surname and first names, the date of birth, the title or rank, and the function of the holder. The card shall bear the photograph of the holder as well as his signature or his fingerprints, or both. It shall bear the embossed stamp of the competent authorities.

3. Each High Contracting Party shall make out its own type of identity card, guided by the model annexed, by way of example, to the present Regulations. The High Contracting Parties shall transmit to each other a specimen of the model they are using. Identity cards shall be made out, if possible, at least in duplicate, one copy being kept by the issuing Power.

4. The said persons may not, without legitimate reason, be deprived of their identity card or of the right to wear the armband.

-----

**PROTOCOL FOR THE PROTECTION OF CULTURAL  
PROPERTY IN THE EVENT OF ARMED CONFLICT  
(THE `HAGUE PROTOCOL)**

The High Contracting Parties are agreed as follows:

**I.**

1. Each High Contracting Party undertakes to prevent the exportation, from a territory occupied by it during an armed conflict, of cultural property as defined in Article I of the Convention for the Protection of Cultural Property in the Event of Armed Conflict, signed at The Hague on 14 May, 1954,

2. Each High Contracting Party undertakes to take into its custody cultural property imported into its territory either directly or indirectly from any occupied territory, This shall either be effected automatically upon the importation of the property or, failing this, at the request of the authorities of that territory.

3. Each High Contracting Party undertakes to return, at the close of hostilities, to the competent authorities of the territory previously occupied, cultural property which is in its territory, if such property has been exported in contravention of the principle laid down in the first paragraph. Such property shall never be retained as war reparations.

4. The High Contracting Party whose obligation it was to prevent the exportation of cultural property from the territory occupied by it, shall pay an indemnity to the holders in good faith of any cultural property which has to be returned in accordance with the preceding paragraph.

**II.**

5. Cultural property coming from the territory of a High Contracting Party and deposited by it in the territory of another High Contracting Party for the purpose of protecting such property against the dangers of an armed conflict, shall be returned by the latter, at the end of hostilities, to the competent authorities of the territory from which it came.

**III.**

6. The present Protocol shall bear the date of 14 May, 1954 and, until the date of 31 December, 1954, shall remain open for signature by all States invited to the Conference which met at The Hague from 21 April, 1954 to 14 May, 1954.

7. (a) The present Protocol shall be subject to ratification by signatory States in accordance with their respective constitutional procedures.



## 1954 Hague Convention and Protocol

(b) The instruments of ratification shall be deposited with the Director-General of the United Nations Educational, Scientific and Cultural Organization.

8. From the date of its entry into force, the present Protocol shall be open for accession by all States mentioned in paragraph 6 which have not signed it as well as any other State invited to accede by the Executive Board of the United Nations Educational, Scientific and Cultural Organization. Accession shall be effected by the deposit of an instrument of accession with the Director-General of the United Nations Educational, Scientific and Cultural Organization.

9. The States referred to in paragraphs 6 and 8 may declare, at the time of signature, ratification or accession, that they will not be bound by the provisions of Section I or by those of Section 11 of the present Protocol.

10. (a) The present Protocol shall enter into force three months after five instruments of ratification have been deposited.

(b) Thereafter, it shall enter into force, for each High Contracting Party, three months after the deposit of its instrument of ratification or accession.

(c) The situations referred to in Articles 18 and 19 of the Convention for the Protection of Cultural Property in the Event of Armed Conflict, signed at The Hague on 14 May, 1954, shall give immediate effect to ratifications and accessions deposited by the Parties to the conflict either before or after the beginning of hostilities or occupation. In such cases, the Director-General of the United Nations Educational, Scientific and Cultural Organization shall transmit the communications referred to in paragraph 14 by the speediest method.

11. (a) Each State Party to the Protocol on - the date of its entry into force shall take all necessary measures to ensure its effective application within a period of six months after such entry into force.

(b) This period shall be six months from the date of deposit of the instruments of ratification or accession for any State which deposits its instrument of ratification or accession after the date of the entry into force of the Protocol.

12. Any High Contracting Party may, at the time of ratification or accession, or at any time thereafter, declare by notification addressed to the Director-General of the United Nations Educational, Scientific and Cultural Organization, that the present Protocol shall extend to all or any of the territories for whose international relations it is responsible. The said notification shall take effect three months after the date of its receipt.

13. (a) Each High Contracting Party may denounce the present Protocol on Its own behalf, or on behalf of any territory for whose international relations it is responsible.

(b) The denunciation shall be notified by an instrument in writing, deposited with the Director-General of the United Nations Educational, Scientific and Cultural Organization.

(c) The denunciation shall take effect one year after receipt of the instrument of denunciation. However, if, on the expiry of this period, the denouncing Party is involved in an armed conflict, the denunciation shall not take effect until the end of hostilities, or until the operations of repatriating cultural property are completed, whichever is the later.

14. The Director-General of the United Nations Educational, Scientific and Cultural Organization shall inform the States referred to in paragraphs 6 and 8, as well as the United Nations, of the deposit of all the instruments of ratification, accession or acceptance provided for in paragraphs 7, 8 and 15 and the notifications and denunciations provided for respectively in paragraphs 12 and 13.

15. (a) The present Protocol may be revised if revision is requested by more than one-third of the High Contracting Parties.

(b) The Director-General of the United Nations Educational, Scientific and Cultural Organization shall convene a Conference for this purpose.

Protection of cultural property in the event of armed conflict (protocol)

(c) Amendments to the present Protocol shall enter into force only after they have been unanimously adopted by the High Contracting Parties represented at the Conference and accepted by each of the High Contracting Parties.

(d) Acceptance by the High Contracting Parties of amendments to the present Protocol, which have been adopted by the Conference mentioned in sub-paragraphs (b) and (c), shall be effected by the deposit of a formal instrument with the Director-General of the United Nations Educational, Scientific and Cultural Organization.

(e) After the entry into force of amendments to the present Protocol, only the text of the said Protocol thus amended shall remain open for ratification or accession.

In accordance with Article 102 of the Charter of the United Nations, the t present Protocol shall be registered with the Secretariat of the United Nations at the request of the Director-General of the United Nations Educational, Scientific and Cultural Organization.

IN FAITH WHEREOF the undersigned, duly authorized, have signed the present Protocol.

Done at The Hague, this fourteenth day of May, 1954, in English, French, Russian and Spanish, the four texts being equally authoritative, in a single copy which shall be deposited in the archives of the United Nations Educational, Scientific and Cultural Organization, and certified true copies of which shall be delivered to all the States referred to in paragraphs 6 and 8 as well as to the United Nations.

-----

## **RESOLUTIONS OF THE 1954 HAGUE CONFERENCE**

### **Resolution I**

The Conference expresses the hope that the competent organs of the United Nations should decide, in the event of military action being taken in implementation of the Charter, to ensure application of the provisions of the Convention by the armed forces taking part in such action.

### **Resolution II**

The Conference expresses the hope that each of the High Contracting Parties, on acceding to the Convention, should set up, within the framework of its constitutional and administrative system, a national advisory committee consisting of a small number of distinguished persons: for example, senior officials of archaeological services, museums, etc., a representative of the military general staff, a representative of the Ministry of Foreign Affairs a specialist in international law and two or three other members whose official duties or specialized knowledge are related to the fields covered by the Convention. The Committee should be under the authority of the minister of State or senior official responsible for the national service chiefly concerned with the care of cultural property. Its chief functions would be:

- a) to advise the government concerning the measures required for the implementation of the Convention in its legislative, technical or military aspects, both in time of peace and during an armed conflict;
- (b) to approach its government in the event of an armed conflict or when such a conflict appears imminent, with a view to ensuring that cultural property situated

**1954 Hague Convention and Protocol**

- within its own territory or within that of other countries is known to, and respected and protected by the armed forces of the country, in accordance with the provisions of the Convention;
- (c) to arrange, in agreement with its government, for liaison and co-operation with other similar national committees and with any competent international authority.

**Resolution III**

The Conference expresses the hope that the Director-General of the United Nations Educational, Scientific and Cultural Organization should convene, as soon as possible after the entry into force of the Convention for the Protection of Cultural Property in the Event of Armed Conflict, a meeting of the High Contracting Parties.



**Parties to the Hague Convention**

**APPENDIX II**

**PARTIES TO 1954 HAGUE CONVENTION AND OTHER  
INTERNATIONAL TREATIES, JUNE 1993**

**KEY:**

- Y = Yes  
 ASSOC. = Associate Member of UNESCO  
 R = Ratified by this State  
 A = Acceded to by this State  
 AC = Accepted by this State (World Heritage Convention only)  
 S = Adopted by this State (as successor to previous State)

<i>COUNTRY</i>	<i>U.N. MEMBER</i>	<i>UNESCO MEMBER</i>	<i>HAGUE CON- VENTION</i>	<i>HAGUE PROTO- COL</i>	<i>WORLD HERITAGE CONV.</i>
AFGHANISTAN	Y	Y	-	-	R
ALBANIA	Y	Y	A	A	R
ALGERIA	Y	Y	-	-	R
ANGLOLA	Y	Y	-	-	R
ANTIGUA AND BAR- BUDA	Y	Y	-	-	AC
ARGENTINA	Y	Y	A	-	AC
ARMENIA	Y	Y	-	-	-
ARUBA	-	ASSOC.	-	-	-
AUSTRALIA	Y	Y	R	-	R
AUSTRIA	Y	Y	R	R	R
AZERBAIJAN	Y	Y	S	-	-
BAHAMAS	Y	Y	-	-	-
BAHRAIN	Y	Y	-	-	R
BANGLADESH	Y	Y	-	-	AC
BARBADOS	Y	Y	-	-	-
BELARUS	Y	Y	R	R	R
BELGIUM	Y	Y	R	R	-
BELIZE	Y	Y	-	-	R
BENIN	Y	Y	-	-	R
BHUTAN	Y	Y	-	-	-
BOLIVIA	Y	Y	-	-	R

<i>COUNTRY</i>	<i>U.N. MEMBER</i>	<i>UNESCO MEMBER</i>	<i>HAGUE CONVENTI ON</i>	<i>HAGUE PROTO- COL</i>	<i>WORLD HERITAGE CONV.</i>
BOSNIA AND HERZ- OGOVIA	Y	Y	-	-	-
BOTSWANA	Y	Y	-	-	-
BRAZIL	Y	Y	R	R	AC
BRITISH VIRGIN ISLANDS	-	ASSOC.	-	-	-
BRUNEI DARUSSALAM	Y	-	-	-	-
BULGARIA	Y	Y	A	A	AC
BURKINA FASO	Y	Y	A	A	R
BURUNDI	Y	Y	-	-	R
CAMBODIA	Y	Y	R	R	AC
CAMEROON	Y	Y	A	A	R
CANADA	Y	Y	-	-	AC
CAPE VERDE, REP- UBLIC OF	Y	Y	-	-	AC
CENTRAL AFRICAN REPUBLIC	Y	Y	-	-	R
CHAD	Y	Y	-	-	-
CHILE	Y	Y	-	-	R
CHINA	Y	Y	-	-	R
COLOMBIA	Y	Y	-	-	AC
COMOROS	Y	Y	-	-	-
CONGO	Y	Y	-	-	R
COOK ISLANDS	-	Y	-	-	-
COSTA RICA	Y	Y	-	-	R
COTE D'IVOIRE	Y	Y	A	-	R
CROATIA	Y	Y	S	S	S
CUBA	Y	Y	R	R	R
CYPRUS	Y	Y	A	A	AC
CZECH REPUBLIC	Y	Y	S	S	S
DENMARK	Y	Y	-	-	R
DJIBOUTI	Y	Y	-	-	-

### Parties to the Hague Convention

<i>COUNTRY</i>	<i>U.N. MEMBER</i>	<i>UNESCO MEMBER</i>	<i>HAGUE CONVENTI ON</i>	<i>HAGUE PROTO- COL</i>	<i>WORLD HERITAGE CONV.</i>
DOMINICA	Y	Y	-	-	-
DOMINICAN REPUBLIC	Y	Y	A	-	R
ECUADOR	Y	Y	R	R	AC
EGYPT	Y	Y	R	R	R
EL SALVADOR	Y	Y	-	-	AC
EQUATORIAL GUINEA	Y	Y	-	-	-
ERITREA	Y	-	-	-	-
ESTONIA	Y	Y	-	-	-
ETHIOPIA	Y	Y	-	-	R
FIJI	Y	Y	-	-	R
FINLAND	Y	Y	-	-	R
FRANCE	Y	Y	R	R	AC
GABON	Y	Y	A	A	R
GAMBIA	Y	Y	-	-	R
GEORGIA	Y	Y	S	S	S
GERMANY	Y	Y	R	R	R
GHANA	Y	Y	A	A	R
GREECE	Y	Y	R	R	R
GRENADA	Y	Y	-	-	-
GUATAMALA	Y	Y	A	-	R
GUINEA	Y	Y	A	A	R
GUNIEA-BISSAU	Y	Y	-	-	-
GUYANA	Y	Y	-	-	AC
HAITI	Y	Y	-	-	R
HOLY SEE	-	-	A	A	A
HONDURAS	Y	Y	-	-	R
HUNGARY	Y	Y	R	A	AC
ICELAND	Y	Y	-	-	-
INDIA	Y	Y	R	R	R
INDONESIA	Y	Y	R	R	AC

<i>COUNTRY</i>	<i>U.N. MEMBER</i>	<i>UNESCO MEMBER</i>	<i>HAGUE CONVENTI ON</i>	<i>HAGUE PROTO- COL</i>	<i>WORLD HERITAGE CONV.</i>
IRAN, ISLAMIC REP- UBLIC OF	Y	Y	R	R	AC
IRAQ	Y	Y	R	R	AC
IRELAND	Y	Y	-	-	R
ISRAEL	Y	Y	R	A	-
ITALY	Y	Y	R	R	R
JAMAICA	Y	Y	-	-	AC
JAPAN	Y	Y	-	-	AC
JORDAN	Y	Y	R	R	R
KAZAKSTAN	Y	Y	-	-	-
KENYA	Y	Y	-	-	AC
KIRIBATI	-	Y	-	-	-
KOREA, DEMOCRATIC PEOPLE'S REPUBLIC OF	Y	Y	-	-	-
KOREA, REPUBLIC OF	Y	Y	-	-	AC
KUWAIT	Y	Y	A	A	-
KYRGYZSTAN	Y	Y	-	-	-
LAO PEOPLE'S DEM- OCRATIC REPUBLIC	Y	Y	-	-	R
LATVIA	Y	Y	-	-	-
LEBANON	Y	Y	R	R	R
LESOTHO	Y	Y	-	-	-
LIBERIA	Y	Y	-	-	-
LIBYAN ARAB JAMAHI- RIYA	Y	Y	R	R	R
LIETCHTENSTEIN	Y	-	A	A	-
LITHUANIA, REPUBLIC OF	Y	Y	-	-	AC
LUXEMBOURG	Y	Y	R	R	R
MACEDONIA, FORMER YUGOSLAV REPUBLIC OF	Y	-	-	-	-
MADAGASCAR	Y	Y	A	A	R
MALAWI	Y	Y	-	-	R



### Parties to the Hague Convention

<i>COUNTRY</i>	<i>U.N. MEMBER</i>	<i>UNESCO MEMBER</i>	<i>HAGUE CONVENTI ON</i>	<i>HAGUE PROTO- COL</i>	<i>WORLD HERITAGE CONV.</i>
MALAYSIA	Y	Y	A	A	R
MALDIVES	Y	Y	-	-	AC
MALI	Y	Y	A	A	AC
MALTA	Y	Y	-	-	AC
MARSHALL ISLANDS	Y	-	-	-	-
MAURITANIA	Y	Y	-	-	R
MAURITIUS	Y	Y	-	-	-
MEXICO	Y	Y	R	R	AC
MICRONESIA	Y	-	-	-	-
MOLDOVA	Y	Y	-	-	-
MONACO	Y	Y	R	R	R
MONGOLIA	Y	Y	A	-	AC
MOROCCO	Y	Y	A	A	R
MOZAMBIQUE	Y	Y	-	-	R
MYANMAR	Y	Y	R	R	-
NAMIBIA	Y	Y	-	-	-
NAURU	-	-	-	-	-
NEPAL	Y	Y	-	-	AC
NETHERLANDS	Y	Y	R	R	AC
NETHERLANDS ANTILLES	-	ASSOC.	-	-	AC
NEW ZEALAND	Y	Y	-	-	R
NICARAGUA	Y	Y	R	R	AC
NIGER	Y	Y	A	A	AC
NIGERIA	Y	Y	A	A	R
NORWAY	Y	Y	R	R	R
OMAN	Y	Y	A	-	AC
PAKISTAN	Y	Y	A	A	R
PANAMA	Y	Y	A	-	R
PAPUA NEW GUINEA	Y	Y	-	-	-
PARAGUAY	Y	Y	-	-	R
PERU	Y	Y	A	A	R

<i>COUNTRY</i>	<i>U.N. MEMBER</i>	<i>UNESCO MEMBER</i>	<i>HAGUE CONVENTI ON</i>	<i>HAGUE PROTO- COL</i>	<i>WORLD HERITAGE CONV.</i>
PHILIPPINES	Y	Y	-	-	R
POLAND	Y	Y	R	R	R
PORTUGAL	Y	Y	-	-	R
QATAR	Y	Y	A	-	AC
ROMANIA	Y	Y	R	A	AC
RUSSIAN FEDERATION	Y	Y	R	R	R
RWANDA	Y	Y	-	-	-
SAINT KITTS & NEVIS	Y	Y	-	-	AC
SAINT LUCIA	Y	Y	-	-	R
SANT VINCENT & GRENADINES	Y	Y	-	-	-
SAMOA	Y	Y	-	-	-
SAN MARINO, REPUB- LIC OF	Y	Y	R	R	R
SAO TOME & PRIN- CIPE	Y	Y	-	-	-
SAUDI ARABIA	Y	Y	a	-	AC
SENEGAL	Y	Y	A	A	R
SEYCHELLES	Y	Y	-	-	AC
SIERRA LEONE	Y	Y	-	-	-
SINGAPORE	Y	-	-	-	-
SLOVAK REPUBLIC	Y	Y	S	S	S
SLOVENIA	Y	Y	S	S	S
SOLOMON ISLANDS	Y	Y	-	-	A
SOMALIA	Y	Y	-	-	-
SOUTH AFRICA	Y	-	-	-	-
SPAIN	Y	Y	R	-	AC
SRI LANKA	Y	Y	-	-	AC
SUDAN	Y	Y	A	-	R
SURIMAME	Y	Y	-	-	-
SWAZILAND	Y	Y	-	-	-
SWEDEN	Y	Y	A	A	R

### Parties to the Hague Convention

<i>COUNTRY</i>	<i>U.N. MEMBER</i>	<i>UNESCO MEMBER</i>	<i>HAGUE CONVENTI ON</i>	<i>HAGUE PROTO- COL</i>	<i>WORLD HERITAGE CONV.</i>
SWITZERLAND	-	Y	A	A	R
SYRIAN ARAB REPUB- LIC	Y	Y	R	A	A
TAJIKISTAN	Y	Y	S	S	S
TANZANIA, UNITED REPUBLIC OF	Y	Y	A	-	R
THAILAND	Y	Y	A	A	AC
TOGO	Y	Y	-	-	-
TONGA	-	Y	-	-	-
TRINIDAD & TOBAGO	Y	Y	-	-	-
TUNISIA	Y	Y	A	A	A
TURKEY	Y	Y	A	A	A
TURKMENISTAN	Y	-	-	-	-
TUVALU	-	Y	-	-	-
UGANDA	Y	Y	-	-	-
UKRAINE	Y	Y	R	R	R
UNITED ARAB EMIR- ATES	Y	Y	-	-	-
UNITED KINGDOM	Y	-	-	-	R
UNITED STATES OF AMERICA	Y	-	-	-	R
URUGUAY	Y	Y	-	-	AC
UZBEKISTAN	Y	-	-	-	S
VANUATU	Y	-	-	-	-
VENEZUELA	Y	Y	-	-	AC
VIET NAM, SOCIALIST REPUBLIC OF	Y	Y	-	-	AC
YEMEN REPUBLIC	Y	Y	A	A	A
YUGOSLAVIA	Y	Y	R	R	R
ZAIRE	Y	Y	A	A	R
ZAMBIA	Y	Y	-	-	R
ZIMBABWE	Y	Y	-	-	R



**1935 Washington Treaty (Roerich Pact)**

***APPENDIX III***

***TREATY ON THE PROTECTION OF ARTISTIC AND  
SCIENTIFIC INSTITUTIONS AND HISTORIC MONUMENTS (ROERICH  
PACT) WASHINGTON, 15 APRIL 1935***

The High Contracting Parties, animated by the purpose of giving conventional form to the postulates of the resolution approved on 16 December 1933, by all the States represented at the Seventh International Conference of American States, held at Montevideo, which recommended to 'the Governments of America which have not yet done so that they sign the 'Roerich Pact', initiated by the 'Roerich Museum' in the United States, and which has as its object the universal adoption of a flag, already designed and generally known, in order thereby to preserve in any time of danger all nationally and privately owned immovable monuments which form the cultural treasure of peoples,' have resolved to conclude a Treaty with that end in view and to the effect that the treasures of culture be respected and protected in time of war and in peace, have agreed upon the following Articles:

**Article 1.**

The historic monuments, museums, scientific, artistic, educational and cultural institutions shall be considered as neutral and as such respected and protected by belligerents. The same respect and protection shall be due to the personnel of the institutions mentioned above. The same respect and protection shall be accorded to the historic monuments, museums, scientific, artistic, educational and cultural institutions in time of peace as well as in war.

