

## National Interest Analysis

### First (1954) and Second (1999) Protocols to the Convention for the Protection of Cultural Property in the Event of Armed Conflict (UNESCO, The Hague)

#### Executive Summary

1. It is proposed that New Zealand accede to the two Protocols to the *Convention for the Protection of Cultural Property in the Event of Armed Conflict* (the Convention):

- 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 Convention.

2. The First Protocol is primarily concerned with the illicit trade in objects looted during armed conflict. Contracting parties in occupation of another country undertake to prevent the export of cultural property, and also to take into custody any cultural property imported into their territory either directly or indirectly from any occupied country.

3. The Second Protocol has three key objectives. The first objective is to introduce the system of 'enhanced protection'. The second objective is to require parties to the Second Protocol to criminalise serious violations of the Protocol and make such offences punishable by appropriate penalties. Finally, the Second Protocol seeks to supplement and strengthen some of the provisions of the Convention itself.

4. There are four key objectives which the government wishes to achieve by acceding to the Protocols.

(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>

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

5. The advantages of accession arise from the objectives above, and are similar to the advantages of ratifying the Convention. The key disadvantage of accession is similarly shared with the Convention: it will restrict the freedom of action of the New Zealand Defence Force (NZDF) on operations in certain circumstances.

6. Both Protocols will require legislation before they can be acceded to. The First Protocol's requirement to take into custody certain cultural property is not met in current New Zealand law. Similarly, the offences which the Second Protocol requires a State party to enact, do not currently exist in New Zealand statutes.

7. Extensive public consultation has already been undertaken by the Ministry for Culture and Heritage, in 2007. There was overwhelming support for ratification of the Convention, with 80% support for accession to the First Protocol, and 74% support for accession to the Second Protocol.

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

8. It is proposed that New Zealand accede to the two Protocols to *the Convention for the Protection of Cultural Property in the Event of Armed Conflict* (the Convention). New Zealand is not a signatory to either Protocol. It is proposed that New Zealand accede to the Protocols once the necessary legislative changes have been made.

9. The *Protocol to the Convention for the Protection of Cultural Property in the Event of Armed Conflict* (the First Protocol) was adopted at The Hague on 14 May 1954, and came into force 7 August 1956. Currently 97 States are party to it (as at 28 March 2008). The First Protocol would enter into force for New Zealand three months after the deposit of New Zealand's instrument of accession (First Protocol, Article 10(b)).

10. The *Second Protocol to the Hague Convention of 1954 for the Protection of Cultural Property in the Event of Armed Conflict* (the Second Protocol) was

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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).

adopted at The Hague on 26 March 1999, and came into force 9 March 2004. Currently, 48 States are party to it (as at 28 March 2008). The Second Protocol would enter into force for New Zealand three months after the deposit of New Zealand's instrument of accession (Second Protocol, Article 43).

11. A separate National Interest Analysis has been prepared for the Convention. The three instruments are, however, considered by the government to be a package. There is, therefore, considerable cross-over in the discussion in the two National Interest Analyses in respect of the reasons for New Zealand taking the treaty action, and its advantages and disadvantages.

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

### *Background*

12. The Convention and the First Protocol were developed as a response to the mass destruction of cultural heritage in Europe during the Second World War. Following further 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.

### *Current situation*

13. 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, though it is also the case that careful preparations by staff for storage of items meant that many others were saved.

14. 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 Protocols*

#### **The First Protocol**

15. The First Protocol is primarily concerned with the illicit trade in objects looted during armed conflict. Contracting parties in occupation of another country undertake to prevent the export of cultural property, and also to take into custody any cultural property imported into their territory either directly or indirectly from any occupied country. The First Protocol also provides for the return of cultural property at the close of hostilities. The First Protocol has been reinforced and, in some parts, superseded by the 1970 UNESCO Convention.

Article 11 of that Convention, for example, states that the “export and transfer of ownership of cultural property under compulsion arising...from the occupation of a country by a foreign power shall be regarded as illicit.”

## The Second Protocol

16. The Second Protocol has three key objectives. The first objective is to introduce the system of ‘enhanced protection’. To be granted enhanced protection under the Second Protocol, cultural property must be cultural heritage of the greatest importance for humanity, be protected by domestic measures that recognize its cultural and historical value and ensure the highest level of protection, and must not be used for military purposes or to shield military sites. Parties to a conflict must refrain from making such property the object of an attack or using such property or its surroundings in support of military action. Immunity from attack may be lost if the property becomes, by its use, a military objective. Even then, the property may only be attacked in limited circumstances.

17. The second objective is to require parties to the Second Protocol to criminalise serious violations of the Protocol and make such offences punishable by appropriate penalties. Parties must establish jurisdiction over such offences, and extradite or prosecute alleged offenders found in their territories. Promotion of the Convention with the general public and target groups such as cultural heritage professionals, the military or law-enforcement agencies, is also required.

18. Finally, the Second Protocol seeks to supplement some of the provisions of the Convention, for example by providing that the preparatory measures for safeguarding cultural property under the Convention shall include, as appropriate, such actions as the preparation of inventories, the planning of emergency measures for protection against fire or structural collapse, the preparation for the removal of moveable cultural property or the provision for adequate in situ protection of such property and the designation of competent authorities for the safeguarding of cultural property.

## Key reasons for New Zealand to accede to the Protocols

19. There are four overriding objectives which the government wishes to achieve by ratifying the Convention and acceding to its Protocols.

(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>2</sup>, and the 1998 Rome Statute of the International Criminal Court.

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<sup>2</sup> New Zealand is currently in the process of ratifying the Third Additional Protocol (2005) to the Geneva Conventions

(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>3</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 than if New Zealand were not a party to the Convention.

20. In addition, the government considers that the Protocols provide some important supplementary provisions to the Convention itself, particularly in respect of the trade in looted cultural objects during and following armed conflict (First Protocol) and in respect of the most important cultural property of the world (Second Protocol). For New Zealand to be seen to be participating fully in the system of cultural property protection during times of armed conflict, it is important that New Zealand accede to these Protocols also.

*Major and like-minded parties to the Protocols*

21. There are (as at 25 January 2008) 97 parties to the First Protocol, and 48 to the Second Protocol. Major and like-minded parties include:

Germany: First Protocol (1967)

Netherlands: First Protocol (1958), Second Protocol (2007)

Russia: First Protocol (1957)

France: First Protocol (1957)

Sweden: First Protocol (1985)

Spain: First Protocol (1992), Second Protocol (2001)

Finland: First Protocol (1994), Second Protocol (2004)

Canada: First Protocol (2005), Second Protocol (2005)

China: First Protocol (2000)

Japan: First Protocol (2007), Second Protocol (2007).

