

## National Interest Analysis

### Convention for the Protection of Cultural Property in the Event of Armed Conflict (UNESCO, The Hague, 1954)

#### Executive Summary

1. It is proposed that New Zealand ratify the *Convention for the Protection of Cultural Property in the Event of Armed Conflict* (the Convention). The Convention has two Protocols, the *Protocol to the Convention for the Protection of Cultural Property in the Event of Armed Conflict* (1954) and the *Second Protocol to the Hague Convention of 1954 for the Protection of Cultural Property in the Event of Armed Conflict* (1999). A separate National Interest Analysis has been prepared for the Protocols in view of the legislative changes which will be required in order for New Zealand to meet its obligations under the Protocols. The three instruments are, however, considered by the government to be a package.

2. States party to the Convention identify cultural property within their territory that is of “great importance to the cultural heritage of every people”, and therefore to be protected. These are to be protected with safeguarding measures to be taken in peacetime. States which are parties to the Convention are also required to respect cultural property during times of armed conflict, by refraining from directing acts of hostility against such property. Parties also undertake to prohibit, prevent and put a stop to theft, pillage, vandalism, requisitioning or misappropriation of cultural property and to refrain from any acts of reprisal against cultural property.

3. There are four key objectives which the government wishes to achieve by ratifying the Convention.

(1) It would be a further expression of New Zealand’s commitment to the various international measures which exist to guide the relations between nation states during times of conflict.

(2) It would reinforce the current operational practice of New Zealand’s armed forces when involved in conflicts overseas by making those current practices an obligation under international law.

(3) It would enhance New Zealand’s participation in the system of international instruments designed to protect and enhance cultural activity, and, in particular, the key cultural property Conventions.<sup>1</sup>

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<sup>1</sup> UNESCO Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property (1970), the UNIDROIT Convention on Stolen or Illegally Exported Cultural Objects (1995), and the UNESCO Convention concerning the Protection of the World Cultural and Natural Heritage (1972).

(4) It would increase the likelihood that important New Zealand cultural property would survive an armed conflict on New Zealand territory intact.

4. The advantages of ratification arise from the objectives above. The key disadvantage of ratification is that the Convention will restrict the freedom of action of the NZDF on operations in certain circumstances.

5. There are no new legislative requirements which will arise for New Zealand from ratification of the Convention. There are no compliance costs for business arising from ratification. Costs arising for government will be absorbed within departmental baselines.

6. Extensive public consultation has already been undertaken by the Ministry for Culture and Heritage, with 1500 discussion papers sent out to a wide range of stakeholders in 2007. There was overwhelming support for ratification of the Convention, with 85% of respondents agreeing with ratification of the Convention, and only 7% disagreeing.

#### **Nature and timing of proposed treaty action**

7. It is proposed that New Zealand ratify the *Convention for the Protection of Cultural Property in the Event of Armed Conflict* (the Convention), which was adopted at The Hague on 14 May 1954, and came into force on 7 August 1956. New Zealand signed the Convention on 20 December 1954. It is proposed that New Zealand ratify the Convention in 2008. The Convention would enter into force for New Zealand three months after the deposit of New Zealand's instrument of ratification (Convention, Article 33). A copy of the text of the Convention is attached.

8. The Convention has two Protocols, the *Protocol to the Convention for the Protection of Cultural Property in the Event of Armed Conflict* (1954) and the *Second Protocol to the Hague Convention of 1954 for the Protection of Cultural Property in the Event of Armed Conflict* (1999). A separate National Interest Analysis has been prepared for the Protocols in view of the legislative changes which will be required in order for New Zealand to meet its obligations under the Protocols. The three instruments are, however, considered by the government to be a package.

#### **Reasons for New Zealand becoming Party to the Treaty**

##### *Background*

9. The Convention was developed as a response to the mass destruction of cultural heritage in Europe during the Second World War. Following further

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losses of cultural property in the first Iraq/Kuwait conflict and in the Balkans, the Second Protocol was developed in the late 1990s in order to strengthen protections for cultural property.