**Article 2.**

The neutrality of, and protection and respect due to, the monuments and institutions mentioned in the preceding Article, shall be recognized in the entire expanse of territories subject to the sovereignty of each of the Signatory and Acceding States, without any discrimination as to the State allegiance of said monuments and institutions. The respective Governments agree to adopt the measures of internal legislation necessary to insure said protection and respect.

**Article 3.**

In order to identify the monuments and institutions mentioned in Article 1, use may be made of a distinctive flag (red circle - with a triple red sphere in the circle on a white background) in accordance with the model attached to this Treaty.

**Article 4.**

The Signatory Governments and those which accede this Treaty shall send to the Pan American Union, at the tin signature or accession, or at any time thereafter, a list of the monuments and institutions for which they desire the protection agreed in this Treaty. The Pan American Union, when notifying the Government signatures or accessions, shall also send the list of monuments institutions mentioned in this Article, and shall inform the Governments of any changes in said list.

**Article 5.**

The monuments and institutions mentioned in Article I shall cease to enjoy the privileges recognized in the present Treaty in case they are made use of for military purposes.

**Article 6.**

The States which do not sign the present Treaty on the date it is opened for signature may sign or adhere to it at any time.

**Article 7.**

The instruments of accession, as well as those of ratification and denunciation of the present Treaty, shall be deposited the Pan American Union, which shall communicate notice of the of deposit to the other Signatory of Acceding States.

**Article 8.**

The present Treaty may be denounced at any time by any of the Signatory or Acceding States, and the denunciation shall into effect three months after notice of it has been given to the other Signatory or Acceding States.

In witness whereof the undersigned Plenipotentiaries, after have deposited their full powers, found to be in due and proper form, sign this Treaty on behalf of their respective Governments, and a thereto their seals, on the dates appearing opposite their signature.

## 1923 Proposed Hague Rules of Air Warfare

### *APPENDIX IV*

#### ***EXTRACTS FROM 1923 PROPOSED CONVENTION FOR RULES OF AIR WARFARE DRAWN UP BY A HAGUE CONFERENCE OF JURISTS***

##### **Art. 22.**

Aerial bombardment for the purpose of terrorizing the civilian population, of destroying or damaging private property not of military character, or of injuring non-combatants is prohibited.

##### **Art. 24.**

- (1) Aerial bombardment is legitimate only when directed at a military objective, that is to say, an object of which the destruction or injury would constitute a distinct military advantage to the belligerent.
- (2) Such bombardment is legitimate only when directed exclusively at the following objectives: military forces; military works; military establishments or depots; factories constituting important and well-known centres engaged in the manufacture of arms, ammunition or distinctively military supplies; lines of communication or transportation used for military purposes.
- (3) The bombardment of cities, towns, villages, dwellings or buildings not in the immediate neighbourhood of the operations of land forces is prohibited. In cases where the objectives specified in paragraph (2) are so situated, that they cannot be bombarded without the indiscriminate bombardment of the civilian population, the aircraft must abstain from bombardment.
- (4) In the immediate neighbourhood of the operations of land forces, the bombardment of cities, towns, villages, dwellings or buildings is legitimate provided that there exists a reasonable presumption that the military concentration is sufficiently important to justify such bombardment, having regard to the danger thus caused to the civilian population.
- (5) A belligerent state is liable to pay compensation for injuries to person or to property caused by the violation by any of its officers or forces of the provisions of this article.

##### **Art. 25.**

In bombardment by aircraft, all necessary steps must be taken by the commander to spare as far as possible buildings dedicated to public worship, art, science or charitable purposes, historic monuments, hospital ships, hospitals and other places where the sick and wounded are collected, provided such buildings, objects or places are not at the time used for military purposes. Such buildings, objects and places must by day be indicated by marks visible to aircraft. The use of marks to indicate other buildings, objects, or places than those specified above is to be deemed an act of perfidy. The marks used as aforesaid shall be in the case of buildings protected under the Geneva Convention the red cross on a white ground, and in the case of other protected buildings a large rectangular panel divided diagonally into two pointed triangular portions, one black and the other white.

A belligerent who desires to secure by night the protection for the hospitals and other privileged buildings above mentioned must take the necessary measures to render the special signs referred to sufficiently visible.

**Art. 26.**

The following special rules are adopted for the purpose of enabling states to obtain more efficient protection for important historic monuments situated within their territory, provided that they are willing to refrain from the use of such monuments and a surrounding zone for military purposes, and to accept a special regime for their intersection.

- (1) A state shall be entitled, if it sees fit, to establish a zone of protection round such monuments situated in its territory. Such zones shall in time of war enjoy immunity from bombardment.
- (2) The monuments round which a zone is to be established shall be notified to other Powers in peace time through the diplomatic channel; the notification shall also indicate the limits of the zones. The notification may not be withdrawn in time of war.
- (3) The zone of protection may include, in addition to the area actually occupied by the monument or group of monuments, an outer zone, not exceeding 500 metres in width, measured from the circumference of the said area.
- (4) Marks clearly visible from aircraft either by day or by night will be employed for the purpose of ensuring the identification by belligerent airmen of the limits of the zones.
- (5) The marks on the monuments themselves will be those defined in Article 25. The marks employed for indicating the surrounding zones will be fixed by each state adopting the provisions of this article, and will be notified to other Powers at the same time as the monuments and zones are notified.
- (6) Any abusive use of the marks indicating the zones referred to in paragraph 5 will be regarded as an act of perfidy.
- (7) A state adopting the provisions of this article must abstain from using the monument and the surrounding zone for military purposes, or for the benefit in any way whatever of its military organization, or from committing within such monument or from any act with a military purpose in view.
- (8) An inspection committee consisting of three neutral representatives accredited to the State adopting the provisions of this article, or their delegates, shall be appointed for the purpose of ensuring that no violation is committed of the provisions of paragraph 7. One of the members of the committee of inspection shall be the representative (or his delegate) of the State to which has been entrusted the interests of the opposing belligerent<sup>318</sup>.

<sup>318</sup>

*Rules of Air Warfare, drafted by a Commission of Jurists at the Hague, December 1922 - February 1923.* International Committee of the Red Cross, 1989, pp. 127 - 139.



**1936 International Museums Office Draft Convention**

**APPENDIX V**

**INTERNATIONAL MUSEUMS OFFICE, OCTOBER 1936:**

**PRELIMINARY DRAFT INTERNATIONAL CONVENTION FOR  
THE PROTECTION OF HISTORIC BUILDINGS AND WORKS  
OF ART IN TIME OF WAR**

The High Contracting Parties,

Whereas the preservation of artistic treasures is a concern of the community of States and it is important that such treasures should receive international protection;

Being convinced that the destruction of a masterpiece, whatever nation may have produced it, is a spiritual impoverishment for the entire international community;

Guided by the stipulations of the Hague Conventions of 1899 and 1907 concerning the protection of buildings dedicated to the arts;

Recognising that through the development of the technique of warfare monuments and works of art are in increasing danger of destruction, and that it is the duty of the High Contracting Parties to take steps to safeguard them from the destructive effects of war;

Being of opinion that such defensive action cannot be effectual unless it has already been prepared in time of peace organised both nationally and internationally;

Have appointed as their Plenipotentiaries:

Who, having exchanged their full powers, found in good and due form, have agreed upon the following provisions:

**ARTICLE I**

The High Contracting Parties deem it to be incumbent upon every Government to organise the defence of historic buildings and works of art against the foreseeable effects of war, and undertake, each for his own part, to prepare that defence in time of peace.

**ARTICLE 2**

1. The High Contracting Parties agree to inform one another, whenever they see their way to do so, of the steps taken, prepared, or contemplated by their respective administrations in execution of Article I of the present Convention.

2. The administrations of the Contracting States may, if they so desire, secure the technical collaboration of the International Museums Office in organising the protection of their artistic and historic treasures.

**ARTICLE 3**

1. The High Contracting Parties undertake to introduce into their military regulations and instructions such recommendations as may ensure that historic buildings and works of art are respected.

2. Public authorities and military commands shall take steps to impress this conception of respect upon their troops, in order that the latter may co-operate in protecting historic buildings and works of art.

3. The High Contracting Parties undertake to take steps to punish in time of war any person looting or damaging monuments and works of art.

4. They will communicate to one another the texts of such laws or regulations as they may have enacted in application of this Article.

#### **ARTICLE 4**

1. The High Contracting Parties undertake to refrain from any act of hostility directed against any refuge that a High Contracting Party may have designated in his territory to shelter in time of war works of art or of historic interest that may be threatened by military operations.

2. The number of such refuges shall be limited; they may take the form either of buildings erected for the purpose or of existing historic buildings or groups of buildings.

3. To secure immunity, refuges must:

a) be situated at a distance of not less than 20 kilometres from the most likely theatres of military operations, from any military objective, from any main line of communication, and from any large industrial centre (this distance may be reduced in certain cases in countries with a very dense population and small area);

b) have already been notified in time of peace;

c) not be used directly or indirectly for purposes of national defence;

d) be open to international inspection during hostilities.

4. The military authorities shall have access to the refuges at any time for the purpose of satisfying themselves that they are not being used in any way contrary to the present Convention.

#### **ARTICLE 5**

1. The High Contracting Parties, acknowledging it to be their joint and several duty to respect and protect all monuments of artistic or historic interest in time of war, agree to take all possible precautions to spare such monuments during operations and to ensure that their use or situation shall not expose them to attack.

2. Special protection shall be given to monuments or groups of monuments which:

a) Are isolated from any military objective within a radius of 500 metres;

b) Are not directly or indirectly used for purposes of national defence;

c) Have already been notified in time of peace;

d) Are open to international inspection during hostilities.

#### **ARTICLE 6**

Any High Contracting Party may at any time declare that he is prepared to conclude with any other High Contracting Party, on a reciprocal basis, special agreements extending the immunity granted to refuges to certain monuments or groups of monuments the preservation of which, although they do not satisfy the conditions laid down in Article 4, is of fundamental importance to the international community.

## **1936 International Museums Office Draft Convention**

### **ARTICLE 7**

1. Refuges to which immunity has been granted and buildings enjoying the special protection provided for in Article 5, paragraph 2, shall be distinguished by a protecting mark.

2. This mark shall take the form of a light blue triangle inscribed in a white disc.

3. The location and degree of visibility of protecting marks shall be left to the judgment of the authorities responsible for defence.

4. The affixing of protecting marks in time of peace shall be optional.

5. The High Contracting Parties undertake to guard against any misuse of protecting marks, and to punish the same should occasion arise.

6. Monuments and museums shall be brought to the notice of the civil population, who shall be requested to protect them, and of the occupying troops, who shall be informed that they are dealing with buildings the preservation of which is the concern of the entire international community.

7. The manner in which this shall be done is left to the judgment of national authorities. In the case, however, of buildings to which special protection cannot be granted, the marks provided must be different from that described in paragraph 2 of this Article.

### **ARTICLE 8**

The High Contracting Parties agree that historic buildings and works of art shall be immune from reprisals.

### **ARTICLE 9**

1. Should a State which is at war with another State feel called upon to place under shelter in the territory of another country all or any of the works of art in its possession, the High Contracting Parties agree to grant immunity to the means of transport employed for that purpose, provided that the transfer is carried out under international supervision.

2. A belligerent State shall enjoy this immunity once only in respect of each work of art, and only in the direction of the country according hospitality.

3. During transport and while stored abroad, works of art shall be exempt from confiscation and may not be disposed of either by the depositor or by the depositary.

### **ARTICLE 10**

The High Contracting Parties, recognising the necessity of extending the protection contemplated by this Convention to historic buildings and works of art threatened by disturbances or armed conflicts within a country, agree as follows:

1. They may lend their friendly assistance to the contending parties for the purpose of safeguarding the threatened historic and artistic treasures.

2. They may receive and shelter in their respective territories works of art coming from a country in which civil strife is prevalent, and endangered by acts arising out of such strife.

3. Museums and collections of a public character may store works of art abroad during a period of civil strife.

So long as such works remain abroad, the museums which deposited them shall be deemed their owners.

Such deposits shall not be restored until the civil strife is at an end.

During transport and for the period of their deposit, such works of art shall be exempt from confiscation, and may not be disposed of either by the depositor or by the depositary.

4. Works of art in private ownership may receive protection in foreign territory, provided that they are there deposited on the responsibility and through the agency of a

national museum or collection of a public character. The same rules concerning deposit and restoration shall apply, and restoration may be effected only through the agency of the depositing institution.

**ARTICLE 11**

1. International Commissions of Inspection shall satisfy themselves while military operations are proceeding that no breach of the provisions of this Convention is committed.

2. Offences committed in breach of the provisions of this Convention shall be established by the International Commission of Inspection operating in the territory in which they were committed.

3. Details of the constitution and operation of these Commissions are laid down in the Regulations for the execution of this Convention.

**ARTICLE 12**

1. The High Contracting Parties agree to meet from time to time in general conference to decide conjointly upon measures for ensuring the application of this Convention, and to review, if necessary, the Regulations for its execution.

2. The General Conference shall appoint its Standing Committee and Secretariat, whose powers in the intervals between sessions of the Conference shall be defined by the Regulations for the execution of this Convention.

**ARTICLE 13**

In the event of disagreement between the belligerents as to the application of the provisions of this Convention, the Contracting States entrusted with the interests of the belligerents and the Standing Committee of the General Conference shall lend their good offices for the settlement of the dispute.

**FINAL PROVISIONS**

.....

**REGULATIONS FOR THE EXECUTION OF THE CONVENTION**

**ARTICLE 1**

As soon as the Convention comes into force, there shall be drawn up an international list of commissioners to whom missions arising out of the execution of the Convention may be entrusted during the period of hostilities. This list shall consist of persons of acknowledged impartiality, selected by the Standing Committee of the General Conference on the nomination of qualified institutions in the contracting countries (Courts of Justice, Government Departments, Academies, Universities and Museums).

## **1936 International Museums Office Draft Convention**

### **ARTICLE 2**

1. As soon as the Convention has been ratified, each of the High Contracting Parties shall designate the refuges which are to enjoy in his territory the immunity provided for in Article 4 of the Convention, and the monuments which are to enjoy the special protection provided for in Article 5, paragraph 2.

2. Each High Contracting Party shall send to the Standing Committee of the Conference a list of the refuges and monuments designated, together with the written approval of the International Verification Commission referred to in Article 4 of these Regulations.

### **ARTICLE 3**

1. The International Verification Commission shall certify that the refuges and monuments designated satisfy the conditions laid down in Articles 4 and 5 of the Convention respectively. It may also give an opinion on the number of refuges and the material conditions in which they are fitted up.

2. In the case of countries with a dense population and small area, it shall rest with the Commission to decide what minimum distance may be allowed between the refuges and the danger-points mentioned in Article 4, paragraph (a), of the Convention.

### **ARTICLE 4**

The International Verification Commissions shall consist of:

a) A representative of the State in whose territory the refuges and monuments have been designated;

b) A commissioner on the international list, appointed by the Standing Committee, who shall act as Chairman of the Commission;

c) A representative of each of such States as the Standing Committee may have named.

### **ARTICLE 5**

1. Applications for the appointment of a Verification Commission must be sent to the Standing Committee of the Conference, together with a list of the refuges and monuments designated. The Standing Committee shall immediately carry out the necessary consultations with a view to the definitive appointment of the Commission, which shall meet at the invitation of the Government concerned and at such place as the latter may appoint.

2. The Commission's work of verification shall be conducted on the spot and shall, if it thinks this necessary, deal separately with each of the refuges and monuments designated.

3. The conclusions of the Verification Commission shall be delivered to the member of the Commission representing the Government concerned

4. The conclusions of the Verification Commission must be unanimously agreed by the members present.

### **ARTICLE 6**

1. Each of the High Contracting Parties who has made the declaration from the international list and appointed by the Standing Committee to act as Chairman of the Commission; a representative of the State in whose territory the inspection is to be carried out; and a representative (or his delegate) of the State to which the interests of the other belligerent in the same territory have been entrusted. This last-mentioned member may likewise be selected from among the commissioners on the international list belonging to neutral countries.

2. The Chairmen of International Commissions of Inspection, or their delegates, may at any time inspect refuges and monuments enjoying the special protection provided for in Article 5 of the Convention.

3. The Standing Committee may attach additional commissioners to the Chairman of the Commission, as the requirements of inspection may dictate.

4. The Chairmen of International Commissions of Inspection may consult experts whose advice seems to them necessary in the performance of the missions entrusted to them.

5. The conclusions of International Commissions of Inspection shall be adopted by majority vote. The representatives of the parties concerned shall have no vote.

6. The conclusions of International Commissions of Inspection shall be submitted to the Standing Committee, which shall communicate them to each of the High Contracting Parties, and shall decide whether they shall also be made public.

7. The Standing Committee shall decide upon the procedure to be followed for establishing breaches of or exceptions to the Convention for which no special provision has been made.

### **ARTICLE 8**

1. Works of art may not be transferred from one refuge to another unless this is necessary for their safety.

2. As soon as evacuation is completed, the protecting mark must be removed.

3. Exceptionally, should there be any obstacle to the transfer of works of art to a regular refuge, the responsible authorities shall decide what steps are to be taken to store them temporarily in a place of safety. Such temporary store may be shown by the protecting mark, which shall be affixed by the International Commission of Inspection, the latter having the sole right to affix it.

4. In occupied territories, any other exceptional measures that may be dictated by unforeseeable circumstances and by the necessity of preserving monuments and works of art must be taken with the agreement of the International Commission of Inspection.

5. In occupied territories, refuges and monuments enjoying special protection shall be under the supervision of the International Commission of Inspection of the occupying State.

6. The International Commission of Inspection, jointly with the authorities of the occupying State, shall take all necessary steps for the preservation of any monuments which may be damaged. Such steps shall not, however, amount to more than temporary strengthening.

### **ARTICLE 9**

During military occupation, the national staff appointed to preserve and guard refuges, museums, or monuments must be retained in their employment unless there is any legitimate military reason for their dismissal. They shall however, be in the same position in relation to the military authorities of occupation as the civil population of the occupied territories.

### **ARTICLE 10**

In the event of the transfer of works of art to the territory of a foreign country as provided in Article 9 of the Convention, the following rules shall apply:

1. Transport shall be carried out in collaboration with the International Commission of Inspection, to which an inventory of the works to be transferred shall be delivered.

2. The International Commission of Inspection shall give notice of the proposed transfer to the Standing Committee of the General Conference, which shall inform the other belligerent or belligerents. Transport shall not take place until the latter have been so informed.

## **1936 International Museums Office Draft Convention**

3. The convoy shall be covered by the protecting mark, and accompanied by a delegate of the International Commission of Inspection, or by a neutral Commissioner appointed for the purpose by the Standing Committee.

4. For transport otherwise than by land, the Standing Committee shall lay down such additional rules as may be applicable in each particular case.

### **ARTICLE 11**

For the purposes of the application of Article 10 of the Convention, the Standing Committee of the Conference shall lend its good offices to the contending parties with a view to taking all necessary steps for the protection of monuments and works of art threatened by the operations.

### **ARTICLE 12**

1. The General Conference provided for in Article 12 of the Convention shall consist of one representative of each of the Contracting States.

2. The General Conference shall meet whenever necessary, but at least once in every five years. Any State may entrust its representation to another Contracting State, which shall in such case have as many votes as the number of States it represents.

3. The first session of the General Conference shall be held in the year following the entry into force of the Convention.

4. The Conference shall fix the number and the term of office of members of its Standing Committee, and shall designate the States from which they shall be drawn. Any State may entrust its representation to another State represented on the Standing Committee, and such State shall then have as many votes as the number of States it represents.

5. The General Conference shall decide all matters connected with the application and proper operation of the Convention, and in general all questions relating to the protection of the artistic and historic heritage of the international community in time of war.

6. The Standing Committee shall perform the functions assigned to it by the Convention.

7. In the intervals between sessions of the Conference, the Standing Committee shall settle all questions relating to the application of the Convention, except as the Conference may otherwise decide.

8. The Standing Committee shall meet whenever necessary, but at least once in each year.

9. The Standing Committee shall elect its Chairman and shall determine the powers to be vested in him and in the Secretariat of the Conference during the intervals between the Committee's sessions.