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<sup>3</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).

22. The United Kingdom has also announced its intention to accede to both the Protocols, and is at a similar stage to New Zealand in doing so.

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

### *Advantages*

23. The obligations under the First Protocol will ensure that New Zealand is seen to be participating in the full set of international arrangements which exist for the protection of cultural property from illicit export, import and transfer of ownership. In addition to the First Protocol (which deals specifically with the illicit export of cultural property during times of armed conflict), these arrangements comprise 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), both of which New Zealand became party to in 2007. New Zealand's participation in these instruments, in particular the First Protocol, strengthens the international system of protection for cultural property from illicit export in the event of armed conflict. This makes it more likely that, in the event that New Zealand itself were occupied, New Zealand cultural property will not be subject to wholesale removal from this country.

24. Proceeding with accession to the Second Protocol will also mean that New Zealand will go through the process of identifying cultural property in this country that is "of the greatest importance to humanity", and place that property under the system of enhanced protection provided by the Second Protocol. Such cultural property is subject to significantly stricter limits on the circumstances in which cultural property may be put at risk of damage or destruction.

25. New Zealand's becoming party to the Protocols, and in particular the process of establishing New Zealand's most important cultural property for enhanced protection, is likely to raise the profile of cultural property within New Zealand and for New Zealanders. This is likely to engender a positive sense that New Zealand cultural heritage has value in international terms, and pride that New Zealand is playing its part in the worldwide protection of cultural property.

26. The Second Protocol, as will be discussed further below, requires the criminalisation of certain serious breaches of international law on protection of cultural property. Along with the establishment of offences to deal with those breaches, it is required that those offences be backed with appropriate penalties. It is anticipated that these penalties will act as strong deterrents to any would-be offenders against the principles and provisions of international law in this area.

### *Disadvantages of proceeding*

27. There is one key potential disadvantage in acceding to the Protocols. If New Zealand accedes to the Second Protocol, then cultural property which is subject to enhanced protection, or its immediate surroundings, will not be able to be used for military purposes. In the event of armed conflict in New Zealand, however, the New Zealand armed forces will have to steer operations away from areas containing significant cultural property in all but a narrowly defined range of circumstances even if the enemy forces, whether or not party to the Protocol, use such property for military advantage. That necessarily poses risks in the event of armed conflict taking place in New Zealand. The New Zealand Defence Force has been involved in the policy process around possible accession, and is aware of the requirements that ratification will impose on it. The Convention will restrict the freedom of action of the NZDF on operations in certain circumstances. If New Zealand accedes to the Second Protocol, the Ministry for Culture and Heritage will work with the NZDF to define the cultural property for which enhanced protection will be sought, so that the final lists are workable from both a heritage and a military point of view. Accordingly, the government does not consider that these provisions are likely in practice to disadvantage New Zealand.

28. On balance, officials consider that the advantages to New Zealand of acceding to the Protocols outweigh the likely potential disadvantages.

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

29. The First Protocol contains a number of obligations for New Zealand:

- To prevent the export of cultural property from a territory occupied by New Zealand during an armed conflict (Article 1);
- To take into custody any cultural property imported into New Zealand from a territory occupied during an armed conflict (Article 2);
- To return any cultural property, which is in New Zealand after a conflict has finished, exported in contravention of the Article 1 from occupied territory (Article 3);
- To pay an indemnity to the good faith holders of any cultural property which has to be returned in accordance with Article 3 (Article 4); and
- To return any property which has been sent to New Zealand for safekeeping during an armed conflict (which New Zealand is not involved in) to the territory where it came from (Article 5).

30. Article 11 requires States party to take any necessary measures to ensure the effective application of the First Protocol within six months after accession to it.

31. Article 9 specifies that States acceding to the Protocol may declare that they will not be bound by the provisions of Part I (Articles 1 to 4) or Part II (Article 5). It is not intended that New Zealand will make such a declaration.

32. There is no dispute resolution mechanism specified in the Protocol.

33. The Second Protocol also contains a number of obligations for New Zealand:

- To ensure that safeguarding measures taken in peacetime with respect to Article 3 of the Convention shall include, *as appropriate*, actions such as the preparation of inventories, preparations for removing moveable cultural property to a safe place, and preparation of measures against fire or structural collapse (Article 5);
- To do everything possible to ensure that in a conflict situation, items of protected cultural property are not attacked or exposed to possible damage (Articles 7, 8 and 12);
- Where New Zealand was occupying another country party to the Convention, it would be obliged to prohibit and prevent illegal export or other removal of cultural property, archaeological excavations (except in certain circumstances), and alteration to or change of use of cultural property that is intended to conceal or destroy cultural, historical or scientific evidence (Article 9);
- To submit a list of cultural property for which New Zealand intends to request the granting of enhanced protection (Article 11);
- To make the acts listed in Article 15 criminal offences under New Zealand's domestic law (Article 15);
- To take necessary legislative measures to make such offences punishable by appropriate penalties. Parties must also establish jurisdiction over such offences (including in three of them, where an offender is merely present in its territory), and extradite or prosecute alleged offenders found in their territories (Articles 16-21);
- To take necessary legislative measures to "suppress" the illicit export or other removal of cultural property in violation of the Convention or the Second Protocol (Article 21(b)); and
- To disseminate the Protocol as widely as possible both in times of peace and armed conflict, including incorporating it into military guidelines and training programmes, and provide information to UNESCO on what has been done to satisfy this obligation (Article 30).

34. There are no provisions for making reservations from the Second Protocol.

35. In the case of a conflict between two parties to the Second Protocol, including a dispute about the application of the Second Protocol, there are two avenues for resolving a dispute. The first is that the Protecting Powers (if any have been appointed) may, either on their own initiative, or at the invitation of one

of the parties to the dispute or the Director-General of UNESCO, propose a meeting of the representatives of the disputing parties at a neutral venue and with a neutral chair. Alternatively, if no Protecting Powers have been appointed, the Director-General of UNESCO may propose a meeting or any other form of action to resolve the dispute.

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

36. The Protocols contain a number of obligations, as outlined above in Section 5. These fall into two categories: firstly, obligations for which either no new measures are required or for which only non-legislative action needs to be taken, and secondly, obligations for which legislation is required.