10. Although the Convention is the key international document seeking to protect cultural heritage in the event of armed conflict, it is supported by provisions in the Additional Protocols to the 1949 Geneva Conventions, the 1970 UNESCO<sup>2</sup> *Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property* and the 1995 UNIDROIT<sup>3</sup> *Convention on Stolen or Illegally Exported Cultural Objects*. New Zealand is a party to these other instruments.

#### *Current situation*

11. Destruction of cultural property during armed conflict continues to be a problem throughout the world. The current conflict in Iraq, for example, has seen destruction and looting of cultural property. In the case of the Iraqi National Museum, it would appear that an indeterminate number of items were looted in 2003.

12. New Zealand Defence Force personnel are made aware of the provisions of the Convention and the need to respect cultural property during their training, including recognising the special emblem of the Convention when it is displayed on protected cultural property.

#### *Objectives of the Convention*

13. States party to the Convention identify cultural property within their territory that is of “great importance to the cultural heritage of every people”, and thus to be protected. States undertake to prepare in times of peace for the safeguarding of such property against the foreseeable effects of armed conflict, with such measures as they consider appropriate.

14. States which are parties to the Convention are also required to respect cultural property during times of armed conflict, both within their own territory as well as within the territory of other parties to the Convention. This requires states which are party to the Convention to refrain from using cultural property or its immediate surroundings for purposes likely to expose that property to destruction or damage, and to refrain from directing acts of hostility against such property. Parties also undertake to prohibit, prevent and put a stop to theft, pillage, vandalism, requisitioning or misappropriation of cultural property and to refrain from any acts of reprisal against cultural property.

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<sup>2</sup> United Nations Educational, Scientific and Cultural Organisation.

<sup>3</sup> International Institute for the Unification of Private Law.

15. The Convention provides a number of means by which these objectives can be implemented, including the use of a special emblem to identify protected cultural property, and provisions for protection of cultural property being transported to a safer place.

*Key reasons for New Zealand to ratify the Convention*

16. There are four key objectives which the government wishes to achieve by ratifying the Convention.

(1) It would be a further expression of New Zealand's commitment to the various international measures which exist to guide the relations between nation states during times of conflict. These include the four Geneva Conventions of 1949, the three Additional Protocols to the Geneva Conventions<sup>4</sup>, and the 1998 Rome Statute of the International Criminal Court.

(2) It would reinforce the current operational practice of New Zealand's armed forces when involved in conflicts overseas by making those current practices an obligation under international law. It would also make New Zealand's commitment to those practices more visible.

(3) It would enhance New Zealand's participation in the system of international instruments designed to protect and enhance cultural activity, and, in particular, the key cultural property Conventions.<sup>5</sup> Of these, New Zealand recently (1 May 2007) acceded to the 1970 UNESCO and 1995 UNIDROIT Conventions, and has been a party to the World Heritage Convention since 1984.

(4) It would increase the likelihood that important New Zealand cultural property would survive an armed conflict on New Zealand territory intact.

*Major and like-minded parties to the Convention and Protocols*

17. There are 118 States party to the Convention (as at 28 March 2008). Major and like-minded parties include: Australia (1984), Sweden (1985), Finland (1984), Germany (1967), Japan (2007), Netherlands (1958), Russia (1957), France (1957), Spain (1960), Canada (1998), China (2000), South Africa (2003). The United Kingdom has also announced its intention to become party to the Convention (and Protocols), and is at a similar stage to New Zealand in doing so.

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<sup>4</sup> New Zealand is currently in the process of ratifying the Third Additional Protocol (2005) to the Geneva Conventions

<sup>5</sup> UNESCO Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property (1970), the UNIDROIT Convention on Stolen or Illegally Exported Cultural Objects (1995), and the UNESCO Convention concerning the Protection of the World Cultural and Natural Heritage (1972).