10. The chairmanship may not be held in time of war by a national of a belligerent country.

11. In time of war, any belligerent countries which are not represented on the Standing Committee shall appoint representatives, whose term of office shall come to an end as soon as their respective countries cease to be belligerents. If, however, it is impossible to balance the votes of the representatives of the belligerent countries on the Standing Committee, the voices of all of them shall become purely advisory. If the number of deliberative voices is thereby reduced to less than three, the Standing Committee may unanimously co-opt members belonging to neutral countries as substitutes for other Contracting States

12. The decisions of the Conference and of the Standing Committee shall be taken by a two-thirds majority of the members present; but unanimity must be secured for decisions of the Conference involving the special interests of Contracting States.

13. Two-thirds of the members of the General Conference and of the Standing Committee shall form a quorum.

14. The General Conference and the Standing Committee shall themselves determine the venue of their meetings. Any State may invite the General Conference and the Standing Committee to hold their sessions in its territory.

15. In time of war, if the State in whose territory the Secretariat has its headquarters is a belligerent, the Standing Committee shall decide whether it shall be transferred to the territory of another State.

16. Any High Contracting Party may at any time call the attention of the Standing Committee to any circumstance affecting the application or proper operation of the measures contemplated by the Convention

17. In the discharge of their duties under the Convention, members of International Commissions of Inspection, Commissioners entrusted with missions, and members of the Standing Committee and the Secretariat shall enjoy all the privileges and immunities belonging to international agents.



## **Comparison of Definitions of Cultural Property**

### ***APPENDIX VI***

#### ***COMPARISON OF DEFINITIONS OF CULTURAL PROPERTY IN DIFFERENT INTERNATIONAL INSTRUMENTS***

##### ***GENERAL AND/OR OVERALL DEFINITIONS OF CULTURAL PROPERTY:***

###### **Declaration of Brussels Conference, 1874, Article 8:**

... the property of ... institutions dedicated to religion, charity, and education, to the arts and to the sciences, even where they belong to the State shall be treated as private property. All seizures of, destruction or wilful damage done to institutions of this character, historic monuments, works of art or of the sciences, should be prosecuted by the competent authorities.

###### **United States Secretary of War General Order No. 101 (on orders of President William McKinley):**

"... All churches and buildings devoted to religious worship and to the arts and sciences, ... are, so far as possible, to be protected, and all destruction or intentional defacement of such places, or of historic monuments or archives, or of works of science or art is prohibited, save when required by urgent military necessity."

###### **Fourth Hague Convention, 1907, Article 27**

In sieges and bombardments all necessary steps must be taken to spare, as far as possible, buildings dedicated to religion, art, science or charitable purposes, historic monuments ... provided that they are not being used at the time for military purposes.

It is the duty of the besieged to indicate the presence of such buildings or places by distinctive and visible signs, which shall be notified to the enemy before hand.

###### **Washington Treaty ('Roerich Pact'), 1935, Article I:**

The historic monuments, museums, scientific, educational and cultural institutions shall be considered as neutral and as such respected and protected by belligerents.

The same respect and protection shall be due to the personnel of the institutions of the institutions mentioned above.

The same respect and protection shall be accorded to the historic monuments, museums, scientific, educational and cultural institutions in time of peace as well as in war.

###### **Hague Convention 1954, Article 1**

... movable or immovable property of great importance to the cultural heritage of every people, such as ...

### **Recommendation on Illicit Export, Import and Transfer of Cultural Property**

I (1) ... movable and immovable property of great importance to the cultural heritage of a country, such as ...

#### **UNESCO Convention 1970, Article 1**

... property which, on religious or secular grounds, is specifically designated by each State as being of importance for archaeology, prehistory, history, literature, art or science, and which belongs to the following categories: ...

#### **UNESCO Convention 1970, Article 4**

... for the purpose of the Convention property which belongs to the following categories forms part of the cultural heritage of each State:

- (a) Cultural property created by the individual or collective genius of nationals of the State concerned, and cultural property of importance to the State concerned within the territory of that State by foreign national or stateless persons resident within such territory;
- (b) cultural property found within the national territory;
- (c) cultural property acquired by archaeological, ethnological or natural science missions, with the consent of the competent authorities of the country of origin of such property;
- (d) cultural property which has been the subject of a freely agreed exchange;
- (e) cultural property received as a gift or purchased legally with the consent of the competent authorities of the country of origin of such property.

#### **UNESCO Recommendations on International Exchange of Cultural Property, 1976, Article I (1)**

... items which are the expression and testimony of human creation and of the evolution of nature which, in the opinion of the competent bodies in individual States, are, or many be, of historical, artistic, scientific or technical value and interest, including items in the following categories: ...

#### **UNESCO Recommendation for the Protection of Movable Cultural Property, 1978, Article I (1):**

... all movable objects which are the expression and testimony of human creation or of the evolution of nature and which are of archaeological, historical, artistic, scientific or technical value and interest, including items in the following categories: ...

#### **ARCHAEOLOGY:**

#### **Hague Convention 1954, Article 1**

... archaeological sites; ... objects of ... archaeological interest;

#### **UNESCO Recommendation on Illicit Export, Import and Transfer of Cultural Property**

... other property of ... archaeological interest, ...

#### **UNESCO Recommendation on Archaeological Excavations, 1956, Article I**

*I. Archaeological excavations.* ... by archaeological excavation is meant any research aimed at the discovery of objects of archaeological character, whether such research involves

## **Comparison of Definitions of Cultural Property**

digging of the ground or systematic exploration of its surface or is carried out on the bed or in the sub-soil of inland or territorial waters of a Member State.

2. *Property protected.* ... any remains whose preservation is in the public interest from the point of view of history or art and architecture, ...

### **UNESCO Convention 1970, Article 1**

(c) products of archaeological excavations (including regular and clandestine) or of archaeological discoveries;

### **World Heritage Convention 1972, Article 1**

... elements or structures of an archaeological nature ... cave dwellings and combination of features, which are of outstanding universal value from the point of view of history, art or science;

... works of man or the combined works of nature and man, and areas including archaeological sites which are of outstanding universal value from the historical, aesthetic, ethnological or anthropological points of view.

### **UNESCO Recommendations on International Exchange of Cultural Property, 1976, Article I (1)**

(b) archaeological objects;

### **UNESCO Recommendation for the Protection of Movable Cultural Property, 1978, Article I (1):**

- (i) products of archaeological exploration and excavations conducted on land and under water;
- (ii) antiquities such as tools, pottery, inscriptions, coins, seals, jewellery, weapons and funerary remains, including mummies;

### ***CULTURAL INSTITUTIONS:***

#### **Hague Convention 1954, Article 1**

(b) buildings whose main and effective purpose is to preserve or exhibit the movable cultural property defined [above] such as museums, large libraries and depository of archives, and refuges intended to shelter, in the event of armed conflict, the movable property defined [above];

#### **UNESCO Convention 1970, Article 1**

[generally not applicable]

#### **UNESCO Recommendations on International Exchange of Cultural Property, 1976, Article I (1)**

... any permanent establishment administered in the general interest for the purpose of preserving, studying and enhancing cultural property and making it accessible to the public and which is licensed or approved by the competent public authorities of each State;

***ETHNOGRAPHY:*****Hague Convention 1954**

[No specific provision]

**UNESCO Recommendation on Illicit Export, Import and Transfer of Cultural Property**

... such as ... ethnological documents, ...

**UNESCO Convention 1970, Article 1**

(f) objects of ethnological interest;

**UNESCO Recommendations on International Exchange of Cultural Property, 1976, Article I (1)**

(c) objects and documentation of ethnological interest;

**UNESCO Recommendation for the Protection of Movable Cultural Property, 1978, Article I (1):**

(iv) material of anthropological and ethnological interest;

***FINE AND APPLIED ART:*****Hague Convention 1954, Article 1**

... works of art; ... other objects of artistic, ... interest ...

**UNESCO Recommendation on Illicit Export, Import and Transfer of Cultural Property**

... such as works of art and architecture, ...

**UNESCO Convention 1970, Article 1**

(g) property of artistic interest, such as:

- (i) pictures, painting and drawings produced entirely by hand on any support and in any material (excluding industrial designs and manufactured articles decorated by hand);
- (ii) original works of statuary art and sculpture in any material;
- (iii) original engravings, prints and lithographs;
- (iv) original artistic assemblages and montages in any material; ...
- (k) articles of furniture more than one hundred years old and old musical instruments.

**World Heritage Convention 1972, Article 1**

... works of monumental sculpture and painting ... which are of outstanding universal value from the point of view of history, art or science;

**UNESCO Recommendations on International Exchange of Cultural Property, 1976, Article I (1)**

(d) works of fine art and of the applied arts;

## **Comparison of Definitions of Cultural Property**

### **UNESCO Recommendation for the Protection of Movable Cultural Property, 1978, Article I (1):**

- (vi) items of artistic interest, such as: paintings and drawings, produced entirely by hand on any support and in any material (excluding industrial designs and manufactured articles decorated by hand); original prints, posters and photographs, as the media for original creativity; original artistic assemblages and montages in any material; work of statutory art and sculpture in any material; works of applied art in such materials as glass, ceramics, metal, wood, etc.;
- (x) items of furniture, tapestries, carpets, dress and musical instruments;

### ***HISTORICAL MATERIAL:***

#### **Hague Convention 1954, Article 1**

... objects of ... historical ... interest;

#### **UNESCO Recommendation on Illicit Export, Import and Transfer of Cultural Property**

... such as books and other property of artistic, historic or archaeological interest, ...

#### **UNESCO Convention 1970, Article 1**

(b) property relating to history, including the history of science and technology and military and social history, to the life of national leaders, thinkers, scientists and artists and to events of national importance; ...

(e) antiquities more than one hundred years old, such as inscriptions, coins and engraved seals;

#### **UNESCO Recommendations on International Exchange of Cultural Property, 1976, Article I (1)**

[no examples specified]

### **UNESCO Recommendation for the Protection of Movable Cultural Property, 1978, Article I (1):**

- (v) items relating to history, including the history of science and technology and military and social history, to the lives of peoples and national leaders, thinkers, scientists and artists and to events of national importance;
- (viii) items of numismatic (medals and coins) and philatelic interest;

### ***LIBRARIES AND ARCHIVES:***

#### **Hague Convention 1954, Article 1**

... manuscripts, books ... and important collections of books or archives ...

#### **UNESCO Recommendation on Illicit Export, Import and Transfer of Cultural Property**

... manuscripts, ... important collections of books and archives, including musical archives.

**UNESCO Convention 1970, Article 1**

- (h) rare manuscripts and incunabula, old books, documents and publications of special interest (historical, artistic, scientific, literary, etc.) singly or in collections;
- (i) postage, revenue and similar stamps, singly or in collections;
- (j) archives, including sound, photographic and cinematographic archives;

**UNESCO Recommendations on International Exchange of Cultural Property, 1976, Article I (1)**

- (e) literary, musical, photographic and cinematographic works;
- (f) archives and documents;

**UNESCO Recommendation for the Protection of Movable Cultural Property, 1978, Article I (1):**

- (vii) manuscripts and incunabula, codices, books, documents or publications of special interest;
- (ix) archives, including textual records, maps and other cartographic material, photographs, cinematographic films, sound recordings and machine-readable records;

***MONUMENTS AND SITES:***

**Hague Convention 1954, Article 1**

... monuments of architecture, art or history, whether religious or secular; ... groups of buildings which, as a whole, are of historical or artistic interest;

## **Comparison of Definitions of Cultural Property**

### **UNESCO Convention 1970, Article 1**

[generally not applicable but]: (d) ... elements of artistic or historic monuments or archaeological sites which have been dismembered;

### **World Heritage Convention 1972, Article 1**

monuments: architectural works, ... inscriptions, cave dwellings and combination of features, which are of outstanding universal value from the point of view of history, art or science;

groups of buildings: groups of separate or connected buildings which, because of their architecture, their homogeneity or their place in the landscape, are of outstanding universal value from the point of view of history, art or science;

sites: works of man or the combined works of nature and man, and areas ... which are of outstanding universal value from the historical, aesthetic, ethnological or anthropological points of view.

### **UNESCO Recommendation concerning the Safeguarding of Historic Areas, 1976**

`Historic and architectural (including vernacular) areas' shall be taken to mean any groups of buildings, structures and open spaces including archaeological and palaeontological sites, constituting human settlements in an urban or rural environment, the cohesion and value of which, from the archaeological, architectural, prehistoric, historic, aesthetic or socio-cultural point of view are recognized.

Among these `areas', which are very varied in nature, it is possible to distinguish the following in particular: prehistoric sites, historic towns, old urban quarters, villages and hamlets as well as homogeneous monumental groups ...

### **UNESCO Recommendation for the Protection of Movable Cultural Property, 1978, Article I (1):**

(iii) items resulting from the dismemberment of historic monuments;

### ***SCIENCE:***

#### **Hague Convention 1954, Article 1**

... as well as scientific collections ...

#### **UNESCO Recommendation on Illicit Export, Import and Transfer of Cultural Property**

... type specimens of flora and fauna, scientific collections ...

#### **UNESCO Convention 1970, Article 1**

(a) Rare collections and specimens of fauna, flora, minerals and anatomy, and objects of palaeontological interest;

#### **World Heritage Convention 1972, Article 2**

... the following shall be considered as `natural heritage':

natural features consisting of physical and biological formations or groups of such formations, which are of outstanding universal value from the aesthetic or scientific point of view;  
 geological and physiographical formations and precisely delineated areas which constitute the habitat of threatened species of animals and plants of outstanding value from the point of view of science or conservation;

natural sites or precisely delineated natural areas of outstanding universal value from the point of view of science, conservation or natural beauty.

**UNESCO Recommendations on International Exchange of Cultural Property, 1976, Article I (1)**

(a) zoological, botanical and geological specimens;

**OTHER ITEMS:**

**Hague Convention 1954, Article 1**

... reproductions of the property defined above;

**UNESCO Convention 1970, Article 1**

[No specific provision]

***IMPORTANT CULTURAL AREAS:***

**Hague Convention 1954, Article 1**

(b) centres containing a large amount of cultural property as defined ... to be known as 'centres containing monuments'.

**UNESCO Convention 1970, Article 1**

[generally not applicable]

**World Heritage Convention 1972, Article 1**

monuments:	architectural works, works of monumental sculpture and painting, elements or structures of an archaeological nature, inscriptions, cave dwellings and combination of features, which are of outstanding universal value from the point of view of history, art or science;
cultural zones:	groups of separate or connected buildings which, because of their architecture, their homogeneity or their place in the landscape, are of outstanding universal value from the point of view of history, art or science;
sites:	works of man or the combined works of nature and man, and areas ... which are of outstanding universal value from the historical, aesthetic, ethnological or anthropological points of view.



## **Comparison of Definitions of Cultural Property**



## Periodic Reports of High Contracting Parties

### APPENDIX VII

#### **PERIODIC REPORTS OF HIGH CONTRACTING PARTIES**

Under Article 26(2), each High Contracting Party undertakes to forward to the Director-general of UNESCO, at least once every four years, a periodic report on the action taken or being contemplated to implement the *Convention*. These reports are brought together by the Director-General and made available to parties to it.

Since 1954, such compilations of national reports have been made in the years 1962, 1967, 1970, 1979, 1984 and 1989. Less than 100 periodic reports have been submitted by States Parties to the 1954 *Hague Convention*, perhaps about one quarter of the number that should have been received by the Director-General, after allowing for the dates of formal adoption by ratification or otherwise by the 82 States Parties to the *Convention* (68 Parties to the *Protocol* also) as at April 1993. (See Appendix II of this Report for the full list). The following periodic reports have been submitted:

YEAR OF D-G's REPORT	1962	1967	1970	1979	1984	1989
ALBANIA	-	Y	-	-	-	-
AUSTRALIA	-	-	Y	-	-	-
AUSTRIA	-	Y	Y	Y	Y	-
BELGIUM	Y	-	-	Y	-	-
BULGARIA	-	Y	-	-	Y	-
BYELORUSSIA	Y	-	-	Y	Y	-
CAMBODIA	-	-	Y	-	-	-
CHILE (NOT PARTY TO CONV.)	-	-	Y	-	-	-
CHINA (NOT PARTY TO CONV.)	-	-	Y	-	-	-
CUBA	-	-	-	-	-	Y
CYPRUS	-	-	Y	-	Y	Y
CZECHOSLOVAKIA	Y	-	-	Y	-	Y
DENMARK (NOT PARTY TO CONV.)	-	-	Y	-	-	-
EGYPT [& U.A.R.]	-	-	Y	-	-	Y
FRANCE	-	-	-	-	Y	-
GERMANY (DEM. REP.)	-	-	-	Y	Y	Y
GERMANY (FEDERAL REP.)	-	Y	Y	Y	Y	Y
GHANA	-	Y	-	-	-	-
HOLY SEE	Y	Y	-	Y	Y	Y
HUNGARY	-	Y	-	Y	-	Y

<i>YEAR OF D-G's REPORT</i>	<i>1962</i>	<i>1967</i>	<i>1970</i>	<i>1979</i>	<i>1984</i>	<i>1989</i>
INDIA	Y	Y	-	-	-	Y
IRAN	-	-	-	Y	Y	-
IRAQ	-	-	-	Y	-	Y
ISRAEL	-	Y	Y	-	-	-
ITALY	Y	Y	Y	-	-	-
JORDAN	-	-	-	Y	Y	Y
KOREA (REP.) (NOT PARTY TO CONV.)	-	Y	-	-	-	-
KUWAIT	-	-	-	-	Y	-
LEBANON	-	-	-	Y	-	-
LIBYA	-	-	-	Y	-	-
LIECHTENSTEIN	-	-	-	-	Y	Y
LUXEMBOURG	-	-	Y	-	Y	-
MALAYSIA	Y	-	-	-	-	Y
MEXICO	-	-	-	-	Y	Y
NETHERLANDS	Y	Y	Y	-	Y	Y
NEW ZEALAND (NOT PARTY TO CONV.)	-	Y	-	-	-	-
NIGERIA	-	-	-	-	Y	-
NORWAY	-	-	Y	-	Y	Y
PAKISTAN	-	Y	-	-	-	-
POLAND	Y	Y	-	Y	Y	Y
SAN MARINO	-	Y	-	-	-	-
SAUDI ARABIA	-	-	-	-	Y	Y
SIERRA LEONE (NOT PARTY TO CONV.)	-	Y	-	-	-	-
SPAIN	-	-	-	-	Y	Y
SWITZERLAND	-	Y	Y	-	Y	Y
SYRIAN ARAB REP.	-	Y	Y	Y	Y	Y
THAILAND	-	-	-	-	Y	Y
TURKEY	-	-	Y	-	-	-
U.S.S.R.	-	-	Y	Y	Y	Y
UKRAINE SSR	-	-	Y	-	-	Y
YUGOSLAVIA	-	Y	Y	Y	-	Y

1993 Report of USA Department of Defense

*APPENDIX VIII*

***JANUARY 1993 REPORT OF DEPARTMENT OF DEFENSE,  
UNITED STATES OF AMERICA, TO CONGRESS ON  
INTERNATIONAL POLICIES AND PROCEDURES REGARDING  
THE PROTECTION OF NATURAL AND CULTURAL  
RESOURCES DURING TIMES OF WAR***

**DEPARTMENT OF DEFENSE  
OFFICE OF GENERAL COUNSEL  
WASHINGTON, D.C. 20301-1600**

January 19, 1993

Honorable William H. Natcher  
Chairman, Committee on Appropriations  
United States House of Representatives  
Washington, D.C. 20515

Dear Mr. Chairman:

The Senate Report (102-154) accompanying the Department of Defense Appropriation Bill for fiscal year 1992 (H.R. 2521), requested that the Department of Defense, in conjunction with the Department of State, convene a panel to examine "international policies and procedures regarding the protection of natural and cultural resources during times of war." The Senate Report also requested that specific recommendations be provided to the Secretary of Defense and to the House and Senate Committees on Appropriations as to ways in which "collateral damage to natural and cultural resources can continue to be minimized." In accordance with the Senate Report, the attached report is submitted for your information.

Sincerely,

John H. McNeill  
Deputy General Counsel  
(International Affairs & Intelligence)

Enclosure

- - - - -

***Report to Senate and House Appropriations Committees***

The Report accompanying the Department of Defense Appropriation Bill, 1992, recognized (p. 46) the effort taken by U.S. military services during Operation Desert Storm to ensure that valuable cultural resources were not harmed. The Report requested an examination of ways in which "collateral damage to natural and cultural resources from military operations can continue to be minimized."