### ***Obligations not requiring legislation***

37. Article 1 of the First Protocol is a general statement of obligation to prevent the exportation of cultural property when involved in armed conflict as an occupying power.

38. Article 4 of the First Protocol, dealing with the payment of indemnities to good faith holders of cultural property which has to be returned following an armed conflict, has been assessed as not requiring amendment to domestic legislation at this time. Similarly, Article 5, which obliges states to return cultural property which has been given to them for safekeeping during an armed conflict, will also not require legislative change. It is anticipated that such return will be managed through diplomatic arrangements.

39. In relation to the Second Protocol, the obligations which do not require legislative action relate to:

- safeguarding measures (Article 5),
- not exposing to damage or attacking protected cultural property (Articles 7, 8 and 12),
- preventing the illegal export or removal of cultural property when in occupation of another country (Article 9),
- submitting a list of property for enhanced protection (Article 11),  
and
- dissemination of the Protocol (Article 30).

40. These obligations will be met either through military guidelines and training or by relevant action by the Ministry for Culture and Heritage.

### ***Obligations requiring legislation***

41. The two Protocols to the Convention contain a number of obligations which, if New Zealand wishes to accede to them, will require legislative change. In these instances, there is no other option than legislation in order to implement the obligations arising from accession, because existing statutes do not adequately provide for the obligations in the Protocols.

Article 2 of the First Protocol requires that New Zealand take into custody any cultural property imported into New Zealand from any territory occupied during an armed conflict. Article 3 of the First Protocol requires returning, at the close of hostilities, cultural property which is in New Zealand, if such property were exported in contravention of the Protocol. Elements of both of these obligations are not currently covered in New Zealand domestic legislation, and will require legislative change.

42. In the first instance, legislation will be required because current New Zealand legislation does not have a definition of cultural property which matches that in the Convention (which is the definition the Protocols use, and is the definition upon which the obligations in Articles 2 and 3 depend). Furthermore, provisions allowing New Zealand to take into custody protected foreign objects in the Protected Objects Act 1975 depend on the unlawfulness of the export or its theft before seizure or recovery can take place. There is no such requirement in the Convention and First Protocol. These instruments envisage that, in a time of war, essentially all movements of cultural property (except for the purposes of safekeeping as outlined in Article 5 of the First Protocol) should cease, due to the likelihood that such property has been illicitly exported – or exported under duress. Such a blanket embargo on imports of cultural property from nations afflicted by armed conflict is not currently provided for in New Zealand law.

43. The Second Protocol also contains a number of obligations which will require legislative change. Under Article 15, parties to the Second Protocol must criminalize serious violations of the Protocol and Convention. These include:

- a Making cultural property under enhanced protection the object of attack;
- b Using cultural property under enhanced protection or its immediate surroundings in support of military action;
- c Extensive destruction or appropriation of cultural property protected under the Convention or this protocol;
- d Making cultural property protected under this Convention and this Protocol the object of attack;
- e Theft, pillage, or misappropriation of, or acts of vandalism directed against cultural property protected under the Convention.

44. The Second Protocol further requires that parties make such offences punishable by appropriate penalties. Parties must also establish jurisdiction over

such offences (including in the case of (a) – (c) above when the offender is merely present in its territory), and extradite or prosecute alleged offenders found in their territories (Articles 16-18).

45. Aspects of these obligations are already covered by New Zealand criminal law (eg. theft, conversion, trespass, criminal damage and some war crimes provisions in the International Crimes and International Criminal Court Act), but the fit is imperfect. Furthermore, the available penalties for ‘ordinary’ theft, for example, are not considered appropriate in the context of protected cultural property. The creation of new specific offence provisions that combine an appropriately worded crime with a range of appropriate penalties is needed to reflect the potential gravity of the offences. In addition, the obligation to establish jurisdiction is not provided for under existing legislation.

46. Finally, Article 21 requires parties to adopt “such legislative, administrative or disciplinary measures as may be necessary” to suppress certain acts, including the illicit export from occupied territory in violation of the Convention or Protocol. This is not currently provided for under existing domestic legislation.

47. It is clear, therefore, that the existing legislative framework is insufficient to give proper effect to Articles 15-21 of the Second Protocol, and that legislative amendment will be required to implement these obligations, if New Zealand is to accede to this Protocol.

48. At present, a Bill to effect the amendments discussed above has not yet been prepared, although such a Bill has been granted a priority 4 on the 2008 legislative programme, ‘to proceed to a select committee in 2008’. No decisions have yet been made as to whether the Bill will be a standalone piece of legislation or whether it will amend existing statutes.

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

49. No negative economic effects are anticipated from New Zealand’s accession to the Protocols. No comprehensive research has been done in New Zealand on the economic effects of heritage protection nationally, 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 Protocols is, of course, to avert possible losses of cultural property.

50. No negative social effects are anticipated.

51. No negative environmental effects are anticipated. In the event of an armed conflict, the Protocols 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 also represent an environmental benefit.

52. A number of cultural effects are anticipated. It would increase the likelihood that important New Zealand cultural property would survive intact an armed conflict on New Zealand territory than if New Zealand were not a party to the Convention. It may also be the case that accession will raise the profile of cultural property in peacetime. This may make this property more valued, and have flow-on effects for the respect in which that property is held in general terms. Accession to the First Protocol will also increase the chances that any cultural property taken from New Zealand in the event of an armed conflict will be returned.

53. 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 to those protective measures already taken to ensure against fire, theft, and natural disasters.

54. The Protocols are likely to have a direct impact on Māori. In addition to the likely protection of wahi tapu and marae under the Convention, New Zealand may wish to nominate some cultural property for enhanced protection under the Second Protocol. The Second Protocol requires that property for enhanced protection be that of the “greatest importance for humanity”. This means that an assessment of which Māori cultural property will meet this threshold will need to be undertaken. This is an issue which will need to be carefully worked through in consultation with Māori and managed as part of implementing New Zealand’s obligations under the Convention. Paragraph 62 outlines consultation which has already taken place with Māori.

55. 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**

56. It is unlikely that large costs will be incurred by New Zealand as a result of acceding to the Protocols. The main cost is likely to be taking into custody any cultural property that arrives in New Zealand from occupied states. New Zealand’s experience with the Protected Objects Act 1975 since the amendments to it came into force on 1 November 2006 has been that no items of cultural property meeting the definition of ‘protected foreign object’ have come to New Zealand.

