

The Fourth Meeting of the High Contracting Parties to the Hague Convention for the Protection of Cultural Property in the Event of Armed Conflict, 1954

Paris, France
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In issues No. 2 of 1996 (pp. 339–341) and No. 1 of 1998 (pp. 268–271) of the *International Journal of Cultural Property*, conference reports were provided on the outcome of the second and third meetings (13 November 1995 and 1997, respectively) of the High Contracting Parties to the Convention for the Protection of Cultural Property in the Event of Armed Conflict 1954 (“the Convention”).

The fourth meeting of States party to the Hague Convention (“the Convention”) took place on the occasion of the thirtieth session of the General Conference of UNESCO in Paris on 18 November 1999. In comparison with the two previous meetings, the attendance was lower; the meeting was attended by the representatives of only sixty of the current ninety-six States Parties. The decreased number of States party to the Convention participating in the meeting may be due to two factors: first, the elaboration and subsequent adoption of the Second Protocol to the Convention by the March 1999 Hague Diplomatic Conference¹ closed the review of the Convention, thus bringing about a certain diminution of interest in this subject, and second, after a long and difficult period (six weeks of Executive Board and General Conference meetings, including the election of a new Director-General of the Organization and a strike by the General Service staff of the UNESCO Secretariat), a certain degree of exhaustion was evident.

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Participation in this meeting was not limited to States Parties. Five States not party to the Convention (Denmark, Malta, Rwanda, Sri Lanka, and the United States of America) sent Observers to the meeting. As in the past, the United Nations, the International Centre for the Study of the Preservation and the Restoration of Cultural Property (ICCROM), the International Committee of the Red Cross (ICRC), the International Council of Museums (ICOM), the International Council on Monuments and Sites (ICOMOS), the International Council on Archives (ICA), and the International Federation of Library Associations and Institutions (IFLA) were invited to participate. All but three of these (UN, ICCROM, and ICOMOS) attended the meeting.

When preparing the provisional agenda of the meeting, the Secretariat envisaged three principal goals: (1) to provide the participants and observers with an update on the Secretariat's activities related to the implementation of the Convention and 1954 Protocol as well as the progress in the number of states signatories of the Second Protocol; (2) to raise with States party to the Convention the status of the Federal Republic of Yugoslavia with regard to the Convention; and (3) to obtain the opinion of States party to the Convention on the marking of destroyed cultural property with the distinctive emblem of the Convention.

With regard to the first goal, it is necessary to point out that this meeting was the first since the adoption of the Second Protocol to the Convention, signed by 18 November 1999, by thirty-three States.² To enter into force, thus becoming legally binding, at least twenty States must provide the Director-General of UNESCO with their instruments of ratification, acceptance, approval, or accession. During the general discussion of the Secretariat's activities, several States explained that their competent authorities are considering the Second Protocol with a view to becoming party to it. The question of entry into force of the Second Protocol is not purely academic, because only after that will it be possible to elect the twelve Member Committee for the Protection of Cultural Property in the Event of Armed Conflict, thus putting into practice an efficient supervisory body vested with real powers (e.g., granting, cancellation, and withdrawal of enhanced protection; monitoring and supervision of the Second Protocol; consideration of national reports on the implementation of the Second Protocol; and consideration of requests for international assistance and determination of the use of the Fund).

The second and the most controversial issue concerned the clarification of the status of the Federal Republic of Yugoslavia with regard to the Convention. In March 1999 the authorities of the Federal Republic of Yugoslavia requested the Secretariat to enter several cultural sites in the International Register of Cultural Property under Special Protection established under the Convention. This Register is a special list of cultural property maintained by the Director-General of UNESCO. Its aim is to provide such property with the greatest possible degree

of protection in order to assure its survival in the event of armed conflict. To date, only four States (Austria, Germany, the Holy See, and the Netherlands) have entered a total number of six sites in the Register. The reasons for the low level of entries in the Register are principally two: very cumbersome conditions with which to comply and a certain reticence of States to provide their potential adversaries and terrorists with a "hit list."