The care exercised by the United States and its Coalition partners in Operation Desert Storm to minimize damage to natural, civilian, and cultural resources is documented in Appendix O to the Department of Defense's Final Report to Congress on the Conduct of the Persian Gulf War, submitted by the Secretary of Defense on April 12, 1992. These issues were reconsidered by a panel of experts within the Departments of Defense and State in

response to the request contained in the Report accompanying the Department of Defense Appropriation Bill. These experts were:

John H. McNeill, Deputy General Counsel (International Affairs & Intelligence), Department of Defense;

Albert H. Dyson III, Senior Attorney, Office of the Deputy General Counsel, Department of Defense;

Victor A. D. Rostow, Deputy Assistant Secretary of Defense (Acting), Conventional Forces & Arms Control Policy, Office of the Assistant Secretary of Defense (International Security Policy);

Colonel James P. Terry, USMC [United States Marine Corps], Legal Counsel to the Chairman, Joint Chiefs of Staff;

Major Carol L. Brennecke, USAF [United States Air Force], Office of the Legal Counsel to the Chairman, Joint Chiefs of Staff;

W. Hays Parks, Special Assistant for Law of War Matters, International & Operational Law Division, Office of The Judge Advocate General, Department of the Army;

Commander Charles A. Allen, USN [United States Navy], Head, Law of Armed Conflict Branch, International Law Division, Office of the Judge Advocate General, Department of the Navy;

Major Steven J. Lepper, USAF [United States Air Force], International and Operational Law Division, Office of the Judge Advocate General, Department of the Air Force;

Edward R. Cummings, Assistant Legal Adviser for Politico-Military Affairs, Office of the Legal Adviser, Department of State; and

James C. O'Brien, Attorney-Adviser, Politico-Military Affairs, Office of the Legal Adviser, Department of State.

The following constitutes their findings:

The United States considers the obligations to protect natural, civilian, and cultural property to be customary international law. The armed forces of the United States have one of the foremost programs for implementation of and respect for the law of war in the conduct of military operations, as evidenced by their actions in the course of the Gulf War. A fundamental problem with respect to minimization of collateral damage to natural, civilian and cultural property lies in the failure of implementation of the law of war by many nations and, in many cases, in its intentional abuse. Such was the case during the Gulf War; damage that occurred to natural or cultural property in almost every instance was directly attributable to intentional violations of the law of war by the Government of Iraq and its military forces.

Cultural property, civilian objects, and natural resources are protected from intentional attack so long as they are not utilized for military purposes. Each also is protected from collateral damage that is clearly disproportionate to the military advantage to be gained in the attack of military objectives. The law of war acknowledges the unfortunate inevitability of collateral damage when military objectives and civilian objects (including cultural property and natural resources) are commingled.

The obligation to take reasonable measures to minimize damage to natural resources and cultural property is shared by both an attacker and a defender. A number of steps can be taken by an attacker in order to minimize collateral damage to natural resources or cultural property. Many of these come in the design and development of weapons, weapon systems, and target intelligence, target acquisition, or weapons delivery systems. Each of these

## 1993 Report of USA Department of Defense

systems is enhanced by the quality of training provided personnel responsible for their operation. U.S. efforts to develop, acquire, and utilize weapon systems such as the F-117 aircraft, the laser-guided bomb, and the Tomahawk missile are illustrative of the degree to which the armed services have sought precision in their military operations in order to minimize collateral damage. Even when the most precise means are not utilized, weapons systems such as F-15E Strike Eagle and F/A-18 Hornet aircraft employing general purpose gravity bombs possess weapons delivery systems that provide a measure of accuracy vastly exceeding previous capabilities, or current capabilities of most nations.

The defender has certain responsibilities as well, not the least of which is to take all reasonable measures to separate military objectives from civilian objects and the civilian population. Regrettably, in conflicts such as the Korean and Vietnam Wars, as well as the 1991 Persian Gulf War, the armed forces of the United States have faced opponents who have elected to use their civilian populations and civilian objects to shield military objectives from attack. Notwithstanding such actions, U.S. forces have taken reasonable measures to minimize collateral injury to civilians and damage to civilian objects while conducting their military operations, often at increased risk to U.S. personnel.

Finally, with the poor track record of compliance with the law of war by some nations, the United States has a responsibility to protect against threats that may inflict serious collateral damage to our own interests and allies. These threats can arise from any nation that does not have the capability or desire to respect the law of war. One example is Iraq's indiscriminate use of SCUDs during the Iran-Iraq War and the Gulf War. These highly inaccurate theater ballistic missiles can cause extensive collateral damage well out of proportion to military results. Another concern is the proliferation of weapons of mass destruction, whose use on friendly targets could cause severe collateral damage. The United States must have the capability to raise the threshold for using these weapons through active deterrence and defense.

The foregoing establishes a foundation to respond to the question raised in the Report for the Defense Appropriations Act, 1992. The paragraphs that follow will provide more specific information relating to the protection of natural resources and cultural property from collateral damage.

### *Natural resources.*

The United States recognizes that protection of natural resources, as well as protection of the environment, is important even in times of armed conflict. Natural resources are finite, and reasonable measures must be taken to protect against their unnecessary destruction. At the same time, combat has definite effects, however variable in extent and duration, on the natural environment; photographs of the battlefields of World War I provide evidence of that destructiveness, while photographs of those same battlefields today offer equal evidence of the resilient abilities of the planet to recover from the effects of conventional military operations.

In this respect the panel of experts was not inclined to agree with the suggestion in the Report of the Defense Appropriations Bill that "the employment of more powerful area munitions and standoff weaponry" necessarily results in a greater threat to the environment or natural resources. The area munitions now in use are not as destructive as the massive artillery barrages of World War I, or some bombs employed during World War II, while stand-off munitions such as the Tomahawk missile offer greater accuracy without increasing the threat to natural resources or the environment.

Similarly, natural resources that may be of value to an enemy in his war effort are legitimate targets. The 1943 air raids on the Ploesti oil fields in Romania, and the Combined Bomber Offensive campaign against Nazi oil, were critical to allied defeat of Germany in World War II, for example. What is prohibited is unnecessary destruction, that is,

destruction of natural resources that has no or limited military value. During Desert Storm, Coalition planners targeted Iraq's ability to produce refined oil products (such as gasoline) that had immediate military use, but eschewed attack on its long-term crude oil production capability. This stands in direct contrast to Iraqi destruction of the oil fields of Kuwait. "Environmental terrorism" operations such as those used by Iraq are not a part of U.S. military doctrine or practice.

The U.S. military has taken special notice of the need to protect natural resources and the environment in recent operations, and will continue to do so. In the course of Operation Praying Mantis (April 18, 1988), U.S. military forces were to attack Iranian gas and oil separation platforms (GOSPs) being utilized by Iran for military purposes, including use as observation platforms for Iranian attacks on neutral-flag oil tankers. Although aircraft were available to carry out this operation, the decision was made for Navy SEALs and Marines to assault the platforms in order to minimize the possibility of release of oil and gas contained by the platforms. The assaults were successfully conducted without release of the oil and gas.

In the course of Coalition efforts to liberate Kuwait, Iraqi forces sabotaged the Al-Ahmadi terminal in Kuwait, releasing a vast amount of oil into the Gulf. This act constituted unnecessary destruction of natural resources while also constituting a serious environmental threat to the Gulf. The flow from the Al-Ahmadi terminal was stopped by aerial destruction of vital equipment near the terminal by U.S. aircraft using precision-guided munitions.

Several international conferences have been held since the Gulf War to address the issue of protection of natural resources from unnecessary destruction and the corollary issue of protection of the natural environment; the issue recently has been considered by the Sixth Committee of the United Nations General Assembly. A general consensus exists that there is adequate protection for natural resources and the environment in the law of war as now codified; what is required is a greater respect for the law of war, and an awareness of the potential effect particular military operations or means and methods of warfare may have on the environment.

### ***Cultural property.***

Like any civilian object, cultural property is protected from intentional attack so long as it is not used for military purposes, or to shield military objectives from attack. Law of war provisions relating to the protection of cultural property date back to treaties negotiated at the beginning of this century that today are regarded as part of customary international law. As recognized in the Report for the Defense Appropriation Bill, the U.S. and its Coalition partners in Desert Storm recognized that they were fighting in the "cradle of civilization" and took extraordinary measures to minimize damage to cultural property. Regrettably, these precautionary steps were met by Iraqi use of cultural property within its control to shield military objects from attack. A classic example is the positioning of two MiG-21 fighter aircraft at the entrance of the ancient temple of Ur. Although the law of war permitted their attack, and although each could have been destroyed utilizing precision-guided munitions, U.S. commanders recognized that the aircraft for all intents and purposes were incapable of military operations from their position, and elected against their attack for fear of collateral damage to the temple.

Other steps were taken to minimize collateral damage. Although intelligence collection involves utilization of very scarce resources, these resources were used to look for cultural property in order to properly identify it. Target intelligence officers identified the numerous pieces of cultural property or cultural property sites in Iraq; a "no-strike" target list was prepared, placing known cultural property off limits from attack, as well as some otherwise legitimate targets if attack of the latter might place nearby cultural property at risk of damage. Target folders were annotated regarding near-by cultural property, and large-format maps were utilized with "non-targets" such as cultural property highlighted. In



## **1993 Report of USA Department of Defense**

examining large-format photographs of targets, each was reviewed and compared with other known data to locate and identify cultural property.

To the degree possible and consistent with allowable risk to aircraft and aircrews, aircraft and munitions were selected so that attacks on targets in proximity to cultural objects would provide the greatest possible accuracy and the least risk of collateral damage to the cultural property. Where necessary for their protection, attacking aircraft were accompanied by support mission aircraft to minimize the possibility that attacking aircraft aircrew might be distracted from their assigned mission. Aircrews attacking targets in proximity to cultural property were directed not to expend their munitions if they lacked positive identification of their targets.

The definitive U.S. policy of adherence to the law of war, which is entrenched in U.S. military doctrine and decision-making processes, ensures that similar actions will be taken by U.S. forces in any future conflict. As is true with regard to the protection of natural resources, protection of cultural property ultimately will depend upon adherence to the law of war by all parties to a conflict.

In the course of responding to this request, the panel of Department of Defense and State experts considered one additional step for the protection of cultural property. The Hague Convention for the Protection of Cultural Property in the Event of Armed Conflict of May 14, 1954 was the product of an international conference in which the United States played a very strong part. However, a decision was taken within the Executive Branch in 1958 that the convention would not be forwarded by the President to the United States Senate for its advice and consent to ratification. The basis for that 1958 decision is being reconsidered in light of changing world circumstances, the degree to which that treaty has been accepted and implemented by other nations, and the U.S. experience in the Gulf War and other conflicts since 1958. We are hopeful that this reconsideration can be concluded shortly.

### ***Conclusion.***

The panel of Departments of Defense and State experts concluded that the steps taken by U.S. forces during the Gulf War to protect natural resources and cultural property from intentional attack and collateral damage exceeded the law of war obligations of the United States. Building on this record, in order to continue to minimize collateral damage to either, as well as to other civilian objects, similar steps will be taken by the United States in future conflicts, consistent with the fundamental law of war, principles of necessity, and proportionality. The United States will continue to encourage other nations to take similar steps. A greater degree of protection for natural resources and cultural property will result from increased respect for the law of war by all nations. The United States will continue to contribute to this improvement in respect for the law of war by encouraging other States and international organizations such as the International Committee of the Red Cross to do more to implement and ensure respect for existing law of war conventions by all nations.

Within the United States, in culture and in practice, sound doctrine and acute awareness of collateral damage issues are embedded throughout our policy and defense communities; however, these are not enough. The cornerstone of minimizing collateral damage is capability. We will continue to seek legislative support for the capabilities that provide the options necessary for achieving U.S. interests with the lowest collateral damage. Such capabilities include intelligence assets to identify cultural and natural resources and to assess U.S. responses; command, control, and communications assets to ensure rules of engagement are implemented; and the most precise weapons at the right level of lethality to achieve the desired results. Finally, the United States will continue to explore methods of protecting against violations that threaten to inflict serious collateral damage to our own interests and allies from the nations that do not have the capability or the desire to respect the law of war.



## Netherlands Cultural Protection Handbook

### APPENDIX IX.

#### GOVERNMENT OF THE NETHERLANDS:

#### TRANSLATION OF HANDBOOK ON PROTECTING THE CULTURAL HERITAGE IN EMERGENCIES JANUARY 1991

##### *CONTENTS*

1. Introduction
2. Responsibility for the protection of the Dutch cultural heritage
3. Objects to be protected
4. Dangers to be protected against
5. Protection: when and how
6. Measures
7. Funding
8. The 'Top 100' protected buildings
9. The 'Top 10' objects of cultural value (other than buildings)

##### **1. INTRODUCTION**

The blue and white shields hanging on the walls of fine old buildings are a familiar sight. But their significance is less widely known. The shield is an international insignia used to denote monuments of great cultural value. This booklet gives a brief description of the way in which the priceless cultural heritage of the Netherlands is preserved. It is intended for everyone who is involved in protecting this heritage in emergencies, for example during disasters or times of international tension.

The Netherlands has a vast cultural heritage, dating back to ancient times. This irreplaceable legacy must be carefully protected and preserved, especially in emergencies. The Cultural Protection Inspectorate plays a significant role in this regard.

Protection of our culture is the responsibility of the Ministry of Welfare, Health and Cultural Affairs. The Ministry's policy is based primarily on the government's duty to protect the community from external threats.

In 1959, the Netherlands ratified the Convention on the Protection of Cultural Property in the event of Armed Conflict, signed in The Hague in 1954. In doing so, we undertook to take suitable measures to this end during peacetime and to make the necessary funds available. In recent years, Government policy has concentrated in the first instance on the protection of cultural property from the consequences of peacetime disasters.

This brochure is intended for:

- Owners or managers of cultural property protected by the international insignia;
- Provincial and municipal authorities;
- Regional disaster relief organisations;
- Local disaster relief organisations;
- National Territorial Commander;
- Provincial Military Commander;
- Officials responsible for disaster relief;

- Officials responsible for the management and supervision of protected objects, buildings and historic sites.

## **2.       *RESPONSIBILITY FOR THE PROTECTION OF THE DUTCH CULTURAL HERITAGE***

To fulfil its obligations to protect the national cultural heritage, the government created a national organisation, the Cultural Protection Inspectorate (ICB), which is run and coordinated by the Ministry of Welfare, Health and Cultural Affairs. The Inspectorate is made up of volunteers appointed by the Minister, consisting of provincial, regional and general inspectors. Each inspector has some kind of connection - often of a professional nature - with the Dutch cultural heritage. The organisation is structured as follows.

The Ministry of Welfare, Health and Cultural Affairs is responsible for the development of an integrated policy on cultural protection. This includes drafting legislation and regulations and assuming managerial responsibility for ensuring that its policy is implemented in practice.

The provincial inspectors coordinate measures aimed at protecting monuments and other cultural property within their areas of jurisdiction. It is their task to ensure that action can be taken in the event of emergencies. They also provide support for the regional inspectors in their areas, in close consultation with the Provincial Governor, the Provincial Military Commander or the Territorial Commander. They see to it that the regional inspectors are properly briefed, they assess recommendations and plans, and present these to the Minister and to owners of cultural property.

The regional inspectors, in their turn, support the provincial inspectors. They are responsible for protecting the monuments and other cultural property in their own regions in close collaboration with local mayors and municipal disaster relief organisations. They encourage the drawing up of emergency plans to protect cultural property and make recommendations on protective action. Their regions generally coincide with those of the regional fire services.

The general inspectors are responsible for the protection of particular categories of cultural property, including stained-glass windows, carillons, bells, clock towers and organs, as well as for fire prevention in protected buildings. They also advise the provincial and regional inspectors and the owners or managers of cultural property.

In addition to the inspectors, there are a number of cultural protection officers. These officers, appointed pursuant to the Royal Decree of 16 May 1953 (Bulletin of Acts, Orders and Decrees, no. 31), belong to the Army reserve. Their tasks include:

- preventing as far as possible damage to or destruction of buildings, museums, libraries, archives etc. that are protected by the blue and white shield;
- preventing the theft of cultural property;
- taking steps to ensure that historical buildings containing cultural treasures and which bear the blue and white shield are not used as billets for military personnel or for other military purposes;
- providing support for the transport of cultural property.

The ICB is by no means intended to perform a "catch-all" function. Its activities should rather be seen as supplementary to the regular provisions for the national cultural heritage.

## **3.       *Objects to be protected***

The Netherlands possesses an abundance of buildings and objects of great cultural value. 43,000 buildings are listed under the Monuments and Historical Buildings Act, including churches, castles, houses and mills. An extensive collection of immovable cultural objects

## **Netherlands Cultural Protection Handbook**

are housed in approximately 800 museums, antiquities rooms, libraries, archives, etc. In addition, there are a number of "movable" protected objects in "fixed" locations, such as church pews, tombs, organs, fonts, pulpits, carillons and stained-glass windows.

The need to implement an effective and efficient policy with limited funds forced the government to select which buildings and objects to protect financially. To enable these choices to be made, clear criteria were drawn up and the existing status of all monuments revised.

The inspectors' activities are particularly directed towards the following objects:

### **Protected buildings**

- More than 100 objects of exceptional cultural-historical value. These are known as the Top 100 (see page 15) and all bear the blue and white shield, the international insignia introduced in the Hague Treaty.
- Objects of importance to the national cultural heritage. These also bear the blue and white shield.
- The remaining buildings on the national Register of Protected Monuments and Historic Buildings.

### **Other objects of cultural value**

- Objects of exceptional cultural-historical value housed in public and private collections in museums, castles, archives, libraries, etc.
- Objects designated under the Cultural Heritage Preservation Act (Bulletin of Acts, Orders and Decrees 1984, 49).
- Objects designated as being of exceptional cultural value, pursuant to the State Arts Collections Decree (Government Gazette 1985, 34).
- Objects designated by the Head of the Netherlands Office for Fine Arts.
- Cultural goods which are theoretically "movable" but which are considered "immovable" due to their location or use, designated by the Head of the Department for the Preservation of Monuments and Historic Buildings and/ or the Head of the Netherlands Office of Fine Arts.

## ***4. DANGERS TO BE PROTECTED AGAINST***

The ICB takes the following threats into account in implementing protective measures:

- vandalism
- theft
- looting
- chemical damage (for example, as a result of natural disasters)
- projectiles
- fallen masonry
- molotov cocktails
- water
- explosives
- heat, fire, smoke
- fragmentation

- earth tremors
- the effects of air pressure
- industrial disasters
- environmental disasters
- natural disasters
- dangerous transport.

This list is incomplete but does give some idea of the kind of threats the Inspectorate has to be prepared for. The above sequence is roughly in ascending order of severity, but this can by no means to be used as a yardstick. Damage caused by a knife, for example, can be more serious than the effects of a bomb explosion some distance away.

Many of these dangers can arise under normal circumstances; preventive and remedial measures may frequently coincide. For example, in the cases of fire, water or fallen masonry, steps taken to provide for emergencies are frequently useful as normal preventive measures.

The work of the ICB is carried out largely in the grey area between normal preventive tactics and supplementary measures for emergencies. It advises the owners of cultural monuments on how to protect their property from such hazards.

## **5.     *PROTECTIVE MEASURES: WHEN AND HOW***

The ICB's responsibilities relate to two completely different situations - normal and emergencies.

### **Normal circumstances**

Under normal circumstances, the Inspectorate has a preventive function. The main task of the inspectors is to provide for possible emergencies.

### **Emergencies**

These include emergency situations and disasters, as well as threats arising during periods of international tension. The inspectors are then authorised to take any measures they consider necessary, in consultation with owners and the authorities concerned, to protect the property in question. Generally speaking, it can be assumed that during emergencies measures are taken to limit damage as much as possible.

Owners and managers of cultural property should, of course, also provide for such eventualities themselves. The ICB provides support in the form of advice and incentives and by implementing measures itself.

## **6.     *MEASURES***

Once an emergency situation has arisen, there is clearly no time for measures to be prepared. Emergency measures should therefore be drawn up as far as possible under normal circumstances, so that they can be implemented by regional inspectors in the event of a disaster.

Measures for the protection of cultural property can be divided into two categories - organisational and practical measures.

### **Organisational measures**

## **Netherlands Cultural Protection Handbook**

It is up to the cultural preservation inspectors to consult with the relevant organisations, to outline the interests involved in protecting the cultural property concerned and to explain the workings of the ICB. They are also responsible for ensuring that relevant information on the ICB and on objects of cultural value is included in emergency plans.

It is important to encourage the fire services, which are responsible for coordinating emergency action, to include the data on the ICB and cultural objects in their own information systems so that they can respond adequately in emergencies. The ICB promotes and supervises the documentation of cultural objects in the form of technical and architect's drawings, photogrammetry, photography and written descriptions, and the placing of these documents in safe storage.

In the field of fire prevention, the ICB encourages the drawing up of 'plans of action' for fire services containing relevant information on the object concerned, the ICB and, more importantly, which sections of the object should be given special attention in the event of fire.