## **Advantages and Disadvantages to New Zealand**

### *Advantages*

18. The Convention will require that New Zealand's armed forces be fully trained and aware of the need to respect cultural property when they are involved in operations overseas. This will reinforce the good reputation for conduct which New Zealand forces currently have, and enhance the trust in our forces when involved in operations on foreign soil. It will also ensure that New Zealand's armed forces are aware of the need to respect New Zealand's own cultural property, were they to be deployed in defence of New Zealand itself.

19. Ratifying the Convention would be consistent with New Zealand's support for the international rule of law. More specifically, it would mean that New Zealand will be party to the three key international treaties dealing with cultural property (the other two being the UNESCO Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property (1970), and the UNIDROIT Convention on Stolen or Illegally Exported Cultural Objects (1995), to both of which New Zealand is already party). New Zealand government Ministers and officials have in the past been questioned by representatives of UNESCO about New Zealand's intentions, given that New Zealand signed the Convention in 1954, but has not yet ratified it.

20. Becoming party to the Convention would also mean that New Zealand's key cultural property will be less likely to suffer damage or destruction in the event of an armed conflict in New Zealand. Cultural property that is of "great importance to the cultural heritage of every people" would be identified and, if a conflict occurred, there would be an obligation on enemy forces from any State party to the Convention to respect that cultural property and refrain from directing acts of hostility against it (New Zealand's reciprocal obligation would be to not use the site or its immediate surrounds for purposes which would likely expose it to destruction or damage). These obligations could only be waived where imperative military necessity required it.

21. Finally, becoming party to the Convention is likely to raise the profile of cultural property within New Zealand and for New Zealanders. In addition to the initial publicity at the time of ratification, some cultural property owners may elect to display the special emblem of the Convention, which is likely to engender a positive sense that New Zealand's cultural heritage is a worthy addition to the world's heritage, and pride that New Zealand is playing its part in the worldwide protection of cultural property.

### *Disadvantages of proceeding*

22. There are two potential disadvantages to New Zealand ratifying the Convention.

23. Firstly, if New Zealand ratifies the Convention, protected cultural property, or its immediate surroundings, will not be able to be used for military purposes. The New Zealand Defence Force (“NZDF”) has been involved in the policy process towards possible ratification, and is aware of the limitations that ratification will impose on it. The Convention will restrict the freedom of action of the NZDF on operations in certain circumstances. These restrictions on armed forces’ operations are one of the key purposes of the Convention, but remain, nonetheless, restrictions which necessarily carry risks. The Convention does, however, provide that in cases of imperative military necessity (most clearly defined in Article 6 of the Second Protocol), the obligation not to use cultural property for military purposes may be waived. If New Zealand decides to proceed with ratification of the Convention, the Ministry for Culture and Heritage would work with the New Zealand Defence Force to define the cultural property to be protected, so that military considerations are fully taken into account when final lists are developed. Accordingly, the government does not consider that these provisions will in practice disadvantage New Zealand.

24. Secondly, the Convention obliges parties to undertake preparatory measures in peacetime. Some respondents to the Ministry for Culture and Heritage’s consultation document noted that if protection of qualifying cultural property was mandatory, they would be unhappy if they (as owners of such property) were required to spend money implementing preparatory measures. The Ministry notes that the preparatory measures outlined in the Convention are caveated as being those “appropriate” for each country. Having considered the various currently existing measures for protection against fire, theft, natural disaster and other potential threats<sup>6</sup>, the government has concluded that cultural property likely to qualify for protection is already adequately protected, and that no further preparatory measures need to be taken upon ratification/accession. Accordingly, the government does not consider that this obligation in fact disadvantages New Zealand.

25. Officials consider that the advantages to New Zealand of ratifying the Convention outweigh any potential disadvantages.

### **Obligations which would be imposed on New Zealand**

26. A number of obligations are imposed under the Convention:

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<sup>6</sup> Including measures/provisions in legislation such as the Building Act 2004, but also those which individual institutions may have.