The Yugoslav request has not so far been acted on because a number of States have questioned the status of the Federal Republic of Yugoslavia as party to the Convention, which was ratified by the Socialist Federal Republic of Yugoslavia on 13 February 1956. The Federal Republic of Yugoslavia has been excluded from meetings of the United Nations since resolution 47/1 of the United Nations General Assembly, which stated that "the Federal Republic of Yugoslavia (Serbia and Montenegro) cannot continue automatically the membership of the former Socialist Federal Republic of Yugoslavia in the United Nations; and therefore decides that the Federal Republic of Yugoslavia (Serbia and Montenegro) should apply for membership in the United Nations and that it shall not participate in the work of the General Assembly." This decision has been followed in UNESCO practice. However, the participation of the Federal Republic of Yugoslavia in a Convention, where it has expressed its willingness to be bound by it, is determined not by other States Parties but by the rules of the law of succession, be it of treaty or custom.³ The Secretariat is not authorized to take decisions on such issues.

In this situation the Secretariat sought the views of the States Parties on a possible request for an advisory opinion of the International Court of Justice under Article X, Relations with the International Court of Justice, of the Agreement between the United Nations and the United Nations Educational, Scientific, and Cultural Organization,⁴ which authorizes UNESCO to request an advisory opinion of the Court on legal questions arising within the scope of its activities. Article X(3) stipulates that "[s]uch request may be addressed to the Court by the General Conference or by the Executive Board acting in pursuance of an authorization by the Conference."⁵

It was not intended that the meeting take a decision on the issue, which clearly would require deliberation and subsequent transmission of views to the Secretariat. The mere inclusion in the provisional agenda proved, however, controversial, an element which is not promising for the future of the Intergovernmental Committee, which will inevitably be concerned with other politically sensitive issues.

The Secretariat also provided the participants with an update on the protection of cultural property in Kosovo and Bosnia and Herzegovina. With respect to the marking of destroyed cultural property with the distinctive emblem of the Convention, this issue was included in the provisional agenda because at the beginning of 1999 Bosnia and Herzegovina consulted the Secretariat as to the suit-

ability of marking sites of cultural property with the emblem of the Convention where the property had been intentionally destroyed. This, unlike the question of status of a Party to the Convention, is a question of interpretation of the text, namely Articles 1 (Definition of cultural property) and 17 (Use of the emblem). For this the States are the authorized interpreters of the Convention, not the Secretariat. The Secretariat suggested that this issue also be clarified through the International Court of Justice. The meeting agreed that States Parties consider this issue within their administrations and provide the Secretariat with their views so that it could prepare a working paper for the next meeting of States Parties, scheduled to take place in 2001.

A number of States expressed their support for the application of the Convention by United Nations peacekeeping forces. The readers may be interested to learn that Article X on the Applicability of International Conventions of the Model Agreement between the United Nations and Member States Contributing Personnel and Equipment to United Nations Peace-keeping Operations provides that

[The United Nations peace-keeping operation] shall observe and respect the principles and spirit of the general international conventions applicable to the conduct of military personnel. The international conventions referred to above include the four Geneva Conventions of 12 August 1949 and their Additional Protocols of 8 June 1977 and the UNESCO Convention of 14 May 1954 on the Protection of Cultural Property in the event of armed Conflict. [The Participating State] shall therefore ensure that the members of its national contingent serving with [the United Nations peace-keeping operation] be fully acquainted with the principles and spirit of these Conventions.⁶

They may also wish to acquaint themselves with the recently adopted Guidelines of the UN Secretary General, "Observance by United Nations Forces of International Humanitarian Law," which states in paragraph 6 of the Section 6 "Means and Methods of Combat"⁷ that

The United Nations force is prohibited from attacking monuments of art, architecture or history, archaeological sites, works of art, places of worship and museums and libraries which constitute the cultural or spiritual heritage of peoples. In its area of co-operation, the United Nations force shall not use such cultural property or their immediate surroundings for purposes which might expose them to destruction or damage. Theft, pillage, misappropriation and any act of vandalism directed against cultural property is strictly prohibited.