57. The Second Protocol establishes a Fund for the Protection of Cultural Property in the Event of Armed Conflict. Contributions by States party to the Second Protocol are voluntary. It is not proposed that New Zealand contribute to the fund at this stage.

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

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

59. 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 and Protocols, 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 more 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.

60. 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 in the following table.

<b>Type of respondent</b>	<b>No. of responses</b>	<b>Total number sent out</b>	<b>%</b>
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

61. Overall, 85% of respondents agreed with ratification of the Convention, and only 7% disagreed. Slightly smaller percentages favoured the two Protocols, while opposition to New Zealand's accession to the First Protocol (11%) and Second Protocol (16%) rose (slightly) accordingly.

62. 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.

63. 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**

64. Revision of the provisions of the First Protocol can be made at a Conference only, which can be held if one-third of all Contracting Parties call for such a conference (Article 15). Revisions can only be made by unanimous adoption by all parties represented at such a Conference, and then accepted (i.e. by subsequent deposit of a formal document) by all the parties. New Zealand would consider these amendments on a case-by-case basis, and any decision to accept an amendment would be subject to the usual approvals and procedures.<sup>4</sup>

65. No specific provisions for revision of the Second Protocol are provided for. The Second Protocol does, however, provide for the establishment of a Committee for the Protection of Cultural Property in the Event of Armed Conflict. This Committee has various functions including developing Guidelines for the implementation of the Second Protocol; granting, suspending, or cancelling enhanced protection for cultural property; and monitoring and supervising the implementation of the Second Protocol. Any guidelines proposed by the Committee must be endorsed by a Meeting of the Parties, which is to be held at the same time as the general conference of UNESCO.

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

66. The procedures for denunciation of the Convention (Article 37), First Protocol (Article 13) and Second Protocol (Article 45) are identical. A written instrument of denunciation is to be deposited, with denunciation taking effect one year after the receipt of the instrument. Any decision to denunciate the First or Second Protocols would be subject to the usual domestic approvals and procedures.

## **12. Adequacy Statement**

67. The Ministry for Culture and Heritage has assessed that this National Interest Analysis is adequate.

Ministry for Culture and Heritage  
April 2008

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<sup>4</sup> Compare with the similar procedure for amending the Convention, at Article 39.

## **APPENDIX ONE: Protocol to the Convention for the Protection of Cultural Property in the Event of Armed conflict 1954**

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 1 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.  
  
(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 II 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.

(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 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.

## APPENDIX TWO: **Second Protocol to the Hague Convention of 1954 for the Protection of Cultural Property in the Event of Armed Conflict 1999**

The Parties,

**Conscious** of the need to improve the protection of cultural property in the event of armed conflict and to establish an enhanced system of protection for specifically designated cultural property;

**Reaffirming** the importance of the provisions of the Convention for the Protection of Cultural Property in the Event of Armed Conflict, done at the Hague on 14 May 1954, and emphasizing the necessity to supplement these provisions through measures to reinforce their implementation;

**Desiring** to provide the High Contracting Parties to the Convention with a means of being more closely involved in the protection of cultural property in the event of armed conflict by establishing appropriate procedures therefor;

**Considering** that the rules governing the protection of cultural property in the event of armed conflict should reflect developments in international law;

**Affirming** that the rules of customary international law will continue to govern questions not regulated by the provisions of this Protocol;

**Have agreed as follows:**

### **Chapter 1 Introduction**

#### **Article 1 Definitions**

For the purposes of this Protocol:

- a. "Party" means a State Party to this Protocol;
- b. "cultural property" means cultural property as defined in Article 1 of the Convention;
- c. "Convention" means the Convention for the Protection of Cultural Property in the Event of Armed Conflict, done at The Hague on 14 May 1954;
- d. "High Contracting Party" means a State Party to the Convention;
- e. "enhanced protection" means the system of enhanced protection established by Articles 10 and 11;
- f. "military objective" means an object which by its nature, location, purpose, or use makes an effective contribution to military action and whose total or partial destruction, capture or neutralisation, in the circumstances ruling at the time, offers a definite military advantage;
- g. "illicit" means under compulsion or otherwise in violation of the applicable rules of the domestic law of the occupied territory or of international law.
- h. "List" means the International List of Cultural Property under Enhanced Protection established in accordance with Article 27, sub-paragraph 1(b);
- i. "Director-General" means the Director-General of UNESCO;

j. "UNESCO" means the United Nations Educational, Scientific and Cultural Organization;

k. "First Protocol" means the Protocol for the Protection of Cultural Property in the Event of Armed Conflict done at The Hague on 14 May 1954;

## **Article 2 Relation to the Convention**

This Protocol supplements the Convention in relations between the Parties.

## **Article 3 Scope of application**

1. In addition to the provisions which shall apply in time of peace, this Protocol shall apply in situations referred to in Article 18 paragraphs 1 and 2 of the Convention and in Article 22 paragraph 1.

2. When one of the parties to an armed conflict is not bound by this Protocol, the Parties to this Protocol shall remain bound by it in their mutual relations. They shall furthermore be bound by this Protocol in relation to a State party to the conflict which is not bound by it, if the latter accepts the provisions of this Protocol and so long as it applies them.

## **Article 4 Relationship between Chapter 3 and other provisions of the Convention and this Protocol**

The application of the provisions of Chapter 3 of this Protocol is without prejudice to:

a. the application of the provisions of Chapter I of the Convention and of Chapter 2 of this Protocol;

b. the application of the provisions of Chapter II of the Convention save that, as between Parties to this Protocol or as between a Party and a State which accepts and applies this Protocol in accordance with Article 3 paragraph 2, where cultural property has been granted both special protection and enhanced protection, only the provisions of enhanced protection shall apply.

## **Chapter 2 General provisions regarding protection**

### **Article 5 Safeguarding of cultural property**

Preparatory measures taken in time of peace for the safeguarding of cultural property against the foreseeable effects of an armed conflict pursuant to Article 3 of the Convention shall include, as appropriate, the preparation of inventories, the planning of emergency measures for protection against fire or structural collapse, the preparation for the removal of movable cultural property or the provision for adequate in situ protection of such property, and the designation of competent authorities responsible for the safeguarding of cultural property.