In addition the ICB promotes the drawing up of evacuation plans for the most important registered buildings. These plans should also include descriptions of all parts of the object requiring special protection.

The general inspectors provide instructions on how best to protect stained-glass windows, bells and carillons, organs and other objects of cultural value.

Via the Inspectorate, WVC makes a number of 'pilot-light' agreements with third parties to ensure that sufficient help will be available in emergencies for the ICB to implement the necessary measures.

The ICB also gives advice on the inclusion of measures in restoration plans to protect objects or valuable parts of them. Subsidies are available from WVC for the implementation of these supplementary measures.

### **Practical measures**

Practical measures can be divided into two categories - preventive and operational measures.

#### **Preventive measures**

The ICB promotes the setting up of storage space for valuable objects on site by investigating for each object whether storage can be arranged, if necessary by taking extra measures.

On-site storage space must provide relatively good protection from earth tremors, falling masonry, explosions, heat, water from fire-fighting activities and rising groundwater. In short, it should be adequate to cope with a large number of the hazards listed above.

The Inspectorate encourages the instalment of smoke detectors, with an automatic connection to the fire service.

Building regulations, of course, also require the presence of fire extinguishers. Dry standpipes may also be installed to facilitate fire-fighting on upper floors.

There must be a sufficient source of water available for fire-fighting purposes in the immediate vicinity of the object.

The ICB promotes the distribution of information on action to be taken in the event of fire. To prevent fires spreading, it is important to act quickly to extinguish them in the early

stages. Owners and managers of cultural property should therefore be given basic training in fire-fighting techniques. After all, speed is of the essence!

The Inspectorate develops protective structures to safeguard objects that cannot be stored on-site. Materials are reserved for this in consultation with WVC. The possibility of installing permanent structures is considered, for example, to protect vulnerable objects against water or projectiles.

Burglary prevention is also something that the Inspectorate, as well as owners and managers, must take into account. The primary requirement is that the object can be adequately locked up. Measures to ensure this must comply at least with the \*\*\* classification, with extra steel plating, iron bars, etc., if necessary.

### **Operational measures**

As is clear from the above, the cultural protection inspectors are authorised to take or instigate any measures they consider necessary on their own initiative, in consultation with local authorities.

The inspectors are responsible for the implementation of protective measures, provided, of course, that no other party has been given this responsibility by the owner of the property. Inspectors should also help organise the transport of cultural objects to national and other storage areas, if this is necessary.

The ICB promotes and supervises the on-site storage and protection of objects that cannot be moved elsewhere. This may mean enlisting the help of third parties - in relation to either manpower or materials - under the 'pilot-light' agreements.

Third parties may likewise be called in if the circumstances call for supplementary measures over and above the preventive measures already implemented.

The Inspectorate can provide advice on fire-fighting activities to ensure that objects suffer as little damage as possible. The fire services will, of course, need to guarantee the safety of persons and animals, and then of the area around the fire, before attention can be given to the object. It is up to the regional inspectors to inform the fire services of the instructions in the above-mentioned 'plans of action'.

In the event of an emergency, an official of the Building and Housing Inspection Department will advise the fire service on action to be taken if there is a danger of the structure collapsing. The regional inspector must be involved in these consultations and should insist on measures being taken to keep damage done to the culturally important parts of the buildings to an absolute minimum.

Finally, the ICB will provide owners and managers of cultural property with as much help as possible in emergencies, taking into account the Inspectorate's capacity and priorities. If the owner is unable to take action himself, the regional inspector may take any measures he considers necessary.

## **7. FUNDING**

In principle, the activities of the Inspectorate are carried out free of charge. If measures have to be taken under circumstances that cannot be considered emergencies, the costs have to be borne by the owner of the property. Limited subsidies are available from WVC for supplementary preventive measures.

## **8. 'TOP 100' LISTED BUILDINGS**



## Netherlands Cultural Protection Handbook

Province (left untranslated where advisable)	Building	Place
ZE	St Bavo's	Aardenburg
UT	Castle	Amerongen
NH	Deutzenhofje	Amsterdam
NH	Stock Exchange, Damrak	Amsterdam
NH	Main Post Office	Amsterdam
NH	Hotel American	Amsterdam
NH	Keizersgracht 123	Amsterdam
NH	Royal Palace	Amsterdam
NH	Maritime House	Amsterdam
NH	Spaarndammer Plantsoen	Amsterdam
NH	Trippenhuis	Amsterdam
NH	Amstelkring Museum	Amsterdam
NH	Rijksmuseum	Amsterdam
NH	Oude Kerk	Amsterdam
NH	Portuguese Synagogue	Amsterdam
GE	Het Loo Palace	Apeldoorn
GR	Reformed church	Appingedam
GE	De Schaffelaar estate	Barneveld
ZH	Tussenlanen 11-13, farmhouse	Bergambacht
NB	Markiezenhof	Bergen op
	Zoom	
NB	Onze Lieve Vrouwekerk	Breda
NB	Royal Military Academy	Breda
LI	Korthauserstraat 5	Cottessen
GE	Middachten Castle	De Steeg
OV	Twickel Castle	Delden
ZH	Tomb of William of Orange, Nieuwe Kerk	Delft
ZH	St Agatha's convent	Delft
ZH	Agneta Park	Delft
OV	Church of St Lebuinus	Deventer
OV	Town Hall	Deventer
GE	Slangenburg	Doetinchem
ZH	Onze Lieve Vrouwekerk	Dordrecht
LI	Eijsden Castle	Eijsden
NH	Westerkerk	Enkhuizen
NH	Town Hall	Enkhuizen
FR	Planetarium	Franeker
FR	Town Hall	Franeker
OV	Mastenbroek Steam Pumping Station	Genemuiden
ZH	St Jan's - Goudse Glazen	Gouda
ZH	Naaierstraat 6	Gouda
NB	Hampoort	Grave
NH	Trompenburg	's-Graveland
ZH	Binnenhof, Buitenhof, Prison Gate	The Hague
ZH	Passage	The Hague
ZH	Huis ten Bosch	The Hague
ZH	Panorama Mesdag	The Hague
ZH	Nieuwe Kerk	The Hague
ZH	Old Catholic Church	The Hague
ZH	St Teresa of Avila's church	The Hague
ZH	Huis Schuilenburg	The Hague

ZH	Nirwana (residential flats)	The Hague
ZH	Papaverhof	The Hague
ZH	Mauritshuis	The Hague
GR	Corn Exchange	Groningen
LI	Tower mill	Gronsweld
NH	Welgelegen	Haarlem
NH	Teylers Museum	Haarlem
NH	Choir stalls and screen, Grote kerk	Haarlem
NH	De Cruquius Steam Pumping Station	Haarlemmermeer
ZH	Bisdom van Vliet Museum	Haastrecht
LI	Oranje Nassau I mining monument	Heerlen
NB	Cathedral of St Jan	's-Hertogenbosch
LI	St Gerlach's	Houthem
UT	Villa Henny	Huister Heide
UT	Tower of Reformed church	IJsselstein
OV	Town Hall	Kampen
LI	Rolduc Abbey	Kerkrade
ZH	St Annahofje	Leiden
ZH	De Heesterboom Mill	Leiden
ZH	Thysiana Library	Leiden
FR	Ir. Wouda Pumping Station	Lemmer
LI	Salviuskerkje, former parish church	Limbricht
GR	Reformed church	Leppersum
LI	Spaans Gouvernement	Maastricht
LI	Helpoort	Maastricht
LI	Onze Lieve Vrouwekerk	Maastricht
LI	Church of St Servaas	Maastricht
LI	Town Hall	Maastricht
ZE	Binnendijk 3, farmhouse	Middelburg
ZE	Oostkerk	Middelburg
NH	Middenweg 196, farmhouse	Middenbeemster
NB	Zandstraat 5,	Moergestel
GE	St Hubertus Hunting Lodge	Otterloo
NB	Basilica of SS Agatha and Barbara	Oudenbosch
GE	De Meesterkok E 96, farmhouse	Ratum
ZE	Gate, Fort Rammekens	Ritthem
LI	Munsterkerk	Roermond
ZH	Van Nelle factory	Rotterdam
ZH	Justus van Effen buildings	Rotterdam
ZH	Witte Huis	Rotterdam
ZH	De Kiefhoek	Rotterdam
GE	Castle - shell gallery	Rozendaal
NH	Vinkenbaan 14	Santpoort-Z
UT	Royal Palace	Soestdijk
DR	Former Rams Woerthe villa	Steenwijk
GR	Former monastery	Ter Apel
LI	R.C. church	Thorn
UT	Dom	Utrecht
UT	Schröderhuis	Utrecht
UT	Kerkenkruis	Utrecht
LI	De Kruitmolen	Valkenburg
LI	Railway station	Valkenburg
LI	Castle ruins	Valkenburg
ZE	Town Hall	Veere
ZH	Duivenvoorde Castle	Voorschoten
NB	Martinuskerk and tower	Weert
NH	Town Hall	Weesp
NH	Raadhuis	Westzaan
GE	Mill	Zeddam

## Netherlands Cultural Protection Handbook

ZE	Meelstraat 1	Zierikzee
ZE	Noord- en zuidhavenpoort	Zierikzee
GE	Old library, church of St Walpurga	Zutphen
OV	Sassenpoort	Zwolle

### Abbreviations (Provinces of the Netherlands)

DR	Drenthe
FR	Friesland
GE	Gelderland
GR	Groningen
LI	Limburg
NB	North Brabant
NH	North Holland
OV	Overijssel
UT	Utrecht
ZE	Zeeland
ZH	South Holland

### 9. THE 'TOP 10' OBJECTS OF CULTURAL INTEREST (OTHER THAN BUILDINGS)

(left untranslated where advisable)

#### *Stained glass windows*

<b>Object Place</b>	<b>Remarks</b>	
St Jan's church	Gouda	made by Crabeth et al, begun in 1555
Church of St Nicolaas	Edam	made by Isaac Nicolay et al begun in 1606
Dutch Reformed church	Oudshoorn	made between 1661 and 1671
Nieuwe Kerk	Amsterdam	lower section in northern transept, made by J. van Bronckhorst in 1650
Oude Kerk	Amsterdam	made by Crabeth and Lambeth van Noort, circa 1560
Sint Annahof	Leiden	makers unknown, circa 1500
Dutch Reformed 1631-1636	Schermerhorn	made by Pieter Holsteyn, church
Reformed church (Friesland)	Oudega	made by Ype Staak and Jurjen
Rams Woerthe	Steenwijk	made by A. le Comte circa (former villa)
Maritime Museum	1920 Amsterdam	made by W. Bogtman circa 1916

#### *Church bells*

<b>Object Place</b>	<b>Remarks</b>	
Reformed church	Usquert	cast by Herman(nus) in 1405, Ø 140 cm
Reformed church	Zandweer	cast by H. Kokenbakker in 1467, Ø 107 cm
Reformed church	Oudega	cast in 15th century (caster unknown), Ø 99 cm
Reformed church Buurkerk	Hattem Utrecht	cast by Gert Klinge in 1455, Ø 130 cm cast by Steven Butendiic in 1471, Ø 166 cm
Zuiderkerk tower	Amsterdam	cast by Willem and Jasper Moer in 1511, Ø 170 cm
Oude Kerk	Delft	cast by C. Noorden and J.A. Grave in 1719, Ø 149.3 cm
Reformed church H. Catherinakerk	Schoonhoven Buchten	cast by H. van Trier in 1570, Ø 230 cm cast by Gregorius in 1416, Ø 124.5 cm cast in 12th century (caster unknown), Ø 45.5 cm. Probably the oldest church bell in the Netherlands.

#### *Clocks and chimes*

<b>Object Place</b>	<b>Remarks</b>	
Reformed church	Schildwolde	tower clock with cast iron mechanism, 1598
Reformed church	Poppingawier	tower clock with cast iron mechanism, 16th century
Nieuwe toren	Kampen	chiming clock, made by M. Hansen in 1661; drum by F. Hemony, 1661
Reformed church	Dodewaard	tower clock with cast iron mechanism, made by Goslinck and Hendrik Ruempol in 1754

## Netherlands Cultural Protection Handbook

Speeltoren	Monnickendam	tower with chiming clock and moving figures, made by Roeloff Othszn. in 1595
Reformed church	Winkel	tower clock with cast iron mechanism, 15th century
Reformed church	Zoeterwoude	clock with cast iron mechanism, made by Dirk de Graaf in 1722
Town Hall	Tholen	chiming clock, made by Hendrik Arnouts in 1590
Town Hall	Sluis	'Jantje van Sluis', carved wooden figure with 4 small bells, made circa 1423
Town Hall	's-Hertogenbosch	chiming clock with moving figures, made by Juriaan Sprakel in 1651
Former Dinghuis	Maastricht	clock with cast-iron mechanism, 17th century

### *Organs*

<b>Object Place</b>	<b>Remarks</b>	
Grote Kerk	Alkmaar	great organ, designed by Jacob van Campen and built by G. van Hagerbeer in 1643; choir organ, made by J. van Covelen in 1511
Nieuwe Kerk	Amsterdam	organ with Hauptwerk, Rückpositiv and separate pedal department, built by H.W. Schonat in 1652; upper manual by J. van Hagerbeer added in 1668
Reformed church	Baarland	organ with main and auxiliary manual made by J.J. Moreau circa 1760
Martinikerk	Groningen	15th century organ with three manuals; modified in 1542; pedal department by A. Schnitger added in 1692; new Rückpositiv by F.C. Schnitger and A.A. Hinsz added in 1730
R.C. church	Gronsveld	organ with Grand Orgue, Positif and Écho, made by P. le Picard in 1712
Reformed church	Hattem	organ with single manual, probably made by the Slegel organ builders, 16th century
Church of St Lambertus	Helmond	organ originally with Grand Orgue, Positif, Écho, Récit and attached pedal department, made by G. Robustelly in 1722 for Averbode Abbey
Reformed church	Krewerd	organ with single manual, dating from 1531 (builder unknown)
Nicolaikerk	Utrecht	organ with two manuals, made by Peter Gerritsz. between 1477 and 1479; Renaissance style Rückpositiv added in 16th century (now in storage).



## Proposed Intergovernmental Advisory Committee

### APPENDIX X.

#### OUTLINE OF RECOMMENDED COMPOSITION AND ROLE OF THE PROPOSED INTERGOVERNMENTAL ADVISORY COMMITTEE ON THE PROTECTION OF CULTURAL PROPERTY IN THE EVENT OF ARMED CONFLICT

1. An Intergovernmental Advisory Committee for the Protection of Cultural Property in the Event of Armed Conflict should be established within UNESCO, constituted initially under Category II (Articles 18 - 20) of the UNESCO *Regulations for the general classification of the various categories of meetings convened by UNESCO*<sup>319</sup>. In the longer term the Committee might be re-constituted under specific powers in an updated text of the 1954 *Hague Convention and Protocol*, or by a new Additional Protocol, in either case incorporating appropriate arrangements for financial contributions from High Contracting Parties to meet the necessary expenses of the Committee and its Secretariat.
2. The Committee should follow in general terms the model of the World Heritage Committee<sup>320</sup>, though it would not have executive powers.
2. The main purpose would be keep under review the effectiveness and implementation of the 1954 *Convention and Protocol*, to advise the Director General, the General Conference, States Party to the Convention, as well as non-signatory sovereign states, on appropriate practice in relation to all aspects of the implementation of the *Convention* and more generally on the Protection of Cultural Property in times of Armed Conflict.
3. The Intergovernmental Advisory Committee would in particular receive, review and formally publish the periodic reports of High Contracting Parties specified in Article 26(2) of the 1954 *Convention*, and would assist the Director General in relation to the training and education programmes referred to below.
4. The Committee should be composed of eleven States who shall be High Contracting Parties to the *Hague Convention* elected with due regard to an equitable representation of the different regions and cultures of the world at a meeting in general assembly of States Parties to the *Convention* held during the ordinary session of each UNESCO General Conference. The number of States members of the Committee shall be increased to fifteen States following the entry into force of the *Convention* for at least 100 States, and to twenty-one when the number of States Parties reaches 130.
5. The membership of States Parties to the *Convention* shall be rotated in accordance with the practice of the World Heritage Committee, under rules to be made by the general assembly of High Contracting Parties, based on those in Article 9 of the *World Heritage Convention*.

---

<sup>319</sup> Regulations adopted at the 14th, 18th and 25th sessions of the UNESCO General Conference, (UNESCO *Basic Texts*, 1992, pp.120 - 122.

<sup>320</sup> UNESCO, 1972. *Convention concerning the Protection of the World Cultural and Natural Heritage* Chapter III, Articles 8 - 10.

6. In addition, the following international organisations with special interest and expertise relevant to the application of the *Convention* may be invited by the periodic general assemblies of the High Contracting Parties to attend the meetings of the Committee in an advisory capacity:

International Centre for the Study of the Preservation and Restoration of Cultural Property (ICCROM):

International Committee of the Red Cross

International Council of Monuments and Sites (ICOMOS)

International Council of Museums (ICOM)

International Federation of Library Associations and Institutions (IFLA)

International Council of Archives (ICA)

International Committee of the Red Cross (ICRC)



**Charles McConney's M,FA & A Unit proposal**

**APPENDIX XI**

***CHARLES E. McCONNEY, LOS ANGELES, 1992:***

***DRAFT PROPOSAL FOR THE CREATION OF A PERMANENT  
MONUMENTS, FINE ARTS AND ARCHIVES UNIT WITHIN  
WITHIN THE U.N. PEACE-KEEPING FORCES (SUMMARY)***

To better protect the world's diverse cultural and natural heritage for all humanity and future generations, I believe it is time to create a permanent Monuments, Fine Arts and Archives Unit (M,FA & A Unit) in the U.N. Peace-Keeping Forces.

The idea for such a Unit and the term 'M,FA & A' come from World War II, when Allied Armies (notably U.S. and U.K. forces) assigned approximately 200 officers and enlisted men to protect cathedrals, museums, art collections, historic buildings, etc. from destruction and looting.

Civilians also helped to protect endangered cultural assets in WWII. For example, two private American groups, The American Defense - Harvard Group, and The American Council of Learned Societies, organized several hundred expert scholars, art historians, collectors and artists - many of them refugees from Europe - and painstakingly prepared over 800 detailed maps for Allied ground and air forces. These maps showed monuments, fine art collections and archives to be protected.

In World War II, looting and cultural destruction were also prosecuted in the International Tribunal at Nuremberg. Goering, for instance, was tried, convicted and sentenced for "looting the Low Countries."

Such efforts to protect culture need to be re-created today and institutionalized as a permanent feature in the U.N. Peace-Keeping Forces. There is an urgent need for action as major historic sites and buildings in many areas of the world are threatened with potential destruction. Of great concern is the situation in the former Yugoslav Republics where "World Heritage Sites" (the historic old cities of Split and Dubrovnik) have been deliberately shelled over extended periods of time by federal forces, in violation of international law, without valid military purpose, and seemingly solely to destroy native Croatian culture.

International treaties to protect our planet's cultural and natural assets have been too often been lacking in implementation. Take, for example, the Roerich Pact, which in its April 15, 1935 form was signed by the U.S. and twenty-one other countries in North, Central and South America. To protect sites under this Treaty, parties (nations who have signed or joined the Treaty) are obligated to register sites with the "Registry" (currently the Organization of American States), and display the distinctive flag of the Treaty (often referred to as the "Banner of Peace"). Regrettably, in over fifty-five years only Mexico has registered its sites and this legally valid and important treaty lies dormant.

The 1954 Hague Convention (UNESCO) is also under-applied. Many countries do not send in required reports to UNESCO and under-registration of sites is the pattern. Signatories to the Convention include Israel and all its neighbors, Iran and Iraq, etc. Yet in wars in the Middle East, there has been little, if any, application of the 1954 Hague Convention. And in Yugoslavia, "registered" sites, displaying the banner of the Hague Convention, have been deliberately attacked by federal forces.

To save and preserve artworks, and important cultural and natural sites from destruction and to promote Peace through Culture on a global basis, I propose the creation of a

permanent U.N. M,FA & A Unit. The Unit would be a ready force of approximately 1,000 to 2,500 specially trained activists/solders/scholars individually chosen from U.N. Member Countries. When not in action, Unit forces would be based near major restoration/teaching centers (Rome/Paris, etc.) and could be deployed on short notice to any theater of conflict in the world where important cultural, artistic, and/or natural treasures are endangered. The Unit would always be available to the world community for the emergency protection of endangered World Heritage Sites and other appropriate cultural property. Sites in disputed, boundary or occupied areas could be held and administered by M,FA & A Unit forces in emergency situations (floods, earthquakes, civil disorder, etc.) In addition, in conflict areas, the M,FA & A Unit could intervene or be deployed pursuant to an authorizing resolution of the U.N. Security Council.

To support the work of the M,FA & A Unit, I also propose the creation of a civilian/diplomatic office (which I call the "International Commission") to serve as a bridging group between the Security Council, UNESCO and the Peace-Keeping Forces. The Commission would employ experts in culture, site preservation and international law, and coordinate "campaigns" to protect specific endangered sites.