- To prepare in peacetime for the safeguarding of cultural property against the foreseeable effects of armed conflict (Article 3);
- To respect cultural property by not putting it or its immediate surroundings to a use likely to expose it to destruction or damage, and not directing acts of hostility against such property (Article 4(1));
- To prohibit, prevent, and put a stop to any form of theft, vandalism, misappropriation or pillage of or against cultural property (Article 4(3));
- To refrain from any act directed by way of reprisals against cultural property (Article 4(4));
- To support the national authorities of an occupied country to safeguard its cultural property (Article 5);
- To introduce guidance into military regulations to ensure observance of the provisions of the Convention (Article 7);
- To determine who, within the armed forces, will take responsibility during an armed conflict for promoting respect for cultural property (Article 7);
- To not direct acts of hostility against cultural property being transported (Articles 12 and 13), and grant such property immunity from seizure (Article 14);
- To respect personnel engaged in the protection of cultural property (Article 15);
- To disseminate the text as widely as possible within New Zealand, and ensure that its principles are known to the whole population, particularly military staff and those involved with cultural property (Article 25);
- To forward a report to UNESCO every four years outlining any information relevant to measures New Zealand has taken, is taking, or will take to implement the Convention (Article 26); and
- To take all necessary steps to prosecute and impose sanctions upon persons who commit breaches of the Convention (Article 28).

27. Article 34 requires that States which are party to the Convention must take all necessary measures to ensure the effective application of its provisions within six months of the instruments of ratification being deposited. It should also be noted that Article 4(3) above, which requires the prohibition of certain actions, is covered by current New Zealand law and does not require new legislation.

28. The Conciliation procedure for the Convention is set out at Article 22. It provides that Protecting Powers to a conflict, if they have been appointed, are to “lend their good offices” where they deem it useful in the interests of cultural property in case of disagreement as to the application of the provisions of the Convention. Parties may be invited to a meeting on neutral territory and are bound to give effect to whatever proposals the meeting may make to them. A neutral party, to be approved by the conflicting parties, is to be chosen as chair for such a meeting.

## **6. Measures which the government could or should adopt to implement the obligations in the Convention and its two Protocols**

29. There are no new legislative requirements which will arise for New Zealand from ratification of the Convention<sup>7</sup>.

30. The Ministry for Culture and Heritage will have the lead (though not necessarily sole) responsibility for the preparation of safeguarding measures in peacetime (Article 3), for disseminating the text as widely as possible within New Zealand (Article 25), and for forwarding a report to UNESCO every four years as required by Article 26. The Ministry will be supported in this as necessary by other cultural organisations such as Archives New Zealand, New Zealand Historic Places Trust, National Library of New Zealand, Museums Aotearoa and Te Paerangi National Services (Te Papa), as well as by the New Zealand Defence Force.

31. Most of the remaining obligations outlined above in section 5 of this Analysis only apply in times of armed conflict and will be incorporated into military guidelines and training as appropriate by the New Zealand Defence Force (Article 7). The New Zealand Defence Force has advised that it is largely already in compliance with the spirit, if not all the detail, of the Convention. The Defence Force's Interim Law of Armed Conflict Manual incorporates relevant provisions of the 1977 Additional Protocols to the Geneva Conventions relating to cultural property. These provisions are complementary to those of the Hague Convention, though not as detailed. Also, the Code of Conduct card issued to all Armed Forces Personnel of the New Zealand Defence Force displays the Hague Convention emblem alongside those of the Red Cross and United Nations (among others) with the message: "You are to respect persons and objects either bearing or marked with such signs".

32. The specific obligations which will need to be incorporated include those to respect cultural property (Article 4); to support the national authorities of an occupied country to safeguard its cultural property (Article 5); to not direct acts of hostility against cultural property being transported (Articles 12 and 13), and grant such property immunity from seizure (Article 14); to respect personnel engaged in the protection of cultural property (Article 15); and to take all necessary steps to prosecute and impose sanctions upon persons who commit breaches of the Convention (Article 28).

33. Article 34 requires that States party take all necessary measures to ensure the effective application of the Convention within six months of the instruments of ratification being deposited. It will be the responsibility of the Ministry for Culture and Heritage to ensure that this occurs.

