

DOCUMENTS

Diplomatic Conference on the Second Protocol to the Hague Convention for the Protection of Cultural Property in the Event of Armed Conflict, The Hague, Netherlands (March 15 – 26, 1999)*

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The March 1999 Hague Diplomatic Conference on the Second Protocol to the 1954 Hague Convention for the Protection of Cultural Property in the Event of Armed Conflict (“the Convention”), convened jointly by the Government of the Netherlands and UNESCO, which resulted in the elaboration and adoption of this instrument, represents the culmination of a review of the Convention that has been underway since the beginning of this decade. The review pursued three principal goals: to adapt the Convention to the realities of contemporary armed conflicts, with emphasis on the protection of cultural heritage during non-international armed conflicts; to bridge gaps in the existing protection; and to draft a legal instrument that would reflect new developments in international humanitarian law since 1954, such as the adoption of the two additional protocols (1977) to the 1949 Geneva Conventions and of the International Convention for the Suppression of Terrorist Bombing (1997), as well as the establishment of a Statute for the International Criminal Court in 1998.

Five expert meetings (The Hague, July 1993; Lauswolt, The Netherlands, Feb-

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ruary 1994; Paris, November and December 1994; Paris, March 1997; and Vienna, May 1998) and two meetings of States Parties (Paris, November 1995 and November 1997) preceded the conference. The Lauswolt meeting resulted in the drafting of detailed legal provisions for an improvement of the working of the Convention. These were considered and redrafted at the March 1997 Paris meeting and were subject to extensive discussions and comments by States Parties to the Convention as well as by non–States Parties. Following those discussions, the Secretariat, together with the Netherlands authorities, prepared a preliminary draft Second Protocol, which was widely distributed in October 1998. On the basis of comments received from States Parties, non–States Parties, and the International Committee of the Red Cross, the Secretariat, again in close cooperation with the Netherlands authorities, in February 1999 prepared a final draft, which was circulated before the conference. It should be pointed out that the final draft was substantially reworked.

Before turning to the conference and its results, it is appropriate to mention briefly the main issues raised during the review of the Convention. There were essentially six: the form of the instrument that would incorporate the new provisions; the definition of the notion of “military necessity” with regard to cultural property under general as well as special protection; improvements in the regime of special protection; sanctions for grave breaches and other violations against cultural property and other related issues such as individual criminal responsibility, the responsibility of States, and mutual assistance in criminal matters; improvement in the protection of cultural property in non-international armed conflicts, and establishment of a supervisory body that would monitor the implementation of the Convention and the new instrument.

Representatives of seventy-four of the current ninety-five States Parties participated in the work of the Conference. Nineteen States not party to the Convention as well as Palestine were represented as observers at the Conference. Among intergovernmental organizations, the International Committee of the Red Cross participated in the Conference. Finally, the International Committee of the Blue Shield (ICBS), a four-member non-governmental organization (including the International Council on Archives, International Council of Museums, International Council on Monuments and Sites, and International Federation of Library Associations and Institutions), was represented as well.

After two weeks of intensive and sometimes difficult discussions, the Conference adopted the Second Protocol to the Convention which was signed at The Hague on May 17, 1999. The conference largely owed its success to the chairmanship of Dr. Adriaan Bos of the Netherlands, whose vast diplomatic experience and professionalism pushed the possible procedural structures to their limits and succeeded in focusing the attention of delegates on substantial discussions while avoiding accusatory stances and the transformation of the Conference into a political battlefield—a strong possibility in such a difficult area.

At the time of writing (June 1, 1999), twenty-seven States have signed the Second Protocol. The new Protocol is open for signature by all States party to the Convention by December 31, 1999, and will enter into force three months after the deposit of twenty instruments of ratification, acceptance, approval, or accession.

What are the major achievements of the Second Protocol? There are four.

First, unlike the Hague Convention, the Second Protocol provides a clear definition of the notion of “military necessity” for cultural property under general protection, thus hindering its abuse or loose interpretation. This definition is based on the relevant provisions of Additional Protocol I to the Geneva Conventions and therefore ensures coherence in the implementation of both instruments. Of course, no definition of the notion of “military necessity” can prevent wanton destruction of cultural property in the event of armed conflict. However, the new definition provides criteria that may be realistically evaluated and applied by the military.

Second, the Second Protocol creates a new category of “enhanced protection” for cultural heritage of the greatest importance for humanity that is protected by relevant national legislation and is not used for military purposes. The provisions for special protection in the Convention have not proved effective so far. The new system of enhanced protection will be administered by an intergovernmental committee and even provides for provisional registration in emergencies.

Third, the Second Protocol elaborates stricter sanctions for serious violations against cultural property, defines conditions under which individual criminal responsibility will apply, sets forth conditions for prosecution, and deals with extradition and mutual legal assistance.

Fourth, unlike the Convention, the new Protocol establishes a twelve-member Intergovernmental Committee for the Protection of Cultural Property in the Event of Armed Conflict, which will be responsible for a number of tasks in the implementation of the new Protocol, such as the granting of enhanced protection, supervision of the implementation of this Protocol, and consideration of requests for international assistance. The creation of the new committee may be considered the most important achievement of the Second Protocol because the new supervisory body creates a structure of implementation and will implicate States Parties more directly in its application. This has also the effect of making the Convention and its two Protocols more visible.

The new Protocol has not, however, fulfilled all expectations of States and international organizations raised before the conference. Because of strong opposition by some military participants, it has not made a modest advance in its penal provisions beyond those already existing in other instruments. Nor has it substantially contributed to better protection of cultural property in non-international armed conflicts, because the current chapter 5 does not exceed the scope of the rel-

evant provisions of the Convention or Additional Protocol II to the Geneva Conventions. Finally, at the last minute, the delegates decided to delete an article providing protection for national and international members of the Blue Shield Organization.

To conclude, the elaboration and adoption of the Second Protocol is another step in the improvement of the protection of cultural heritage during hostilities and another major agreement of international humanitarian law. However, its success or failure will largely depend on two aspects: first, the attitude of major military powers toward it, and second, the willingness and capacity of its States Parties to transpose its provisions into their national legislation.

The text of the Second Protocol is available in English on the UNESCO Web site at <<http://www.unesco.org/general/eng/legal/convent.html>>. Hard copies of the Second Protocol in Arabic, Chinese, English, French, Russian and Spanish may be obtained by contacting the International Standards Section of the Division of Cultural Heritage, UNESCO, 1, rue Miollis, 75732 Paris Cedex 15, FRANCE.