### **Article 6 Respect for cultural property**

With the goal of ensuring respect for cultural property in accordance with Article 4 of the Convention:

a. a waiver on the basis of imperative military necessity pursuant to Article 4 paragraph 2 of the Convention may only be invoked to direct an act of hostility against cultural property when and for as long as:

i. that cultural property has, by its function, been made into a military objective; and

ii. there is no feasible alternative available to obtain a similar military advantage to that offered by

directing an act of hostility against that objective;

b. a waiver on the basis of imperative military necessity pursuant to Article 4 paragraph 2 of the Convention may only be invoked to use cultural property for purposes which are likely to expose it to destruction or damage when and for as long as no choice is possible between such use of the cultural property and another feasible method for obtaining a similar military advantage;

c. the decision to invoke imperative military necessity shall only be taken by an officer commanding a force the equivalent of a battalion in size or larger, or a force smaller in size where circumstances do not permit otherwise;

d. in case of an attack based on a decision taken in accordance with sub-paragraph (a), an effective advance warning shall be given whenever circumstances permit.

#### **Article 7 Precautions in attack**

Without prejudice to other precautions required by international humanitarian law in the conduct of military operations, each Party to the conflict shall:

a. do everything feasible to verify that the objectives to be attacked are not cultural property protected under Article 4 of the Convention;

b. take all feasible precautions in the choice of means and methods of attack with a view to avoiding, and in any event to minimizing, incidental damage to cultural property protected under Article 4 of the Convention;

c. refrain from deciding to launch any attack which may be expected to cause incidental damage to cultural property protected under Article 4 of the Convention which would be excessive in relation to the concrete and direct military advantage anticipated; and

d. cancel or suspend an attack if it becomes apparent:

i. that the objective is cultural property protected under Article 4 of the Convention;

ii. that the attack may be expected to cause incidental damage to cultural property protected under Article 4 of the Convention which would be excessive in relation to the concrete and direct military advantage anticipated.

#### **Article 8 Precautions against the effects of hostilities**

The Parties to the conflict shall, to the maximum extent feasible:

a. remove movable cultural property from the vicinity of military objectives or provide for adequate in situ protection;

b. avoid locating military objectives near cultural property.

#### **Article 9 Protection of cultural property in occupied territory**

1. Without prejudice to the provisions of Articles 4 and 5 of the Convention, a Party in occupation of the whole or part of the territory of another Party shall prohibit and prevent in relation to the occupied territory:

a. any illicit export, other removal or transfer of ownership of cultural property;

b. any archaeological excavation, save where this is strictly required to safeguard, record or

preserve cultural property;

c. any alteration to, or change of use of, cultural property which is intended to conceal or destroy cultural, historical or scientific evidence.

2. Any archaeological excavation of, alteration to, or change of use of, cultural property in occupied territory shall, unless circumstances do not permit, be carried out in close co-operation with the competent national authorities of the occupied territory.

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## **Chapter 3 Enhanced Protection**

### **Article 10 Enhanced protection**

Cultural property may be placed under enhanced protection provided that it meets the following three conditions:

- a. it is cultural heritage of the greatest importance for humanity;
- b. it is protected by adequate domestic legal and administrative measures recognising its exceptional cultural and historic value and ensuring the highest level of protection;
- c. it is not used for military purposes or to shield military sites and a declaration has been made by the Party which has control over the cultural property, confirming that it will not be so used.

### **Article 11 The granting of enhanced protection**

1. Each Party should submit to the Committee a list of cultural property for which it intends to request the granting of enhanced protection.
2. The Party which has jurisdiction or control over the cultural property may request that it be included in the List to be established in accordance with Article 27 sub-paragraph 1(b). This request shall include all necessary information related to the criteria mentioned in Article 10. The Committee may invite a Party to request that cultural property be included in the List.
3. Other Parties, the International Committee of the Blue Shield and other non-governmental organisations with relevant expertise may recommend specific cultural property to the Committee. In such cases, the Committee may decide to invite a Party to request inclusion of that cultural property in the List.
4. Neither the request for inclusion of cultural property situated in a territory, sovereignty or jurisdiction over which is claimed by more than one State, nor its inclusion, shall in any way prejudice the rights of the parties to the dispute.
5. Upon receipt of a request for inclusion in the List, the Committee shall inform all Parties of the request. Parties may submit representations regarding such a request to the Committee within sixty days. These representations shall be made only on the basis of the criteria mentioned in Article 10. They shall be specific and related to facts. The Committee shall consider the representations, providing the Party requesting inclusion with a reasonable opportunity to respond before taking the decision. When such representations are before the Committee, decisions for inclusion in the List shall be taken, notwithstanding Article 26, by a majority of four-fifths of its members present and voting.
6. In deciding upon a request, the Committee should ask the advice of governmental and non-governmental organisations, as well as of individual experts.

7. A decision to grant or deny enhanced protection may only be made on the basis of the criteria mentioned in Article 10.

8. In exceptional cases, when the Committee has concluded that the Party requesting inclusion of cultural property in the List cannot fulfil the criteria of Article 10 sub-paragraph (b), the Committee may decide to grant enhanced protection, provided that the requesting Party submits a request for international assistance under Article 32.

9. Upon the outbreak of hostilities, a Party to the conflict may request, on an emergency basis, enhanced protection of cultural property under its jurisdiction or control by communicating this request to the Committee. The Committee shall transmit this request immediately to all Parties to the conflict. In such cases the Committee will consider representations from the Parties concerned on an expedited basis. The decision to grant provisional enhanced protection shall be taken as soon as possible and, notwithstanding Article 26, by a majority of four-fifths of its members present and voting. Provisional enhanced protection may be granted by the Committee pending the outcome of the regular procedure for the granting of enhanced protection, provided that the provisions of Article 10 sub-paragraphs (a) and (c) are met.

10. Enhanced protection shall be granted to cultural property by the Committee from the moment of its entry in the List.

11. The Director-General shall, without delay, send to the Secretary-General of the United Nations and to all Parties notification of any decision of the Committee to include cultural property on the List.

#### **Article 12 Immunity of cultural property under enhanced protection**

The Parties to a conflict shall ensure the immunity of cultural property under enhanced protection by refraining from making such property the object of attack or from any use of the property or its immediate surroundings in support of military action.

#### **Article 13 Loss of enhanced protection**

1. Cultural property under enhanced protection shall only lose such protection:

- a. if such protection is suspended or cancelled in accordance with Article 14; or
- b. if, and for as long as, the property has, by its use, become a military objective.