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<sup>7</sup> This contrasts with the two Protocols, which will both require some legislative change in order for New Zealand to accede to them. A separate NIA has been prepared with respect to those Protocols.

## **7. Economic, social, cultural and environmental costs and effects**

34. No negative economic effects are anticipated from New Zealand's ratification of the Convention and accession to its Protocols. No research has been done in New Zealand on the economic effects of heritage protection, although it should be noted that, in any case, no new protective measures are anticipated in peacetime as a result of New Zealand's becoming party to the Convention. In an armed conflict, the purpose of the Convention is, of course, to avert possible losses of cultural property.

35. No negative social effects are anticipated.

36. No negative environmental effects are anticipated. In the event of an armed conflict, the Convention may provide some environmental protection by limiting some of the areas of New Zealand which are attacked. This may serve to protect certain valuable urban sites, some valuable natural environment sites where cultural property is situated within those (such as wahi tapu, and Department of Conservation actively managed sites). Also, the protection of certain scientific collections may represent an environmental benefit.

37. A number of cultural effects are anticipated. Ratification would increase the likelihood that important New Zealand cultural property would survive an armed conflict on New Zealand territory intact. It may also be the case that ratification will raise the profile of cultural property in peacetime. This may make this property more valued, and have flow-on effects for the respect for that property in general terms. Finally, ratification will ensure that New Zealand's good reputation in the international cultural arena is enhanced.

38. There will be no impact on the New Zealand economy. Owners of protected cultural property will not be required to take any additional safeguarding measures above those protective measures already taken to ensure against fire, theft, and natural disasters.

39. The Convention is likely to have a direct impact on Māori. Two important categories of cultural property which are likely to be protected are wahi tapu and marae. The requirement of the 1954 Hague Convention that each country protect cultural heritage of "great importance to every people" means that an assessment will need to be undertaken of which Māori cultural property will meet the threshold of great importance. This is an issue which will need to be carefully worked through and managed in consultation with Maori as part of implementing New Zealand's obligations under the Convention. See consultation section for details of consultation which has already taken place with Māori.

40. The NZDF will be directly affected by the Convention. The policy process has involved the NZDF, and the NZDF is aware of the requirements that

ratification will impose on it. The Convention will restrict the freedom of action of the NZDF on operations, with some concomitant risks in certain circumstances.

## **8. Costs to New Zealand of compliance**

41. The Convention provides for the use of a distinctive emblem on protected cultural property. It is proposed that the use of this emblem be optional for owners of cultural property, and that if the emblem is used, the cost should be borne by the owner. In practice, the use of the emblem has been and is rare among parties to the Convention, marking property with the emblem being a potentially time consuming, expensive, and administratively burdensome task. Marking property with the emblem may also be more dangerous to some items of cultural property than leaving it unmarked, and may also be aesthetically detrimental.

42. No compliance costs for business have been identified.

43. Other administration costs, costs related to the provisions on dissemination of the Convention, costs associated with reporting to UNESCO, and costs associated with amendments to military guidelines or training procedures for Defence Force staff, will be funded from within current departmental baselines.

## **9. Completed consultation with the community and interested parties**

44. The Ministry for Culture and Heritage conducted a consultation exercise for two months from mid-April to mid-June 2007. A discussion document, canvassing a number of key issues with the Convention, was prepared in consultation with the Ministry of Foreign Affairs and Trade, the New Zealand Defence Force, Archives New Zealand, National Library of New Zealand, Department of Conservation, Te Puni Kōkiri, New Zealand Historic Places Trust, Museums Aotearoa, and Museum of New Zealand Te Papa Tongarewa. In addition, Ministry of Civil Defence and Emergency Management, Department of Internal Affairs, Land Information New Zealand, and Ministry of Research, Science and Technology all provided input at a specialised level. The Department of the Prime Minister and Cabinet and The Treasury have also been consulted on the proposal. The Treasury is aware of the financial implications of the Convention.

45. The Ministry for Culture and Heritage sent out 1500 copies of the discussion document, and placed documentation on the Ministry's website. The Ministry received 85 responses to the discussion document. The organisations or interests which respondents represented are shown below.