In theaters of military conflict, with respect to significant cultural and natural heritage issues, the International Commission could provide negotiating leadership & initiative analogous to the efforts of the Swiss Committee of the International Red Cross.

There are several important (and hitherto unrecognized) ways in which M,FA & A work intrinsically promotes Peace:

Peace begins when potential conflicting parties demonstrate respect for the common environment and the essence and integrity of each other's contributions to the whole;

M,FA & A work is an ideal context in which to begin the processes of finding common values among belligerents and resolving practical issues;

The U.N. Security Council, working through the medium of M,FA & A work, can significantly modify the behavior of belligerents, promote pacification, and affect the course and outcome of regional conflicts;

A permanent M,FA & A Unit will facilitate the needed implementation and better utilization of existing international law;

"Peace Zones" can be created, and enforced easily and readily in war areas if a permanent M,FA & A Unit exists in the U.N. Peace-Keeping Forces to aid implementation. United Nations M,FA & A work will help build a sense of shared world community by focusing the world's attention on cultural and natural sites and human experiences that "belong to the common world heritage", etc.

The M,FA & A Unit will become an inspiring and reassuring symbol of the world's organized commitment and dedication to the principles of inclusive diversity and the pursuit of Peace through Culture. Finally, it is important to realize that, at present, there are no (and never have been any) permanent units in the U.N. Peace-Keeping Forces. For each crisis a new peace-keeping unit has had to be created. Creating the M,FA & A Unit as the first permanent unit in the U.N. Peace-Keeping Forces will give the world valuable experience in organizing, staffing and administering a supra-national, permanent corps. An independently-formed permanent unit (not comprised of units assigned from M,FA & A national armies) will be an important symbolic and tangible step towards creating a more effective U.N./World Government -- one that can help humanity develop solutions to difficult problems in the context of law and culture and not through resort to war.

For the first permanent U.N. Peace-Keeping Unit to be an M,FA & A one, dedicated to extending Peace through Culture, will be a heartening step forward for humanity.

**Charles McConney's M,FA & A Unit proposal**

The Proposal is available in a more detailed format with exhibits (totaling about 55 pages) and is being circulated to government, cultural, and world leaders.

For further information, please contact:

Charles E. McConney  
3159 S. Barrington, #A  
Los Angeles, CA 90066  
Telephone: (310) 397-7450  
April 21, 1992



**Extracts from Council of Europe Report**

**APPENDIX XII**

**PARLIAMENTARY ASSEMBLY OF  
THE COUNCIL OF EUROPE:**

**EXTRACTS FROM FEBRUARY 1993 REPORT ON THE  
DESTRUCTION BY WAR OF THE CULTURAL HERITAGE  
IN CROATIA AND BOSNIA-HERZEGOVINA<sup>321</sup>**

*A. INFORMATION REPORT BY M. JACQUES BAUMEL*

**Introduction**

By Order 471 of February 1992 the Assembly Sub-Committee on the Architectural and Artistic Heritage was asked to investigate the situation of the cultural heritage in central and eastern Europe. It immediately turned its attention to ex-Yugoslavia and met in Ljubljana in April with representatives of the competent authorities from Slovenia and Croatia. An attempt was made on this occasion to establish contact with the authorities in Bosnia-Herzegovina, but it was unsuccessful.

This was a new situation for which present-day Europe was perhaps unprepared - that of the cultural heritage in a situation of war.

Assembly concern for the cultural heritage in this area had been voiced through questions to the Committee of Ministers, but without any positive response either from the Committee of Ministers (see Doc 6628) or from the CDCC, despite the support of the Chairman of its Cultural Heritage Committee, Mr Jean-Louis Luxen.

In this context it was clear that an initiative had to be taken. I therefore arranged for the twinning of my town of Rueil-Malmaison with Dubrovnik, set up the Comité national d'aide humanitaire et de sauvegarde de Dubrovnik and took advantage of the invitation to observe the presidential elections in Croatia at the end of July 1992 to visit Zagreb, Split and Dubrovnik with Mr Nic Tummers (former Chairman of the Committee): see Appendix A). An exhibition was subsequently mounted by Mr Tummers on the theme "Dubrovnik dans le miroir de Guernica" for the Assembly part-session in September.

Contact was also made with the Serbian authorities with regard to the fate of the collections removed from the museums of Vukovar...<sup>322</sup>

In the face of continued intergovernmental reticence, both in the Council of Europe and in Unesco, the Assembly seized the opportunity of sending a fact-finding mission into the area. This mission was carried out by Mr Colin Kaiser (formerly Director of Icomos) and Mr Jean-Claude Hatterer (staff photographer of the Council of Europe). In the circumstances, but in particular because of the lack of support from the European Community Monitor Mission (ECMM) and UNPROFOR, the area covered by this mission was limited to the regions of Dubrovnik and Mostar.<sup>323</sup>

---

<sup>321</sup> Parliamentary Assembly of the Council of Europe, Strasbourg, 2 February 1993, Doc. No. 6756.

<sup>322</sup> Appendix B of the full report - not reproduced here.

<sup>323</sup> Appendix C of the full report - not reproduced here.

At the latest session of the CDCC (12-14 January 1993), the Assembly representative, Mr Gunther Muller, was strongly supported by the Chairman of the CDCC's own Cultural Heritage Committee in recommending intergovernmental action by the Council of Europe, but not without a certain opposition.

The question is whether we are in a situation of war or cultural co-operation. On the one hand Croatia signed the European Cultural Convention on 1 February 1993. On the other we can note that Unesco is reviewing the Convention on the protection of cultural property in the event of armed conflict (The Hague 1954).

The Assembly's attention is drawn to the following reflections and the annexed

### **1. A cultural catastrophe in the heart of Europe**

The wars in Croatia and Bosnia-Herzegovina are a tragedy for the peoples of these countries and for all Europe. They have led to a major cultural catastrophe for all the communities of the war zone - whether Croat, Bosnian or Serb - and also for our European heritage, which will emerge from the war singularly amputated.

### **2. The wide extent of destruction**

Two-thirds of the administrative districts of Croatia, which corresponds to about two-thirds of this country's territory, have been touched by the war. In Bosnia-Herzegovina, where the war continues, it is difficult to make an estimate, but it is certainly over two-thirds of the country.

### **3. Everything is targeted**

Everything is targeted, but especially the buildings in which men live. Churches and mosques are annihilated, palaces too, museum collections and archives, but it is more accurate to say that the worst destruction is reserved for cities and villages - the heritage in which men live. Mr Kaiser's report describes two such areas - the villages of the Croatian commune of Dubrovnik and the city of Mostar in Bosnia-Herzegovina.

### **4. Everybody's heritage is targeted**

If there can be no doubt that the massive majority of the known damage has been done to the heritage of Catholic Croats and Bosnian Catholics and Moslems, there are unfortunately cases of reprisals against Orthodox heritage and Serbian villages, and it is to be feared that such reprisals are continuing.

Even in the Commune of Dubrovnik there are unacceptable actions against the property of Dubrovnikers of Serbian origin - even Dubrovnik, all of whose people, Croats and Serbs, have suffered together from Federal bombardment and occupation.

### **5. Cleansing: ethnic, cultural and economic**

How can it be that in 1991 and 1992 the full panoply of an army's artillery was turned loose on such towns as Vukovar, Mostar and Sarajevo?

The word ethnic cleansing is now in fashion, but it goes hand in hand with another kind of cleansing - cultural cleansing. What else can the deliberate destruction of mosques and churches be called? In the commune of Dubrovnik the destruction of traditional villages of great architectural value followed the mass exodus of rural people in October 1991 before the Federal Army.

## **Extracts from Council of Europe Report**

Yet cultural cleansing is also economic cleansing. The Commune of Dubrovnik was looted of wine, animals, farm and industrial machinery; its hotels were shelled and its tourist capacities severely damaged - not least through the damage done to its cultural heritage. The industry of Mostar was also destroyed, and tourists may keep away until its minarets are restored.

### **6. The need for information and enhanced international co-operation**

Amazingly the picture of the extent of damage in Croatia is incomplete. The Croatian Government does not know what the situation of the heritage is in occupied Krajina and Slavonia. In Bosnia information is even more fragmentary. What is the situation on the battle fronts, and in the zones occupied by each of the parties, but especially the Serbs, who control about 70% of the territory of Bosnia-Herzegovina? Without basic information - the type that the fact-finding mission found - there is nothing we can do for war-damaged heritage.

It is odd that we remain so ignorant, considering that the UN forces, the UNHCR, and the ECMM are active throughout much of the war-torn territory. They have much information, but which they are unwilling to share. They could help heritage fact-finding missions with transport, but they do not seem willing to share that either. The latest mission had to rely exclusively on the assistance of Croatians and Bosnians. If the international organisations are unwilling or incapable to help international missions, they could perhaps become more actively interested in the fate of the heritage and use the qualified personnel within their ranks as heritage observers and advisors.

### **7. Limitless technical and material needs**

It is clear that the heritage of Croatia and Bosnia needs the technical know-how of foreign experts. We cannot hide behind the false reasons that it is too early to take stock of the situation or that we should not patronise these people, for the Croatians and Bosnians demand that West Europeans finally take a real interest in their heritage, now and not later, when it may be too late.

Are these monuments stable? Can you convince our authorities not to pull them down? What can we do later with these buildings? Do you have craftsmen who will be able to help us? These are the questions that outsiders can bring answers to.

The material needs are limitless: emergency materials to cover buildings and shore up walls; standard building materials to repair roofs. Satisfying these needs goes beyond the capacities of private associations. Our states must organise this aid, and coordinate it.

## **Conclusion - people the heritage in time of war**

There is no reason to be ashamed of being concerned for the cultural heritage when men, women and children are suffering in war. When historic villages and residential districts - and we are talking about regions where most people are living in historic buildings - are destroyed or damaged, these people become refugees, reduced to the degrading experience of refugees, nourishing hatred and preparing the wars of tomorrow. In many cases however their homes can be repaired and they could return to them. All organisations that are interested in helping the Croatian and Bosnian heritage must function as one group. Each of us must pool our efforts rather than claim the glory for one little passing initiative. It does not matter for which country, for which organisation we work, for in reality we must work only for the people who suffer in the zone of war. It does not matter if we cannot solve all the problems at once; every little bit helps.

- - - - -

**APPENDIX A**

**SUMMARY REPORT ON THE VISIT OF A COMMITTEE DELEGATION  
(31 July to 3 August 1992)**

**Introduction**

1. The invitation for the Assembly to observe the elections in Croatia on 2 August provided an occasion for a delegation composed of Mr Baumel and Mr Tummers (co- authors of Written Question no.343 see Doc.6628) and accompanied by Mr Grayson (Secretary to the Committee) to visit Zagreb and Dubrovnik.

**Contacts**

2. In Zagreb the question of the cultural heritage was raised with the President of the Cultural Community of Moslems in Croatia (a full report on war damage to Moslem buildings was promised) and later with the re-elected President TuĐman. It was also discussed with the outgoing Speaker of the Croatian Parliament Mr Zarko Domljan, and with the Minister of Culture and Education Mrs Vesna Girardi-Jurki, on the occasion of a dinner offered by Ambassador Bozidar Gagro. The delegation also briefly encountered the former Yugoslav President, Mr Stipe Mesic.

3. In Dubrovnik the delegation met with the Mayor Mr Petar Poljanic and his Deputy Mr Nikola Obulen, with the Leader of the Croatian Special Guest Delegation Mr Hrvoje Kacic (the outgoing parliamentary representative for Dubrovnik and former Chairman of the Committee for Foreign Affairs), with Mr Bozo Letunic Director of the Institute for the Restoration of Dubrovnik (set up in 1979 by the municipality) and Mr Matko Vetma of the Dubrovnik Institute for the protection and conservation of cultural monuments (Ministry of Culture), and also with Mr Tomo Vlahutin, Director of the Dubrovnik Festival. Intermediaries included Mrs Vesna Gamoulin of the Protocol service of Dubrovnik and most importantly the interpreter-guide Mrs Jagoda Lukavac.

**Observations**

4. **Zagreb** has suffered only one actual attack.

5. The Church of St Mark outside the Parliament building has now had its entrances covered with wooden boarding (chips are visible to the blackened 14-15th century sculptures) but restoration of its brightly coloured 19th century roof tiles with Croatian shield-patterns and of the 17th century baroque bell tower is proceeding.

6. The room in his lodgings in which the Cardinal Archbishop of Zagreb, received the Assembly delegation showed considerable neglect (plaster holes badly bricked up, pictures missing, parquet loose).

7. The Moslem Cultural Centre (with its contemporary mosque and related administrative buildings) appeared in good condition. The carpets bore witness to being donated by the Republic of Iran.

8. **Zagreb to Dubrovnik** The delegation had to travel by air to Split (the road being unsafe between Knin and Zadar) and then was able to take the recently re-opened coast road to Dubrovnik (with police and military escort).



## Extracts from Council of Europe Report

9. There was no sign of damage until the Bosnian port of Neum, a ghost town now apparently in Croatian control.

10. At **Slano** (40km from Dubrovnik) the delegation stopped to be shown evidence of systematic destruction by the occupying Serbs ("one house per night"). A luxury hotel (Admiral) had been destroyed and most of the surrounding buildings. The local church showed no external signs of damage however and the steeple was still intact.

11. From Slano to the city of Dubrovnik (it was unsafe to go further south) war damage appeared fairly constant. Most buildings, whether ancient or modern, showed signs; the roadside was littered with rusting, burnt-out vehicles; sunken hulls and mast-heads marked former harbours.

12. **Rueka Dubrova ka** is an inlet and valley on the northern edge of the modern city of Dubrovnik long favoured by the local aristocracy which built there its summerhouses on a fairly standard plan of four rooms leading off from a central hall, usually with access to the sea and a private chapel. Some of these summerhouses are in private ownership (across the bay one was pointed out as having been bought and restored by a German), but most seem to be in some way local authority or state property. Privatisation has evidently still to be clarified. The delegation was able to visit two sites for the first time accessible to non-military personnel since the Serbian occupation.

13. An ornamental staircase leads from the sea up to the *Sorkocevic (Sorgo) Summerhouse* (16-18th century) with its gallery of 16th century frescoes and beyond a formal garden with fish-ponds etc. The summerhouse was recently restored (though not yet the frescoes) and the area developed (with considerable detriment to the surrounding park that can still be glimpsed from earlier photographs) by the ACI company chain as one of the main marinas on the Croatian coast. The marina had been attacked and then occupied by the Serbian forces; the yachts were sunk and the buildings, including the summerhouse, shelled and ransacked. The damage to the main fabric of the summerhouse seemed however relatively superficial and the frescoes untouched (although very much in need of repair from damp). The ACI chain was said to be able and willing to cover restoration costs; its title to the building is however not yet clear.

14. The *Kaboga Summerhouse* (16th century) is now cut off from its access to the sea by the modern coast road. Tucked under the shadow of the hills and facing north it remains a cool oasis. Its architecture is strong but restrained. Apparently the summerhouse has been unoccupied for some time; it is in need of repair (stone gutters etc) and access to the relevant quarries is now open. The municipal authorities are mainly concerned as to the use to which this and similar buildings can be put. Some are in private ownership, some are public institutions (see below), and some are being leased to the private sector.

15. The Rijeka inlet would seem in architectural heritage terms to pose a problem similar to that of the Golden Horn and Bosforos. It cries for a sensitive overall plan which at present seems to be lacking and in part because of the present hostilities. The internal Croatian solution is to propose taking the present coast road, the "Adriatic Highway", over a new bridge at the mouth of the inlet. This seems to have prompted the construction of a tower-building dormitory township on the northern shore which is far more obtrusive than the evidence of Serbian occupation and consequent damage to this area. Another solution is to take the main south-bound traffic on a motorway built back behind the main coastal hills. Even if this might seem to make little sense in the present situation (where might such a road lead?), it is essential to the survival of planning control in the Dubrovnik area.

16. **(North-) western coastal suburbs of Dubrovnik** There remain a number of easily identifiable historic villas, some in private ownership. The delegation visited the *Palaca Sorkocevic* (16th century), now the seat of the Academy of Science. Although a prominent and most magnificent building, it was shelled in the latest attacks on 8 June 1992 (a large calibre shell case was produced): the parquet of the main salon is ripped apart and the floor

unstable, the stone-work of the open loggia is damaged, the whole library is covered with dust and debris. At one end books line the walls on two tiers and there is a feeling of study, at the other there is a gaping hole and broken glass and plaster.

17. **North (-east) of Dubrovnik** The Serbian forces have now withdrawn from the heights overlooking Dubrovnik, but for fear of mines it was only possible for the delegation to get up to the easternmost position. Even from there the vulnerability of the old city was clearly apparent. Proceeding further inland the delegation was forced to turn back when it met with the Croat/Serb fronts. Damage was apparent everywhere and most constructions showed signs of shelling (it was not possible to reach buildings of special cultural interest in this area).

18. The port of Dubrovnik (Gruj) and port buildings have been damaged. So too have most of the hotels that the delegation visited. They now serve as refugee centres or military barracks - and briefly as polling stations. The Hotel Argentina in which the delegation was lodged was the only hotel apparently open to foreigners; the EEC Observers and journalists were based there; there were no signs of damage but the lifts, as everywhere in Dubrovnik, were not working.

19. The delegation was not able for lack of time to visit the islands nor, but for reasons of security, the (south-) eastern suburbs and airport.

20. **Dubrovnik Old City** The homogeneous medieval walled city is registered on Unesco's World Heritage List. Restoration has been carried out by the municipal Institute for the restoration of Dubrovnik (set up after the 1979 earthquake). In 1981 the Croatian Parliament set up a Committee for the renovation of cultural monuments in the Dubrovnik region and three years later a Professional advisory commission. The former is presided over by President Tuđman and chaired by Mr Domljan (who has also been compiling a topological inventory of Croatian art for the Institute of Historical Studies, Zagreb); the Secretary is Mr Davarin Stipevic (Ministry of Culture). Experts from France, Italy and Unesco are co-opted members of the advisory commission. The Venetian model of independent private organisations is being avoided by the Croatian authorities. Approximately one third of the old city is in private ownership, one third belongs to the Church and one third to the municipality.

21. More recently the old city has been an obvious target both for Serb shelling and for Croatian counter-propaganda. Shelling occurred in November and December 1991 and again in May and June 1992. The first phase was monitored by experts sent in by Unesco (Bruno Carnes and Colin Kaiser) and the question is now being co-ordinated by Gisele Hyvert, but it has been extensively documented by the Croatian authorities (and an exhibition should be mounted in Unesco later in September this year). The only practical measures so far taken have been the removal of tons of rubble from streets and destroyed houses; the boarding up of external sculpture to protect it from shrapnel; the removal into safer places of movable items (books, pictures etc); temporary re-roofing and shoring up.

22. The Assembly delegation made an extensive tour of the old city. The walls, though scarred, seemed in good condition but gave a misleading impression. From them it was possible to identify the extent of the shelling from holes visible in roofs; on further inspection on the ground each of these holes revealed a tragedy inside. Certain buildings had been completely gutted by fire (for example that of the contemporary painter Ivor Grbic), others had been extensively damaged. The roof of the building which had served as the central office for the Dubrovnik Festival had burnt, the archives had been destroyed and the surviving floors felt unsafe; however earlier frescoes had been discovered on the walls (the building has for this reason been given a temporary covering). It should be noted that the principle of construction in Dubrovnik has been to isolate buildings with stone or alleys and this has proved effective in limiting the spread of damage. *Monuments* seem to have suffered more from shrapnel than direct hits: damage was noted by the delegation to the balustrade in the 14th century cloister of the Franciscan Monastery, paving in the main street Placa (this is now largely boarded up, but no frontages have disappeared) and the

## Extracts from Council of Europe Report

Jesuit Staircase. Dramatic direct hits have been made however on the dome of the 15th century drinking fountain by the Pile Gate and on that of the Bell Tower (happily reinforced after the 1979 earthquake).

23. Perhaps the most striking change in Dubrovnik is the lack of people, whether locals or tourists. For considerable periods from November last year the town was without water and electricity (the lifts still do not work); much of the population left (although over 50% returned to vote on 2 August); the tourist industry is at a standstill (only the Hotel Argentina receives foreign visitors; this and the others that are not totally destroyed house refugees and soldiers). A 9pm curfew is still imposed. There are no tourists, no obvious shops. This year's Festival was a symbolic affair lit with candles.

### Conclusions

24. With regard to *protection* of their cultural heritage in time of war the Croatian authorities have acted properly, even if on occasion after the event: for example repeated appeals to remove to a safer place the Franciscan library in Dubrovnik were only heeded after the monastery had been hit. The appropriate flags have been flown (both of The Hague Convention and of Unesco); but these do not repel shells unless they are backed up by action by the international community.