2. In the circumstances of sub-paragraph 1(b), such property may only be the object of attack if:

- a. the attack is the only feasible means of terminating the use of the property referred to in sub-paragraph 1(b);
- b. all feasible precautions are taken in the choice of means and methods of attack, with a view to terminating such use and avoiding, or in any event minimising, damage to the cultural property;
- c. unless circumstances do not permit, due to requirements of immediate self-defence:
  - i. the attack is ordered at the highest operational level of command;
  - ii. effective advance warning is issued to the opposing forces requiring the termination of the use referred to in sub-paragraph 1(b); and
  - iii. Reasonable time is given to the opposing forces to redress the situation.

#### **Article 14 Suspension and cancellation of enhanced protection**

1. Where cultural property no longer meets any one of the criteria in Article 10 of this Protocol, the Committee may suspend its enhanced protection status or cancel that status by removing that cultural property from the List.

2. In the case of a serious violation of Article 12 in relation to cultural property under enhanced protection arising from its use in support of military action, the Committee may suspend its enhanced protection status. Where such violations are continuous, the Committee may exceptionally cancel the enhanced protection status by removing the cultural property from the List.

3. The Director-General shall, without delay, send to the Secretary-General of the United Nations and to all Parties to this Protocol notification of any decision of the Committee to suspend or cancel the enhanced protection of cultural property.

4. Before taking such a decision, the Committee shall afford an opportunity to the Parties to make their views known.

#### **Chapter 4 Criminal responsibility and jurisdiction**

##### **Article 15 Serious violations of this Protocol**

1. Any person commits an offence within the meaning of this Protocol if that person intentionally and in violation of the Convention or this Protocol commits any of the following acts:

- a. making cultural property under enhanced protection the object of attack;
- b. using cultural property under enhanced protection or its immediate surroundings in support of military action;
- c. extensive destruction or appropriation of cultural property protected under the Convention and this Protocol;
- d. making cultural property protected under the Convention and this Protocol the object of attack;
- e. theft, pillage or misappropriation of, or acts of vandalism directed against cultural property protected under the Convention.

2. Each Party shall adopt such measures as may be necessary to establish as criminal offences under its domestic law the offences set forth in this Article and to make such offences punishable by appropriate penalties. When doing so, Parties shall comply with general principles of law and international law, including the rules extending individual criminal responsibility to persons other than those who directly commit the act.

##### **Article 16 Jurisdiction**

1. Without prejudice to paragraph 2, each Party shall take the necessary legislative measures to establish its jurisdiction over offences set forth in Article 15 in the following cases:

- a. when such an offence is committed in the territory of that State;
- b. when the alleged offender is a national of that State;
- c. in the case of offences set forth in Article 15 sub-paragraphs (a) to (c), when the alleged offender is present in its territory.

2. With respect to the exercise of jurisdiction and without prejudice to Article 28 of the Convention:

a. this Protocol does not preclude the incurring of individual criminal responsibility or the exercise of jurisdiction under national and international law that may be applicable, or affect the exercise of jurisdiction under customary international law;

b. except in so far as a State which is not Party to this Protocol may accept and apply its provisions in accordance with Article 3 paragraph 2, members of the armed forces and nationals of a State which is not Party to this Protocol, except for those nationals serving in the armed forces of a State which is a Party to this Protocol, do not incur individual criminal responsibility by virtue of this Protocol, nor does this Protocol impose an obligation to establish jurisdiction over such persons or to extradite them.

### **Article 17 Prosecution**

1. The Party in whose territory the alleged offender of an offence set forth in Article 15 sub-paragraphs 1 (a) to (c) is found to be present shall, if it does not extradite that person, submit, without exception whatsoever and without undue delay, the case to its competent authorities, for the purpose of prosecution, through proceedings in accordance with its domestic law or with, if applicable, the relevant rules of international law.

2. Without prejudice to, if applicable, the relevant rules of international law, any person regarding whom proceedings are being carried out in connection with the Convention or this Protocol shall be guaranteed fair treatment and a fair trial in accordance with domestic law and international law at all stages of the proceedings, and in no cases shall be provided guarantees less favorable to such person than those provided by international law.

### **Article 18 Extradition**

1. The offences set forth in Article 15 sub-paragraphs 1 (a) to (c) shall be deemed to be included as extraditable offences in any extradition treaty existing between any of the Parties before the entry into force of this Protocol. Parties undertake to include such offences in every extradition treaty to be subsequently concluded between them.

2. When a Party which makes extradition conditional on the existence of a treaty receives a request for extradition from another Party with which it has no extradition treaty, the requested Party may, at its option, consider the present Protocol as the legal basis for extradition in respect of offences as set forth in Article 15 sub-paragraphs 1 (a) to (c).

3. Parties which do not make extradition conditional on the existence of a treaty shall recognise the offences set forth in Article 15 sub-paragraphs 1 (a) to (c) as extraditable offences between them, subject to the conditions provided by the law of the requested Party.

4. If necessary, offences set forth in Article 15 sub-paragraphs 1 (a) to (c) shall be treated, for the purposes of extradition between Parties, as if they had been committed not only in the place in which they occurred but also in the territory of the Parties that have established jurisdiction in accordance with Article 16 paragraph 1.

### **Article 19 Mutual legal assistance**

1. Parties shall afford one another the greatest measure of assistance in connection with investigations or criminal or extradition proceedings brought in respect of the offences set forth in Article 15, including assistance in obtaining evidence at their disposal necessary for the proceedings.

2. Parties shall carry out their obligations under paragraph 1 in conformity with any treaties or other arrangements on mutual legal assistance that may exist between them. In the absence of such treaties or arrangements, Parties shall afford one another assistance in accordance with their domestic law.

#### **Article 20 Grounds for refusal**

1. For the purpose of extradition, offences set forth in Article 15 sub-paragraphs 1 (a) to (c), and for the purpose of mutual legal assistance, offences set forth in Article 15 shall not be regarded as political offences nor as offences connected with political offences nor as offences inspired by political motives. Accordingly, a request for extradition or for mutual legal assistance based on such offences may not be refused on the sole ground that it concerns a political offence or an offence connected with a political offence or an offence inspired by political motives.

2. Nothing in this Protocol shall be interpreted as imposing an obligation to extradite or to afford mutual legal assistance if the requested Party has substantial grounds for believing that the request for extradition for offences set forth in Article 15 sub-paragraphs 1 (a) to (c) or for mutual legal assistance with respect to offences set forth in Article 15 has been made for the purpose of prosecuting or punishing a person on account of that person's race, religion, nationality, ethnic origin or political opinion or that compliance with the request would cause prejudice to that person's position for any of these reasons.