The meeting resulted in the adoption of the following resolution.

Fourth Meeting of States Parties to the Convention for the Protection of Cultural Property in the Event of Armed Conflict

(The Hague, 1954)

Paris, 18 November 1999

The High Contracting Parties to the Convention for the Protection of Cultural Property in the Event of Armed Conflict (The Hague, 1954);

Recalling the Resolution adopted at the third meeting (13 November 1997) of the High Contracting Parties to the Hague Convention which invited, inter alia, the Director-General 'to convene during the period of the thirtieth session of the General Conference a fourth meeting of the High Contracting Parties to the Hague Convention';

Thanking all High Contracting Parties to the Convention as well as inter-governmental and non-governmental organizations for their active support and contribution to the review of the Convention resulting in the elaboration and adoption of the Second Protocol to the Convention during the Diplomatic Conference held in The Hague 15–26 March 1999 at the invitation of the Netherlands Government and of the Director-General of UNESCO;

Expressing its particular thanks to the Netherlands Government for its organization of the Diplomatic Conference which greatly contributed to its success;

Thanking the Secretariat for its efforts aimed at the better implementation and promotion of the Convention and its two Protocols, in particular by disseminating the Convention to target groups such as the military or cultural heritage protection professionals as well as to the general public and by co-ordinating its action with intergovernmental and non-governmental organizations concerned;

1. **ENCOURAGE** States not yet party to the Convention to join this agreement and to adopt the relevant national legislation;
2. **NOTE** that all States party to the Convention which have not yet signed the Second Protocol should consider doing so;
3. **NOTE** that those States party to the Convention which have signed the Second Protocol should ratify, accept or approve this agreement;
4. **INVITE** States party to the Convention to provide the Secretariat with their national reports on the implementation of the Convention under Article 26(2) within the time allowed;
5. **INVITE** the Director-General to distribute the report of the present meeting of High Contracting Parties together with this resolution to all High Contracting Parties to the Convention, to all UNESCO Member States, to States with an Observer status, to all other interested States and to international organizations concerned;

6. INVITE the Director-General to convene during the period of the thirty-first session of the General Conference a fifth meeting of the High Contracting Parties to the Hague Convention or earlier if the Director-General receive a request from at least one-fifth of States Parties to the Convention.

NOTES

1. For more detailed information on the results of the March 1999 Hague Diplomatic Conference on the Second Protocol to the Hague Convention, please consult Jan Hladík, 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), 8 *International Journal of Cultural Property* 526–29 (1999). For overall information on the review of the Convention, see Hladík, The Review Process of the 1954 Hague Convention for the Protection of Cultural Property in the Event of Armed Conflict and its Impact on International Humanitarian Law, 1 *Yearbook of International Humanitarian Law* 313–22 (1998) (The Hague, T. M. C. Asser Press 1998).

2. Albania, Armenia, Austria, Belgium, Bulgaria, Cambodia, Côte d'Ivoire, Croatia, Cyprus, Estonia, Finland, Germany, Ghana, Greece, Holy See, Hungary, Indonesia, Italy, Luxembourg, Madagascar, the Netherlands, Nigeria, Oman, Pakistan, Peru, Qatar, Romania, Spain, Sweden, Switzerland, the Syrian Arab Republic, the former Yugoslav Republic of Macedonia, and Yemen.

3. The law of succession is basically codified in the Vienna Convention on Succession of States in Respect of Treaties 1978, concluded in Vienna. However, at the time of this writing (beginning of December 1999) there are only seventeen States parties, which implies that the principles of this Convention have not met with unanimous acceptance by the world community. More detailed information on the status of this Convention are available at the website of the United Nations: <http://untreaty.un.org>.

4. *Basic Texts* 175 (UNESCO, Paris 2000).

5. *Id.*

6. UN document A/46/185 of 23 May 1991.

7. UN document ST/SGB/1999/13 of 6 August 1999.