25. With regard to the *documentation of damage* the Croatian authorities have again established an excellent basis but one which has to be verified by independent international experts. For some time the Croatian Ministry of Education and Culture has published a record of "War damages and destructions inflicted on the cultural monuments, sites and historical centers in Croatia" (the latest update is for the period of May-June 1992). Much has to be evaluated, in particular in the light of the situation preceding the present war. It is unfortunate that Unesco has not yet shown signs of publishing the results of its various missions to Dubrovnik. Unesco's interest remains very closely limited to the confines of the historic city of Dubrovnik "within the walls". The modern reality is however very much more than just what goes on within the old city walls. A wider assessment remains therefore urgently necessary not only in the whole region of Dubrovnik but also throughout the territory of Croatia as a whole. This has been indicated in the written question by MM Baumel and Tummers (no.343 see Doc 6628).

26. Such an assessment should also reveal the *immediate and long-term* needs for heritage protection in Croatia. Apparently nails (and tiles, if Unesco does not produce them soon) are urgently needed. The quarries for stone for the Placa in Dubrovnik for example are accessible, but considerable cost is involved. The conservation effort should be co-ordinated with the economic reconstruction and planning of the whole area. The Old City of Dubrovnik cannot be isolated from the surrounding town and outlying villages which are no less in need of immediate attention. Clearly planning has to be reviewed and a financial aid scheme has to be set up with short, medium and long-term objectives.

27. With regard to *action on the European level*, it can be noted that as a gesture of support, Mr Baumel has offered to twin his town of Rueil-Malmaison with Dubrovnik, has launched a National Committee for humanitarian aid and protection (of Dubrovnik) and proposed that the French Ministry of Culture send a team of experts to restore a specific monument (for example the seat of the Dubrovnik Festival). An appeal was made by the Institute for the restoration of Dubrovnik for subscriptions to permit the publication of a book "Art treasures of Dubrovnik" with 45% of the proceeds going to restoration of the monuments. The idea of European solidarity could however also be more widely extended to cover other towns and villages in Croatia (and why not also Bosnia-Herzegovina?) along the lines of the connections established with the Romanian villages when they were under the threat of Ceausescu's systematisation planning.

28. The present visit was short and inevitably superficial. There was certainly much that the delegation did not see. This report lays no claims therefore to being a definitive statement. In due course supplementary evidence will it is hoped be added.

29. A final observation at this stage could however be that the Serb forces have not irrevocably destroyed the heritage of the Croatian coast but have managed to arrest the tourism from which it lives. It should also be understood that everything in this report should be read as secondary to the personal suffering of those directly involved.

- - - - -

## **Extracts from Council of Europe Report**

### **APPENDIX D**

#### **RECOMMENDATIONS CONCERNING THE CULTURAL HERITAGE OF MOSTAR**

*by Colin Kaiser (consultant expert)<sup>324</sup>*

##### **Institutions**

1. The Zastita Spomenika Kulture should be officially recognised by the governmental authorities as the Institution for the Protection of Historical Monuments of Mostar and Region and have the clearly defined responsibilities normally held by such an institute (documentation, research, preparation, supervision and control of implementation of projects, consultation on all projects affecting the historic fabric of the town).
2. This institute should be enlarged to include all necessary specialisations among its staff.
3. This institute should be allocated the necessary resources to carry out its work and its members should have the opportunity of study tours and attending restoration courses abroad.

##### **War Protection Measures**

1. The protection programme for the Old Bridge of Mostar must be fully implemented as soon as possible, and eventually improved (e.g. sandbagging). The advice of Croatian experts, who have good experience in war protection measures, would be useful.

##### **Emergency Measures**

1. It is necessary to close all dangerous buildings, and to direct pedestrian and motor traffic away from such buildings as the Zgrada Vojne Komande. Such danger zones should be clearly marked for the population.
2. The pinnacle of the Nesuh-age Vucjakovica mosque should be removed as soon as possible, and other damaged minarets should be dismantled.
3. Although material is lacking, the emergency programmes drawn up by the Board of Revitalisation should be implemented on a priority basis (most dangerous and threatened buildings first).
4. Local authorities should be strongly lobbied to provide materials and not export them (e.g. wood).

##### **Information on the situation of Mostar**

1. A short volume on Mostar, explaining its history and development, presenting its monuments, recounting the bombardments and explaining the damage, and outlining the problems for restoration and reuse of monuments after the war should be prepared in several foreign languages.
2. It is essential to have a precise chronology of all the bombardments, indicating the target zones (including all zones of the city), in the context of military operations. It is

---

<sup>324</sup>

Original Council of Europe Doc. No. AS/ Cult/ AA (44) 21 of 17 December 1992.

equally important to have precise information on the calibres of artillery used against the monuments and the frequency of targeting on these monuments.

#### **Relations with international organisations and experts**

1. A proposal for inscription of the historic centre of Mostar and the adjoining mixed historic zone on the List of World Heritage in Danger should be drawn up and submitted to Unesco.
2. Unesco and other international and regional bodies should be solicited to organise a mission to Mostar to evaluate immediate and mid-term needs. These experts should have experience in war/ disaster situations.
3. With the financial assistance of international and regional bodies a commission of three or four international experts who would advise on the reconstruction and restoration of damaged heritage in Mostar should be set up.
4. An international symposium devoted to the restoration of the Islamic heritage of Mostar should be organised in the first half of 1993.

*Colin Kaiser*

*Fact-finding mission of the Parliamentary Assembly of the Council of Europe*

*17 December 1992*

## ***ACKNOWLEDGEMENTS***

I am very much indebted to a very large number of people in many parts of the world who have contributed to this study in many ways: through personal discussions, by submitting written evidence and assisting with the research in various other ways.

The study would not have been possible without the constant support of five people from the sponsoring bodies for the project: His Excellency Dr Johannes Sizoo, Ambassador and Permanent Delegate to UNESCO for the Kingdom of the Netherlands, Mrs. Sabine Gimbrère, Deputy Head of the Division of Multilateral Co-operation in the Netherlands Cultural Policy Department, Mr Adriaan Bos, Chief Legal Adviser, and Dr Gerard Tanja, Deputy Legal Adviser, Netherlands Ministry of Foreign Affairs, and both Dr Lyndel Prott and M. Etienne Clément of the UNESCO Division of Physical Heritage.

I am also very much indebted to both my family and to my colleagues in the Department of Arts Policy and Management, City University: without their support and tolerance it would have been impossible to complete a review of this magnitude within such a short timescale.

A list of those who have assisted me is given below, with apologies for any omissions. (In particular, I do not have a full list of the more than twenty Ambassadors and Heads of Mission to UNESCO, or their senior representatives, who assisted at a half-day seminar called by Ambassador Sizoo at the Netherlands Embassy in Paris, in February 1993.)

However, the opinions and conclusions reached are my own, and should not be attributed to any particular person consulted unless he or she is identified by name.

*Ed ABLE*, Director, American Association of Museums, Washington, D.C., U.S.A.

*Ms Annette ANDERSSON*, Department of Humanitarian Affairs, United Nations.

*Professor Charles ARNOLD-BAKER*, Barrister-at-Law, City University, London, United Kingdom.

*Sra Lucia ASTUDILLO*, Organización regional para América Latina y El Caribe, Cuenca, Ecuador.

*Mrs Agnes Grafijn BALLESTEM*, Director, Netherlands Central Laboratory for Research of Art and Scientific Objects, Amsterdam, The Netherlands.

*Mr Ian D. BAXTER*, Department of National Heritage, London, United Kingdom.

*Dr Geoff R. BERRIDGE*, Reader, Department of Politics, University of Leicester, Leicester, United Kingdom.

*ms Helen BETTINSON*, Producer - Television Documentaries, BBC, London, England.

*Mr Adriaan BOS*, Chief Legal Adviser, and Dr Gerard Tanja, Deputy Legal Adviser, Netherlands Ministry of Foreign Affairs, The Hague, Netherlands.

*M. Mounir BOUCHENAKI*, Director, Division of Physical Heritage, UNESCO, Paris, France.

*Mr Dinu BUMBARU*, Director of Programmes, Héritage Montréal, and Secretary, ICOMOS Canada, Montreal, Canada.

*Ms Susan CASY-LEFKOWITZ*, Legal Officer, Commission on Environmental Law, International Union for the Conservation of Nature, Bonn, Germany.

*Dr Peter CANNON-BROOKES*, Editor, *International Journal of Museum Management and Curatorship*, Abingdon, Oxfordshire, United Kingdom.

*Ms Consuleo Valdés CHADWICK*, Fundacion Andes, Santiago de Chile.

*Ms Sylvia CHURGIN*, Librarian, Museum Reference Center, Office of Museum Programs, Smithsonian Institution, Washington, D.C., USA.

*Mr Lorne CLARK*, World Travel and Tourism Council, Brussels, Belgium.

*Mr Edward R. CUMMINGS*, Assistant Legal Adviser, Politico-Legal Affairs, US Department of State  
Washington D.C. USA.

*Dr Hiroshi DAIFUKU*, US - ICOMOS (Formerly Head of Monuments and Museums Division, UNESCO), Washington D.C., USA.

*Mrs Marta DE LA TORRE*, Director, Training Program, Getty Conservation Institute, Marina Del Rey, Los Angeles, USA.

*Univ. Doz. Dr. Günter DEMSBSKI*, Kunsthistorisches Museum, Vienna, Austria.

*Dr Ahmed DERRADJI*, Permanent Delegate of ALSECO to UNESCO, Paris, France.

*Mme Elisabeth DES PORTES*, Secretary-General, International Council of Museums (ICOM), Paris, France.

*Norman S. DICKERSON*, U.K. Association of Chief Fire Officers and Chief Officer, Leicestershire Fire and Rescue Service, Leicester, England.

*Ms Mary DINES*, Administrator, Department of Arts Policy and Management, City University, London, United Kingdom.

*Dr Richard P. DOBER*, Dober, Lidsky, Craig Associates Inc., Belmont, MA., U.S.A

*Ms Louise DOSWALD-BECK*, Barrister-at-Law, Legal Division, International Committee of the Red Cross, Geneva, Switzerland.

*Prof. Miléna DRAGICOVIC-SECIC*, Faculty of Drama, New Belgrade, Yugoslavia.

*Mr J. EVENBLIJ*, Cultural Protection Officer, Cultural Heritage Directorate, Ministry of Welfare, Health and Cultural Affairs, Rijswijk, The Netherlands.

*Mrs Erin FAHERTY-MELLA*, Executive Radio Producer, Office of Public Information, UNESCO, Paris, France.

*Mr Wilbur FALK*, Director of Security, The Getty Foundation, Malibu, California, U.S.A.

*M. Bruno FAVEL*, Chargé de Mission, Département des Affaires Internationales (Culture), Ministère de l'Education et de la Culture, Paris, France.

*Ms Arlene K. FLEMING*, Independent Cultural Resource Management Consultant, Great Falls, Virginia, U.S.A

*Dr Michael A. FOPP*, President, International Association of Transport Museums, Royal Air Force Museum, Hendon, London, United Kingdom.

*Ms Nancy FULLER*, Office of Museum Programs, Smithsonian Institution, Washington, D.C., USA.



*Dr Amareswar GALLA*, Director, Cultural Heritage Management Program, University of Canberra, Belconnen, A.C.T., Australia.

*Mrs. Drs. Sabine GIMBRERE*, Deputy Head of the Division of Multilateral Co-operation, Cultural Policy Department, Netherlands Ministry of Welfare, Health and Cultural Affairs, The Hague, The Netherlands.

*Mr Christopher GRAYSON*, Council of Europe, Strasbourg, France.

*Teunis HALFF*, Legal Counsellor, Netherlands Mission to United Nations, New York, U.S.A.

*Mr Henrik Jarl HANSEN*, National Museum, Copenhagen, Denmark.

*Ms Margaret HARVEY*, Frobisher Crescent Branch Librarian, City University, London, United Kingdom.

*Mr HOFFMAN*, Cultural Protection Officer, Province of Zuid-Holland, The Hague, The Netherlands.

*Dr Robert HOFFMAN*, Assistant Secretary, Smithsonian Institution, & Chair, AAM/ ICOM, Washington D.C., USA.

*Mr Joachim HÜTTER*, Peacekeeping Division, United Nations, New York, U.S.A.

*Mme Giselle HYVERT*, Project Officer, Dubrovnik Campaign, Division of Physical Heritage, UNESCO.

*Mr Jack JONES*, Emergency Aid Department, Overseas Development Administration, Foreign and Commonwealth Office, London, United Kingdom.

*Dr Colin KAISER*, Cultural Consultant to the Council of Europe (former Director-General, ICOMOS), Paris, France.

*Russell KLEINE*, Deputy Director, United States National Committee of ICOMOS/ World Monuments Fund, Washington, D.C., USA.

*Drs Ben KOEVOETS*, President, ICOM Netherlands, & PTT Museum, Amsterdam, The Netherlands.

*Mr Jan KOCK*, Dansk ICOM & Aalborg Historiske Museum, Aalborg, Denmark.

*M. Robert LECAT*, Inspecteur Général de l'Administration (Culture), Ministère de l'Education et de la Culture, Paris, France.

*Mr David LISTON*, International Committee for Museum Security of ICOM (ICMS) & Office of Protection Services, The Smithsonian Institution, Washington D.C., USA.

*Dr G.C. LODDER*, Director, Cultural Heritage Directorate, Ministry of Welfare, Health and Cultural Affairs, Rijswijk, The Netherlands.

*Mr Michael LOFTHOUSE*, Senior Assistant, Frobisher Crescent Branch Library, City University, London, United Kingdom.

*Mr Morten LUNDBAEK*, Statens Museumsnaeven, Copenhagen, Denmark.

*Prof. Dr. Ivo MAROEVIC*, Professor of Museology, University of Zagreb, Zagreb, Croatia.

*Mr Charles A. McCONNAY*, Attorney-at-Law, Los Angeles, USA.

*Mr Michael A. MEYER*, Head of International Law, British Red Cross, London, United Kingdom.

*Mr Gregor MODER*, President, ICOM National Committee of Slovenia, Ljubljana, Slovenia.

*Dr Alexander Borg OLIVIER*, Principal Officer, Department of Humanitarian Affairs, United Nations.

*Mr Gustavo OSPINA LOPEZ*, Director, UNESCO Liaison Office with the United Nations, New York, USA.

*Mr H.G. OOST*, Rijksarchiefdienst (Central State Archive Repository), The Hague, The Netherlands.

*Dr Jorge ORTIZ ESCOBAR*, Director nacional, Insituito Nacional de Patrimonio Cultural del Ecuador, Quito, Ecuador.

*Mr W. Hays PARKS*, Speial Assistant for Law of War Matters, Office of Judge Advocate General, Department of the Army, The Pentagon, Washington D.C., USA.

*Prof. Dr.Jur. Josef PARTSCH*, Professor Emeritus, University of Bonn, Ingelheim, Germany.

*Mme Denise PELLISIER*, UNESCO, Paris, France.

*M. Jacques PEROT*, Musée de l'Armée, Paris, France.

*Dr Dieter PESCH*, Rheinisches Freilichtmuseum, Kommern, Germany.

*Mr Jelka PIRKOVIC*, Director, Solenian Institute for the Protection of Natural and Cultural Heritage, Ministry of Culture, Republic of Slovenia, Ljunljana, Slovenia.

*Ms Marja-Liisa POHJANVIRTA*, Finnish National Committee of ICOM, Helsinki, Finland.

*Mrs Anne RAIDL*, former Head of Department of Physical Heritage, UNESCO, Paris, France.

*Mr Robert RAWLINSON*, Fire, Rescue and Disaster Planning Consultant, Hungarton, Leicestershire, United Kingdom.

*Mr Andrew ROBERTS*, Chair, International Documentation Committee (CIDOC), Cambridge, United Kingdom.

*Ms Barbara O. ROBERTS*, Museum Consultant, Seattle, USA.

*Prof. Dr. Adrezej ROTTERMUND*, President ICOM Poland, Warsaw, Poland.

*Mrs Felice STA. MARIA*, Commissioner for Cultural Heritage, Republic of the Philippines, Manila, Philippines.

*Ms L. SCHAUDINN* Director, International Organisations Division, UNESCO, Paris, France.

*Reserve Lt. Col. (Ir.). P.M.C. SCHEERS*, Cultural Protection Officer, The Netherlands & Buro voor Riumtelijke, Ordening en Architectur, Neunen, The Netherlands.

*Mr G. Thoe SCHWARZENBERG*, Head of General Services and Security, the Rijksmuseum, Amsterdam, The Netherlands.

*Ms Jane SIENA*, Director, Training Program, Getty Conservation Institute, Marina Del Rey, Los Angeles, USA.

*His Excellency Dr Johannes SIZOO*, Ambassador and Permanent Delegate to UNESCO for the Kingdom of the Netherlands, Paris.

*Ms Lise H. SKJØTH*, Folkevirke, Frederiksberg, Denmark.

*Ms Jane SLEDGE*, Chief, UNESCO/ ICOM Museum Information Centre, Paris.

*Dr Jana SOUCKOVA*, President, Czechoslovak Committee of ICOM, Náprstek Museum, Praha, Czech Republic.

*Dr Gerard TANJA*, Deputy Legal Adviser, Netherlands Ministry of Foreign Affairs, The Hague.

*Dr Safwan TELL*, Director General, Ministry of Tourism and Antiquities, Hashemite Kingdom of Jordan, Amman, Jordan.

*Ms Nancy Howell TYNER*, Getty Conservation Institute Library, Marina del Rey, Los Angeles.

*Mr Leo VAN NISPEN*, Director-General, ICOMOS, Paris.

*M. Hugues de VARINE*, Museums and Culture Consultant, Paris and Lusigny, France.

*Ms Helen WECHSLER*, International Department, American Association of Museums, Washington D.C., U.S.A.

*Dr Marian WENZEL*, Bosnia Herzegovina Heritage Rescue & Courtauld Institute, London, United Kingdom.

*Mr Ben WHITAKER*, Director, Calouste Gulbenkian Foundation UK, London, United Kingdom.

*Dr Marilou WOOD*, Director, International Department, American Association of Museums, Washington D.C., U.S.A.

*Lt. Col. E.J. WOESSINK*, Legal Adviser, National Territoriaal Commandant (N.T.C.), Netherlands Army.

*Mr Ameur ZEMMALI*, Legal Division, International Committee of the Red Cross, Geneva, Switzerland.



## Bibliography

### **BIBLIOGRAPHY**

- ADLER, G.J., 1972. Targets in War: Legal Considerations. pp. 281 - 326 in Falk, 1968 - 1972 (vol. 3, 1972) (q.v.)
- ALEXANDROV, E., 1978. *La protection du patrimoine cultural en droit international public* (Sofia: Sofia-Presse)
- ALVAREZ LOPERA, J., 1982. *La politica de bienes culturales del gobierno republicano durante la guerra civil espanola* (Madrid: Ministerio de Cultura)
- AMERICAN COMMISSION, 1946. *Report of American Commission for the Protection and Salvage of Artistic and Historic Monuments in War Areas* (Washington D.C.: U.S. Government Printing Office)
- ARMEE SUISSE, 1983. *Conventions internationales concernant les conflits armés et la neutralité III* (La Documentation Suisse, 51.7/ If.)
- BANTON, M., 1977. *The Idea of Race* (London: Tavistock Publications)
- BASSIOUNI, M.C., 1983. Reflections on criminal jurisdiction in the international protection of cultural property. *Syracuse Journal of International Law and Commerce* **10** (2), 281 - 322.
- BERRIDGE, G.R., 1991. *Return to the UN. UN diplomacy in regional conflicts* (Basingstoke: Macmillan)
- BERNHARD, M., 1965. *Verlorene Werke der Malerei: in Deutschland in der Zeit von 1939 bis 1954* (Muenchen: Ackerman)
- BESELER, H. & GOTTSCHOW, N., 1988. *Kriegsschicksale: Deutscher Architektur Verluste - Schäden - Wiederaufbau. Eine Dokumentation für das Gebiet der Bundesrepublik Deutschland* (2 vols.) (Neumünster: Karl Wachholtz Verlag)
- BLISHCHENKO, I.P., 1988. Responsibility in Breaches of International Humanitarian Law. pp. 283 - 296 in UNESCO, 1988, (q.v.)
- BOUTROS-GHALI, B., 1992. *An Agenda for Peace: Preventive Diplomacy, Peacemaking and Peace-keeping* (New York: United Nations)
- BOYLAN, P.J., 1990. Museums and Cultural Identity. Museums Association Presidential Address 1990. *Museums Journal* **Dec. 1990**, pp. 29 - 33.
- BOYLAN, P.J., 1992. Revolutionary France and the foundation of modern museum management and curatorial practice. Part I. From Revolution to the First Republic, 1789 - 1792. *Museum Management and Curatorship* **11**, (2), pp. 141 - 152.
- BRADFIELD, R.M., 1973. *A Natural History of Associations. A Study in the Meaning of Community* (2 vols.) (London: Duckworth)
- BRENNER, L., 1992. Nicholas K. Roerich: Idealist and Visionary. *Foreign Service Journal* **April, 1992**, pp. 17 & 20.
- BRITISH COMMITTEE ON THE PRESERVATION AND RESTITUTION OF WORKS OF ART, 1946A. *Works of Art in Malta. Losses and Survivals in the War* (London: H.M.S.O.)