#### **Article 21 Measures regarding other violations**

Without prejudice to Article 28 of the Convention, each Party shall adopt such legislative, administrative or disciplinary measures as may be necessary to suppress the following acts when committed intentionally:

- a. any use of cultural property in violation of the Convention or this Protocol;
- b. any illicit export, other removal or transfer of ownership of cultural property from occupied territory in violation of the Convention or this Protocol.

### **Chapter 5 The protection of cultural property in armed conflicts not of an international character**

#### **Article 22 Armed conflicts not of an international character**

1. This Protocol shall apply in the event of an armed conflict not of an international character, occurring within the territory of one of the Parties.
2. This Protocol shall not apply to situations of internal disturbances and tensions, such as riots, isolated and sporadic acts of violence and other acts of a similar nature.
3. Nothing in this Protocol shall be invoked for the purpose of affecting the sovereignty of a State or the responsibility of the government, by all legitimate means, to maintain or re-establish law and order in the State or to defend the national unity and territorial integrity of the State.
4. Nothing in this Protocol shall prejudice the primary jurisdiction of a Party in whose territory an armed conflict not of an international character occurs over the violations set forth in Article 15.
5. Nothing in this Protocol shall be invoked as a justification for intervening, directly or indirectly, for any reason whatever, in the armed conflict or in the internal or external affairs of the Party in the territory of which that conflict occurs.

6. The application of this Protocol to the situation referred to in paragraph 1 shall not affect the legal status of the parties to the conflict.

7. UNESCO may offer its services to the parties to the conflict.

## **Chapter 6 Institutional Issues**

### **Article 23 Meeting of the Parties**

1. The Meeting of the Parties shall be convened at the same time as the General Conference of UNESCO, and in co-ordination with the Meeting of the High Contracting Parties, if such a meeting has been called by the Director-General.

2. The Meeting of the Parties shall adopt its Rules of Procedure.

3. The Meeting of the Parties shall have the following functions:

(a) to elect the Members of the Committee, in accordance with Article 24 paragraph 1;

(b) to endorse the Guidelines developed by the Committee in accordance with Article 27 subparagraph 1(a);

(c) to provide guidelines for, and to supervise the use of the Fund by the Committee;

(d) to consider the report submitted by the Committee in accordance with Article 27 subparagraph 1(d);

(e) to discuss any problem related to the application of this Protocol, and to make recommendations, as appropriate.

4. At the request of at least one-fifth of the Parties, the Director-General shall convene an Extraordinary Meeting of the Parties.

### **Article 24 Committee for the Protection of Cultural Property in the Event of Armed Conflict**

1. The Committee for the Protection of Cultural Property in the Event of Armed Conflict is hereby established. It shall be composed of twelve Parties which shall be elected by the Meeting of the Parties.

2. The Committee shall meet once a year in ordinary session and in extra-ordinary sessions whenever it deems necessary.

3. In determining membership of the Committee, Parties shall seek to ensure an equitable representation of the different regions and cultures of the world.

4. Parties members of the Committee shall choose as their representatives persons qualified in the fields of cultural heritage, defence or international law, and they shall endeavour, in consultation with one another, to ensure that the Committee as a whole contains adequate expertise in all these fields.

### **Article 25 Term of office**

1. A Party shall be elected to the Committee for four years and shall be eligible for immediate re-election only once.

2. Notwithstanding the provisions of paragraph 1, the term of office of half of the members chosen

at the time of the first election shall cease at the end of the first ordinary session of the Meeting of the Parties following that at which they were elected. These members shall be chosen by lot by the President of this Meeting after the first election.

#### **Article 26 Rules of procedure**

1. The Committee shall adopt its Rules of Procedure.
2. A majority of the members shall constitute a quorum. Decisions of the Committee shall be taken by a majority of two-thirds of its members voting.
3. Members shall not participate in the voting on any decisions relating to cultural property affected by an armed conflict to which they are parties.

#### **Article 27 Functions**

1. The Committee shall have the following functions:
  - a. to develop Guidelines for the implementation of this Protocol;
  - b. to grant, suspend or cancel enhanced protection for cultural property and to establish, maintain and promote the List of Cultural Property under Enhanced Protection;
  - c. to monitor and supervise the implementation of this Protocol and promote the identification of cultural property under enhanced protection;
  - d. to consider and comment on reports of the Parties, to seek clarifications as required, and prepare its own report on the implementation of this Protocol for the Meeting of the Parties;
  - e. to receive and consider requests for international assistance under Article 32;
  - f. to determine the use of the Fund;
  - g. to perform any other function which may be assigned to it by the Meeting of the Parties.
2. The functions of the Committee shall be performed in co-operation with the Director-General.
3. The Committee shall co-operate with international and national governmental and non-governmental organizations having objectives similar to those of the Convention, its First Protocol and this Protocol. To assist in the implementation of its functions, the Committee may invite to its meetings, in an advisory capacity, eminent professional organizations such as those which have formal relations with UNESCO, including the International Committee of the Blue Shield (ICBS) and its constituent bodies. Representatives of the International Centre for the Study of the Preservation and Restoration of Cultural Property (Rome Centre) (ICCROM) and of the International Committee of the Red Cross (ICRC) may also be invited to attend in an advisory capacity.

#### **Article 28 Secretariat**

The Committee shall be assisted by the Secretariat of UNESCO which shall prepare the Committee's documentation and the agenda for its meetings and shall have the responsibility for the implementation of its decisions.

#### **Article 29 The Fund for the Protection of Cultural Property in the Event of Armed Conflict**

1. A Fund is hereby established for the following purposes:

a. to provide financial or other assistance in support of preparatory or other measures to be taken in peacetime in accordance with, inter alia, Article 5, Article 10 sub-paragraph (b) and Article 30; and

b. to provide financial or other assistance in relation to emergency, provisional or other measures to be taken in order to protect cultural property during periods of armed conflict or of immediate recovery after the end of hostilities in accordance with, inter alia, Article 8 sub-paragraph (a).

2. The Fund shall constitute a trust fund, in conformity with the provisions of the financial regulations of UNESCO.

3. Disbursements from the Fund shall be used only for such purposes as the Committee shall decide in accordance with the guidelines as defined in Article 23 sub-paragraph 3(c). The Committee may accept contributions to be used only for a certain programme or project, provided that the Committee shall have decided on the implementation of such programme or project.