Type of respondent	No. of responses	Total number sent out	%
Owner of Historic Place	31	520*	6
Local authority	10	85	12
Small Museum or Art Gallery	10	264	4
Central government and associated agencies	10	21	48
Historical societies	8	79	10
Metropolitan Museum or Art Gallery and Museums Aotearoa	5	8	63
Maori	3	85	4
Performing Arts Organisation (non-government)	2	16	13
Library	2	418	0.5
Personal response	2	n/a	n/a
Archives	1	14**	7
Universities and Crown Research Institutes	1	17	6
<b>Total</b>	<b>85</b>	<b>1527</b>	<b>6</b>

\*this is the number of owners; total letters sent out was 868

\*\*excludes approved repositories that were already included in Museums

46. Overall, 85% of respondents agreed with ratification of the Convention, and only 7% disagreed.

47. Eighty-five Māori organisations were sent the discussion document. One hundred copies of the discussion document were also sent to Ngati Tuwharetoa on request, though this iwi did not ultimately make a submission. In addition, all owners/guardians of registered wahi tapu or wahi tapu areas were sent a copy. The three Māori organisations which responded were broadly supportive of New Zealand's potential ratification of the Convention and accession to the protocols. Like most respondents, they also made suggestions for cultural property to be protected under the Convention.

48. The one issue which attracted a significantly divided response was whether protection for qualifying cultural property should be mandatory or optional, with responses to this question being split almost equally. Many respondents to the discussion document suggested that if any new safeguarding measures are required by government, owners of property should be able to opt out of protection. Other respondents were firmly of the view that protection should be mandatory, given that cultural heritage that is deemed of 'great importance' to New Zealand should be protected for all present and future New Zealanders, irrespective of ownership. On balance, it is proposed that owners of qualifying cultural property may not opt out of having their property listed for protection, thus providing consistent standards of protection.

49. The Ministry of Foreign Affairs and Trade is currently consulting with Tokelau on the proposal to ratify the Convention and accede to its Protocols. This consultation is undertaken in accordance with clause 10.2.2 of the Joint

Statement of the Principles of Partnership between New Zealand and Tokelau, which requires New Zealand to ensure adequate consultation with Tokelau with regard to treaty actions New Zealand intends to take, and to refrain from extending any such treaty action to Tokelau unless Tokelau expressly requests to be included.

#### **10. Subsequent protocols and/or amendments to the Convention and likely effects**

50. Any Party to the Convention can propose an amendment to the Convention (Article 39). Parties to the Convention can reply within four months and ask either that a Conference of the Contracting Parties be called to consider the amendment, or that they favour/reject the proposed amendment without calling a Conference. Amendments need to be unanimously accepted. Acceptance of the amendments is done by way of deposit of a formal document. New Zealand would consider these amendments on a case by case basis. Any decision by New Zealand to accept an amendment to the Convention would be subject to the usual domestic approvals and procedures.

#### **11. Withdrawal or denunciation provision in the Convention**

51. The procedure for denunciation of the Convention is set out in Article 37. A written instrument of denunciation is to be deposited, with denunciation taking effect one year after the receipt of the instrument. Any decision by New Zealand to denounce the Convention would be subject to the usual domestic approvals and procedures.

Ministry for Culture and Heritage  
April 2008

## **APPENDIX: Convention for the Protection of Cultural Property in the Event of Armed Conflict with Regulations for the Execution of the Convention 1954**

The Hague, 14 May 1954

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) centers containing a large amount of cultural property as defined in sub-paragraphs (a) and (b), to be known as 'centers 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**

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 centers 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 center or from any important military objective constituting a vulnerable point, such as, for example, an aerodrome, broadcasting station, establishment engaged upon work of national defense, 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 center 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 center.

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.

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 there from. 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 1 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**

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 re-spected 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, persaltire 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.

## **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 connexion 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 fulfillment 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.

#### **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.
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 1 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 1(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.

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.