BRITISH COMMITTEE ON THE PRESERVATION AND RESTITUTION OF WORKS OF ART, 1946B. *Works of Art in Italy. Losses and Survivals in the War. Part II - North of Bologna* (London: H.M.S.O.)

BRITISH COMMITTEE ON THE PRESERVATION AND RESTITUTION OF WORKS OF ART, 1946C. *Works of Art in Greece: the Greek Islands and the Dodecanese. Losses and Survivals in the War* (London: H.M.S.O.)

BRITISH COMMITTEE ON THE PRESERVATION AND RESTITUTION OF WORKS OF ART, 1946D. *Works of Art in Germany (British Zone of Occupation). Losses and Survivals in the War* (London: H.M.S.O.)

BRITISH COMMITTEE ON THE PRESERVATION AND RESTITUTION OF WORKS OF ART, 1946E. *Works of Art in Austria (British Zone of Occupation). Losses and Survivals in the War* (London: H.M.S.O.)

BRITISH MUSEUM, 1939. *Air Raid Precautions in Museums, Picture Galleries and Libraries* (London: Trustees of the British Museum)

BURROWS, G.S., 1984. *Montenegro Earthquake: the conservation of historic monuments and art treasures* (Paris: UNESCO)

CARDINI, F., 1992. *La Culture de la Guerre* (Paris: Editions Gallimard)

CARNEGIE ENDOWMENT FOR INTERNATIONAL PEACE, 1921. *The Proceedings of The Hague Peace Conferences* (5 vols) (New York: Oxford University Press)

CASSOU, J., 1947. *Le Pillage par les Allemands des oeuvres d'art et des bibliothèques* (Paris: éditions du Centre)

CATALONIA: COMISSARIAT DE PROPAGANDA, 1937. *Le sauvetage du patrimoine historique et artistique de la Catalogne* (Barcelona: Generalita de Catalunya)

CHAMBERLIN, R., 1983. *Loot! The Heritage of Plunder* (London: Thames & Hudson)

COMMISSION DE RECUPERATION ARTISTIQUE, 1946. *Les chefs-oeuvres des collections privées françaises retrouvés en Allemagne* (Paris: Musée de l'Orangerie)

CORBETT, P.E., 1971. The Vietnam Struggle and International Law. pp. 348 - 404 in Falk, 1971, q.v.

COREMAN, P., 1946. *La protection scientifique des oeuvres d'art en temps de guerre* (Bruxelles: Musée Royal)

CRNOBRNJA, M., 1992. *Le Drame Yougoslave* (Rennes: Editions Apogée)

DAMNA SCIENTIAE HUNGARICAE, 1947. *Devastationes in Bello Mundi Altero Ortae* (Budapest: Ministry of Culture and Public Education)

DE BREUCKER, J., 1975A. La réserve des nécessités militaires dans la Convention de La Haye du 14 mai 1954 sur la Protection des Biens Culturels *Revue de Droit Pénal et de droit de la Guerre* **14**, pp. 255 - 269.

DE BREUCKER, J., 1975B. pour les vingt ans de la Convention de La Haye du 14 mai 1954 sur la Protection des Biens Culturels *Revue Belge de Droit International* **11**, pp. 535 - 547.

### Bibliography

DE SCHUTTER, B. 1984. International Legal Protection of Cultural Property. pp. 72 - 98 in Council of Europe, 1984. *The Harmonisation of Criminal Law and International Criminal Co-operation as Instruments of Protection* (Strasbourg: Council of Europe)

DIRECTION GENERALE DE L'ECONOMIE, 1947. *Répertoire des biens spoliés en France durant la guerre, 1939 - 1945.* (2 vols.) (Berlin: Imprimerie Nationale)

DOSWALD-BECK, L. & CAUDERAY, G.C., 1990. The development of new anti-personnel weapons. *International Review of the Red Cross* **279**, pp. 565 - 577.

EIDE, A., 1988. Internal Disturbance and Tensions. pp. 241 - 256 in UNESCO, 1988, *q.v.*  
ELBINGER, L.K., 1990. The Neutrality of Art. The Roerich Pact's quest to protect art from the ignorance of man. *Foreign Service Journal* **April, 1992**, pp. 16 - 20.

R.A. FALK, (editor), 1968 - 1972, *The Vietnam War and International Law* (3 vols.) (Princeton, N.J.: Princeton University Press)

FALK, R.A., 1971. *The International Law of Civil War* (Baltimore: Johns Hopkins Press)

FRIGO, M., 1986. *La protezione dei beni culturali nel diritto internazionale* (Milan: Guiffre Editore)

GLENNY, M., 1992. *The Fall of Yugoslavia: The Third Balkan War* (London: Penguin)

GOULD, C.H.M., 1965. *Trophy of Conquest. The Musée Napoleon and the Creation of the Louvre* (London: Faber & Faber)

GOVERNMENT OF THE NETHERLANDS, 1939. *Richtlijnen voor de Bescherming Tegen Oorlogsgevaaren van Kunstschaten in Musea, Bibliotheken en Archieven. Vastgesteld bij Beschikking van de Ministers van Onderwijs, Kunsten en Wetenschappen, van Binnenlandsche Zaken en van Defensie.* (s'Gravenhage: Algemeene Landsdrukkerij)

GOVERNMENT OF THE NETHERLANDS, 1961. *Intergovernmental Conference Convention on the Protection of Cultural Property in the Event of Armed Conflicts, The Hague, 1954: Records of the Conference.* (The Hague: Staatsdrukkerij)

GOVERNMENT OF THE NETHERLANDS, 1991. *Cultuurbescherming in Buitengenwone Omstandigheden.* (The Hague: Ministerie van VWC) [Translation of text reproduced as Appendix IX of this Report]

HAGUE CONVENTION, 1954. *Convention for the Protection of Cultural Property in the Event of Armed Conflict, The Hague, 1954.*

HAGUE PROTOCOL, 1954. *Protocol for the Protection of Cultural Property in the Event of Armed Conflict, The Hague, 1954.*

HAGUE REGULATIONS, 1954. *Regulations for the Execution of the Convention for the Protection of Cultural Property in the Event of Armed Conflict, The Hague, 1954.*

HONES, E.R., 1988. Zur Kennzeichnung deskulturguts nach der Haager Konvention vom 14, mai 1954 in *Friedenzeiten Die Offentliche Verwaltung* **41**, pp. 538 - 547.

HOUDEK, F. G., 1988. *Protection of Cultural Property and Archaeological Resources* (New York: Oceana Publications)

INSTITUTE FOR PROTECTION OF CULTURAL MONUMENTS, ZAGREB, 1992. *War damages and destructions inflicted on the culture, monuments, sites and historical centers in*

*Croatia (preliminary report - to April 02th [sic] 1992* (Zagreb: Ministry of Education, Culture and Sports)

INSTITUTE FOR PROTECTION OF CULTURAL MONUMENTS, ZAGREB, 1992B. *War damage on cultural heritage in Croatia: damage and destruction in May and June 1992* (Zagreb: Ministry of Education, Culture and Sports)

ISTITUTO INTERNAZIONALE DI DIRRETO UMANITARIO, 1986. *La Protezione internazionale dei beni culturali*. (Firenze, 22 - 24.11.1984) (Rome: Ed. Nagard)

INTERNATIONAL COMMITTEE OF THE RED CROSS, 1987. *Basic Rules of the Geneva Conventions and their Protocols* (Geneva: ICRC Publications)

INTERNATIONAL COMMITTEE OF THE RED CROSS, 1989. *International Law concerning the Conduct of Hostilities. Collection of Hague Conventions and some other Treaties*. (Geneva: ICRC Publications)

INTERNATIONAL INSTITUTE OF HUMANITARIAN LAW, 1986. *The International Protection of Cultural Property. (Papers of a Symposium organized on the occasion of the 30th anniversary of the Hague Convention* (Rome: International Institute of Humanitarian Law)

KALSHOVEN, F., 1971. *Belligerent Reprisals* (Leiden).

KALSHOVEN, F., 1987. *Constraints on the Waging of War* (Geneva: International Committee of the Red Cross)

KALSHOVEN, F., 1990. Belligerent reprisals revisited. *Netherlands Yearbook of International Law* (1990) pp. 43 - 80.

KURZ, J., 1989. *Kunstraub in Europa: 1938 - 1945* (Hamburg: Facta Oblita)

LAVACHERY, H.A. & NOBLECOURT, A., 1954. *Les techniques de protection des biens culturels en cas de conflit armé* (Musées et Monuments, No. VIII) (Paris: UNESCO)

LEVI-STRAUSS, C., 1977. *L'Identité* (Paris: Presses Universitaires de France)

LITTLE, R., 1975. *Intervention. External Involvement in Civil Wars* (London: Martin Robertson)

LORENZ, S., 1947. *Destruction of the Royal Castle in Warsaw* (Warsaw: Ministry of Culture and Art)

LORENZ, S., 1954. *Trésors Culturels de la Pologne* (Warsaw: Editions Sztuka)

LORENZ, S., (N.D.) *La Canada refuse de rendre à la Pologne ses Richesses Culturelles* (2 vols.) (Warsaw: National Museum)

MC DOUGAL, M.S., & FELICIANO, F.P., 1967. *Law and the Minimum World Public Order: The Legal Regulation of International Coercion* (New Haven, Conn.: Yale University Press)

MERRIMAN, J.H., 1986. Two ways of thinking about Cultural Property. *American Journal of International Law* 80 (4), pp. 831 - 853.

MILLER, R.I., 1975. *The Law of War* (Lexington, MA: Lexington Books)

MOYNIHAN, D.P., 1993. *Pandaemonium: Ethnicity in International Politics* (Oxford: University Press)



### Bibliography

MURARO, M., 1949. *Mostra del restauro di monumenti e opere d'arte danneggiate della guerra nelle Tre Venezie (Vicenza, 1949)* (Venezia: Soprintendenza ai Monumenti)

MUSEUM DOCUMENTATION CENTRE, ZAGREB. *The destruction of museums and galleries in Croatia in the 1991 War* (Zagreb: Ministry of Education and Culture)

MUSEUMS JOURNAL, 1938A. Art Treasures of Spain. *Museums Journal* **37** pp. 338 - 339.

MUSEUMS JOURNAL, 1938B. Air Raid Precautions and Museums. *Museums Journal* **38** p. 24.

NAFZIGER, J.A.R., 1976. UNESCO-centered Management of International Conflict over Cultural Property *Hastings Law Journal* **27**, pp. 1051 - 1067.

NAFZIGER, J.A.R., 1985. International Penal Aspects of Protecting Cultural Property *International Lawyer* **19** pp.835 - 852.

NAHLIK, S. E., 1967. Protection internationale des biens culturels en cas de conflit armé. *Recueil des Cours de l'Académie de Droit International de La Haye* **120**, pp. 61 - 163.

NAHLIK, S.E., 1968. Intéret de l'humanité à protéger son patrimoine *Annuaire de l'Association des Anciens Auditeurs de l'Académie de La Haye* **1967 - 1968**, pp. 156 - 165.

NAHLIK, S.E., 1974. On some deficiencies of the Hague Convention on the Protection of Cultural Property in the Event of Armed Conflict *Annuaire de l'Association des Anciens Auditeurs de l'Académie de La Haye* **1974** pp. 100 - 108.

NAHLIK, S. E., 1988. Protection of Cultural Property. pp. 203 - 215 in UNESCO, 1988, (q.v.)

NATIONAL FIRE PROTECTION ASSOCIATION, 1991A. *Protection of Libraries and Library Collections* (ANSI/ NFPA American National Standard 910, 1991 Edition) (Quincy, MA: National Fire Protection Association)

NATIONAL FIRE PROTECTION ASSOCIATION, 1991B. *Protection of Museums and Museum Collections* (ANSI/ NFPA American National Standard 911, 1991 Edition) (Quincy, MA: National Fire Protection Association)

NATIONAL FIRE PROTECTION ASSOCIATION, 1992. *Protection of Historic Structure and Sites* (ANSI/ NFPA American National Standard 913, 1992 Edition) (Quincy, MA: National Fire Protection Association)

NATIONAL MUSEUM OF KOREA, (N.D. - ca. 1956). *War Damage to Korean Historical Monuments* (Seoul: National Museum of Korea)

NATIONAL MUSEUM, WARSAW, 1945. *Warsaw Accuses [Exhibition Guide-Book]* (Warsaw: Ministry of Culture and Art)

NOBLECOURT, A., 1953. La protection des objets de musée durant les conflits armés. (28 pp.) *Troisième Conférence de l'ICOM, Juillet 1953* (Paris: ICOM)

NOBLECOURT, A., 1958. *Protection of Cultural Property in the event of armed conflict* (Museums and Monuments No. VIII) (Paris: UNESCO)

O'BRIEN, W.V., 1972. The Nuremberg Principles. pp. 193 - 247 in R. FALK, 1968 - 1972, (vol. 3, 1972) q.v.

- O'KEEFE, P.J., & PROTT, L., 1989. *Law and the Cultural Heritage, Vol. III: Movement* (London: Butterworth)
- OFFICE INTERNATIONAL DES MUSEES, 1939. *La Protection des Monuments et Oeuvres d'Art en Temps de Guerre* (Paris: Institut International de Coopération Intellectuelle)
- OXFORD MANUAL, 1880. *The Laws of War on Land. ('Oxford Manual')* (New York & London: Institute of International Law)
- PAPE, M., 1975. *Griechische Kunstwerke aus Kriegsbeute und ihre öffentliche Aufstellung in Rom: von Eroberung von Syrakus in augusteische Zeit* (Unpublished Phil. Dr. Thesis, University of Hamburg).
- PARS, H., 1957. *Pictures in Peril* (Translation of *Noch Leuchten die Bilder*, 1953) (Oxford: University Press)
- PICTET, J.S., 1952 - 1960. *The Geneva Conventions of 12 August 1949*. (4 vols.) (Geneva: ICRC)
- POLIAKOV, L., 1987. *Le Mythe Aryen. Essai sur les sources du racisme et des nationalisms* (New edition) (Paris: Editions Complexe)
- POLISH MINISTRY OF CULTURE AND ART, 1945. *Warsaw Accuses*. (Warsaw)
- LORENZ, S., 1947. *Destruction of the Royal Castle in Warsaw* (Warsaw)
- POLISH MINISTRY OF CULTURE AND ART, 1949 - 1953. *Prace i Materia y Biura Rewindykacji i Odszkodowa* vols. 9 - 13. [vol.9: I. Malarstwo Obce (1949); vol. 10: Staty Wojenne Zbiorów Polskich w Dziedzinie R kopisów Iluminowanych (1952); vol. 11: II Malarstwo Polskie (1951) - English translation as Polish Paintings (1953); vols 12 & 13: Staty Wojenne Zbiorów Polskich w Dziedzinie Rzemios a Artystycznego - Praca Zbiorow I & II]. (Warsaw)
- PROTT, L.V., 1989. Problems of Private International Law for the Protection of the Cultural Heritage. *Recueil des Cours de l'Académie de Droit International de La Haye* **217**: 219 - 317.
- RENAN, J., 1937. L'organisation de la défense du patrimoine artistique et historique espagnol pendant la guerre civil. *Museion* **39/40** pp. 7 - 66.
- RORIMER, J.J., 1950. *Survival. The Salvage and Protection of Art in War*. (New York: Abelard Press)
- ROSS, E.B., 1980. *Beyond the Myth of Culture* (New York: Academic Press)
- ROXAN, D., 1964. *The Jackdaw of Linz. The story of Hitler's art thefts* (London: Cassell)
- ROYAUME DE BELGIQUE, 1953. *Guide Pratique pour la Protection des Biens Culturels* (Anvers: De Sikkel)
- SANDOZ, Y., 1988. Implementing International Humanitarian Law. pp. 259 - 283 in UNESCO, 1988, (q.v.)
- SIMON, M., 1971. *The Battle of the Louvre. The Struggle to save French Art in World War II*. (New York: Hawthorn Books Inc.)
- SCHNEIDER, J.T., 1935. *Report to the Secretary of the Interior on the Preservation of Historic Sites and Buildings*. (Washington, D.C.: U.S. Dept of the Interior)

### Bibliography

- SMALLCOMBE, W.A., 1946. La conservation des objets et documents de musée: expériences au cours de a seconds guerre mondiale. *Mouseion* 55/ 56 pp. 7 - 16.
- SMYTH, C.H., 1988. *Repatriation of art from the collecting point in Munich after World War II: background and beginnings with reference especially to the Netherlands* [Third Gerson Lecture, University of Groningen, 13 March 1986] (Maarsse, Netherlands: G. Schwartz)
- SOLF, W.A., 1986. Cultural Property. Protection in Armed Conflict. pp. 64 - 68 in Max Planck Institute for Comparative Public Law and International Law, 1986. *Encyclopedia of Public International Law* (Amsterdam: North-Holland Publ.)
- STAVENHAGEN, R., 1990. *The Ethnic Question. Conflicts, Development and Human Rights* (Tokyo: United Nations University)
- THOMAS, A. V. W., & THOMAS, A.J., 1971. International aspects of the Civil War in Spain 1936 - 1939. pp. 111 - 178 in Falk, 1971 (q.v.)
- THORNBERRY, P., 1991. *International Law and the Rights of Minorities* (Oxford: University Press)
- TOMAN, J., 1984. La protection des biens culturels dans les conflits armées: cadre juridique et institutionel. pp. 559 - 580 in *Etudes es essais sur le droit international humanitaire et les principe de la Croix-Rouge en l'honneur de Jean Pictet* (Geneva: ICRC Publications)
- TREUE, W., 1960. *Art Plunder: the fate of works of art in war, revolution and peace* (Translation of *Kunsttraub* 1957) (London: Methuen)
- TUCKER, H.H., 1988. *Combating the Terrorists. Democratic responses to Political Violence.* (New York & Oxford: Center for Security Studies)
- UNESCO, 1984. *The protection of movable cultural property. Compendium of legislative texts* (2 vols.) (Paris: UNESCO)
- UNESCO, 1985. *Conventions and Recommendations of UNESCO concerning the protection of the cultural heritage.* (Revised edition). (Paris: UNESCO).
- UNESCO, 1988. *International Dimensions of Humanitarian Law* (Geneva: Henry Dunant Institute; Paris: UNESCO)
- UNESCO, 1990. *Third Medium-Term Plan (1990-1995)* [25 C/ 4 Approved] (Paris: UNESCO)
- UNESCO, 1992. *Basic Texts. Manual of the General Conference and the Executive Board (1992 Edition)* (Paris: UNESCO)
- UNITED NATIONS, 1988. *Universal Declaration of Human Rights.* (New York: United Nations)
- UNITED NATIONS, 1990A. *Charter of the United Nations and Statute of the International Court of Justice* (New York: United Nations)
- UNITED NATIONS, 1990B. *The Blue Helmets. A Review of United Nations Peace-keeping* (2nd edition) (New York: United Nations)
- VALLAND, R., 1961. *Le Front de l'Art.* (Paris: Librairie Plon)
- VARSHAVSKY S.P. & REST, B., 1985. *The Ordeal of The Hermitage. The Siege of Leningrad, 1941 - 1944.* (Leningrad & New York: Aurora Art Publishers)

VEDOVATO, G., 1944. *La protezione internazionale dei monumenti storici contro le offese aeree* (Firenze: Rivista di studi politici internazionali)

VERHAEGEN, J., 1987. Legal obstructions to the prosecution of breaches of humanitarian law. *International Review of the Red Cross* **261** (November - December 1987), pp. 607 - 620.

VISSCHER, C., 1949. *International Protection of Works of Art and Monuments* (Washington D.C.: U.S. Department of State)

VON CLAUSEWITZ, 1968. *On War* [Penguin Classics edition of 1908 J.J. Graham translation of extracts from original *Vom Kreige* of 1832] (London: Penguin Books).

WILHELM, R.J., 1954. La 'Croix-Rouge' des monuments. *Revue Internationale de la Croix-Rouge* pp. 973 - 815.

WILLIAMS, S.A., 1978. *The International and National Protection of Movable Cultural Property* (Dobbs Ferry: Oceana)

WOOLLEY, SIR L., 1947. *A Record of the Work Done by the Military Authorities for the Protection of the Treasures of Art and History in War Areas* (London: H.M.S.O.)

WRIGHT, Q., 1971. Francis Lieber's Code for Land Warfare. pp. 30 - 109 in R.A. Falk, 1971, *q.v.*