4. The resources of the Fund shall consist of:

(a) voluntary contributions made by the Parties;

(b) contributions, gifts or bequests made by:

(i) other States;

(ii) UNESCO or other organizations of the United Nations system;

(iii) other intergovernmental or non-governmental organizations; and

(iv) public or private bodies or individuals;

(c) any interest accruing on the Fund;

(d) funds raised by collections and receipts from events organized for the benefit of the Fund; and

(e) all other resources authorized by the guidelines applicable to the Fund.

## **Chapter 7 Dissemination of Information and International Assistance**

### **Article 30 Dissemination**

1. The Parties shall endeavour by appropriate means, and in particular by educational and information programmes, to strengthen appreciation and respect for cultural property by their entire population.

2. The Parties shall disseminate this Protocol as widely as possible, both in time of peace and in time of armed conflict.

3. Any military or civilian authorities who, in time of armed conflict, assume responsibilities with respect to the application of this Protocol, shall be fully acquainted with the text thereof. To this end the Parties shall, as appropriate:

(a) incorporate guidelines and instructions on the protection of cultural property in their military regulations;

(b) develop and implement, in cooperation with UNESCO and relevant governmental and non-

governmental organizations, peacetime training and educational programmes;

(c) communicate to one another, through the Director-General, information on the laws, administrative provisions and measures taken under sub-paragraphs (a) and (b);

(d) communicate to one another, as soon as possible, through the Director-General, the laws and administrative provisions which they may adopt to ensure the application of this Protocol.

### **Article 31 International cooperation**

In situations of serious violations of this Protocol, the Parties undertake to act, jointly through the Committee, or individually, in cooperation with UNESCO and the United Nations and in conformity with the Charter of the United Nations.

### **Article 32 International assistance**

1. A Party may request from the Committee international assistance for cultural property under enhanced protection as well as assistance with respect to the preparation, development or implementation of the laws, administrative provisions and measures referred to in Article 10.

2. A party to the conflict, which is not a Party to this Protocol but which accepts and applies provisions in accordance with Article 3, paragraph 2, may request appropriate international assistance from the Committee.

3. The Committee shall adopt rules for the submission of requests for international assistance and shall define the forms the international assistance may take.

4. Parties are encouraged to give technical assistance of all kinds, through the Committee, to those Parties or parties to the conflict who request it.

### **Article 33 Assistance of UNESCO**

1. A Party may call upon UNESCO for technical assistance in organizing the protection of its cultural property, such as preparatory action to safeguard cultural property, preventive and organizational measures for emergency situations and compilation of national inventories of cultural property, or in connection with any other problem arising out of the application of this Protocol. UNESCO shall accord such assistance within the limits fixed by its programme and by its resources.

2. Parties are encouraged to provide technical assistance at bilateral or multilateral level.

3. UNESCO is authorized to make, on its own initiative, proposals on these matters to the Parties.

## **Chapter 8 Execution of this Protocol**

### **Article 34 Protecting Powers**

This Protocol shall be applied with the co-operation of the Protecting Powers responsible for safeguarding the interests of the Parties to the conflict.

### **Article 35 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 this Protocol.

2. For this purpose, each of the Protecting Powers may, either at the invitation of one Party, of the Director-General, 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 the territory of a State not party to the conflict. 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 State not party to the conflict or a person presented by the Director-General, which person shall be invited to take part in such a meeting in the capacity of Chairman.

#### **Article 36 Conciliation in absence of Protecting Powers**

1. In a conflict where no Protecting Powers are appointed the Director-General may lend good offices or act by any other form of conciliation or mediation, with a view to settling the disagreement.

2. At the invitation of one Party or of the Director-General, the Chairman of the Committee may 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 the territory of a State not party to the conflict.

#### **Article 37 Translations and reports**

1. The Parties shall translate this Protocol into their official languages and shall communicate these official translations to the Director-General.

2. The Parties shall submit to the Committee, every four years, a report on the implementation of this Protocol.

#### **Article 38 State responsibility**

No provision in this Protocol relating to individual criminal responsibility shall affect the responsibility of States under international law, including the duty to provide reparation.

### **Chapter 9 Final Clauses**

#### **Article 39 Languages**

This Protocol is drawn up in Arabic, Chinese, English, French, Russian and Spanish, the six texts being equally authentic.

#### **Article 40 Signature**

This Protocol shall bear the date of 26 March 1999. It shall be opened for signature by all High Contracting Parties at The Hague from 17 May 1999 until 31 December 1999.

#### **Article 41 Ratification, acceptance or approval**

1. This Protocol shall be subject to ratification, acceptance or approval by High Contracting Parties which have signed this Protocol, in accordance with their respective constitutional procedures.

2. The instruments of ratification, acceptance or approval shall be deposited with the Director-General.

#### **Article 42 Accession**

1. This Protocol shall be open for accession by other High Contracting Parties from 1 January 2000.
2. Accession shall be effected by the deposit of an instrument of accession with the Director-General.

#### **Article 43 Entry into force**

1. This Protocol shall enter into force three months after twenty instruments of ratification, acceptance, approval or accession have been deposited.
2. Thereafter, it shall enter into force, for each Party, three months after the deposit of its instrument of ratification, acceptance, approval or accession.

#### **Article 44 Entry into force in situations of armed conflict**

The situations referred to in Articles 18 and 19 of the Convention shall give immediate effect to ratifications, acceptances or approvals of or accessions to this Protocol deposited by the parties to the conflict either before or after the beginning of hostilities or occupation. In such cases the Director-General shall transmit the communications referred to in Article 46 by the speediest method.

#### **Article 45 Denunciation**

1. Each Party may denounce this Protocol.
2. The denunciation shall be notified by an instrument in writing, deposited with the Director-General.
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 46 Notifications**

The Director-General shall inform all High Contracting Parties as well as the United Nations, of the deposit of all the instruments of ratification, acceptance, approval or accession provided for in Articles 41 and 42 and of denunciations provided for Article 45.

#### **Article 47 Registration with the United Nations**

In conformity with Article 102 of the Charter of the United Nations, this Protocol shall be registered with the Secretariat of the United Nations at the request of the Director-General.

IN FAITH WHEREOF the undersigned, duly authorized, have signed the present Protocol.

DONE at The Hague, this twenty-sixth day of March 1999, in a single copy which shall be deposited in the archives of the UNESCO, and certified true copies of which shall be delivered to all the High Contracting Parties.