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The 1954 Hague Convention on the protection of cultural property in the event of armed conflict and its 1954 and 1999 protocols

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Over a period of many centuries, in parallel with the slow emergence of the concepts of international diplomatic and humanitarian law, both the international community and national law began to accept the concept that in times of armed conflict important immovable cultural property, such as historic, religious and educational sites, buildings and zones, and movable cultural property, such as works of art, and museum, library and archive collections and the institutions caring for these were entitled to respect and protection from both direct acts of war, and associated risks, particularly looting and acts of vandalism. (A history of the evolution of the concept of cultural protection in times of war from the Crusades to the present-day has recently been published: P.J. Boylan, "The concept of cultural protection in times of armed conflict: from the crusades to the new millennium", pp. 43 - 108 in N. Brodie & K. Tubb (editors), 2002. *Illicit Antiquities* (London: Routledge), and this present short paper has been largely based on this.)

However, despite the adoption of provisions in the developing more formalised international Laws of War from the second half of the 19th century onwards, the Second World War in Europe saw cultural destruction on an unprecedented scale, with the loss of many hundreds of thousands of historic buildings, whole historic zones and millions of items of movable cultural property. Faced with the risk of a further World War, and in the light of the experience of the Spanish Civil War, in the late 1930s the International Museums Office of the League of Nations, the predecessor of the present-day UNESCO-based International Council of Museums (ICOM), began work on a proposed international treaty aimed specifically at the protection of both immovable and movable cultural property in times of war.

Though work on this stopped in 1939 with the outbreak of war in Europe, this important pre-war work was taken up again by the Italian government initially, but the lead responsibility soon passed to

UNESCO. Following a considerable period of preparatory work, including a detailed development of the pre-war proposals prepared by the Government of The Netherlands, a Diplomatic Conference was formally convened at The Hague in 1954. The result was the adoption on 14 May 1954 of *The Convention for the Protection of Cultural Property in the Event of Armed Conflict, The Hague, 1954*, which was amplified by detailed *Regulations* for the practical implementation of the Convention (which form an integral part of it), and a separate *Protocol for the Protection of Cultural Property in the Event of Armed Conflict*. Despite much debate and many differences of opinion on the details – particularly at the practical level, the 1954 Conference was clearly agreed on a number of important principles, particularly the concept of a valid international interest of the world community in cultural property as part of the cultural heritage of all mankind', requiring special legal measures at the international level for its safeguarding.

The background and objectives to the Convention and Protocol are set out clearly at the beginning: “The High Contracting Parties, Recognizing that cultural property has suffered grave damage during recent armed conflicts and that, by reason of the developments in the technique of warfare, it is in increasing danger of destruction; Being convinced that damage to cultural property belonging to any people whatsoever means damage to the cultural heritage of all mankind, since each people makes its contribution to the culture of the world; Considering that the preservation of the cultural heritage is of great importance for all peoples of the world and that it is important that this heritage should receive international protection; Guided by the principles concerning the protection of cultural property during armed conflict, as established in the Conventions of The Hague of 1899 and of 1907 and in the Washington Pact of 15 April, 1935; Being of the opinion that such protection cannot be effective unless both national and international measures have been taken to organize it in time of peace; Being determined to take all possible steps to protect cultural property; Have agreed upon the following provisions:.....” (Hague Convention 1954: Preamble)

The Convention itself first defines within the single term 'cultural property' ('biens culturels' in the French version) three different conceptual categories: (1) both immovable and movable items which are themselves of intrinsic artistic, historic, scientific or other cultural value such as historic monuments, works of art or scientific collections, (2) premises used for the housing of movable cultural property, such as museums, libraries and archive premises, and (3) 'centres containing monuments' such as important historic cities or archaeological zones. Protection is also offered by the Convention (Article 2) to temporary wartime shelters, to authorized means of emergency transport in times of hostilities, and to authorized specialist personnel: concepts derived directly from the protection for civilian air-raid shelters, hospitals and ambulances in relation to humanitarian protection in the Geneva Conventions.

The language of the 1954 Convention is very uncomplicated in relation to the second of the two key concepts of its title and purpose: that of 'protection' of cultural property. This is simply defined as comprising 'the safeguarding and respect for such property'. However, the subsidiary definitions ('safeguarding' and 'respect') are rather odd. 'Safeguarding' is used not in the obvious sense of guarding and keeping safe that which is safeguarded (in this case cultural property) at all times, including the times of greatest danger (e.g. in this case during armed conflicts). Instead, in the Convention 'safeguarding' is explicitly defined as referring only to peacetime preparations for the possible effects of war or other armed conflicts: “The High Contracting Parties undertake to prepare in time of peace for the safeguarding of cultural property situated within their own territory against the foreseeable effects of an armed conflict, by taking such measures as they consider appropriate.” (Article 3)

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

Contracting Parties undertake to respect cultural property situated within their own territory as well as within the territory of other High Contracting Parties by refraining from any use of the property and its immediate surroundings or of the appliances in use for its protection for purposes which are likely to expose it to destruction or damage in the event of armed conflict, and by refraining from any act of hostility directed against such property.” (Article 4(1))

Under customary international law the general staff and individual field commanders of invading and occupying forces have an established responsibility not merely to refrain from unlawful acts ('respect') but to ensure adequate military and/or civil police etc. control over not only their own forces, but also irregular forces and civilians within the occupied territory so as also to 'safeguard' (in the Hague Convention sense) both the lives and property of non-combatants. Indeed, in the current discussions about possible war crime cases in ex-Yugoslavia, the issue of field command and control over irregular forces and civilians in relation to the wilful destruction of property is seen as an important issue. It therefore seems reasonable to require attacking and occupying forces not merely to 'respect' but also to 'safeguard' positively cultural property in so far as this is practicable. However, despite much discussion and counter-argument at the 1954 Hague Conference all of these obligations were qualified by the retention of the long-established, but by then already controversial, doctrine of 'military necessity' for the benefit of both the attacking and defending powers: “The obligations mentioned in paragraph 1 of the present Article may be waived only in cases where military necessity imperatively requires such a waiver.” (Article 4 (2))

Few topics in relation to the humanitarian laws of war have attracted more comment and discussion than the exception for 'military necessity', and the limitations that international law places on this. It is generally accepted that the doctrine of 'military necessity' by no means gives unlimited and unrestrained power to either attacking or defending forces. However, the moment that the enemy uses an otherwise protected monument or other feature for a military purpose, or indeed places any form of the 'apparatus of war' (in the widest sense) in proximity to a protected place, it immediately loses its protection under the 1954 Convention, and only regains protection when the military use ends. If this is not done, then no matter how important the feature, it becomes a legitimate military target.

The general requirement of 'respect' (subject of course to imperative 'military necessity') was further clarified by two further clauses in the 1954 Convention requiring effective measures against theft and pillage, and prohibiting reprisals against cultural property, respectively: “3. The High Contracting Parties further undertake to prohibit, prevent and, if necessary, put a stop to any form of theft, pillage or misappropriation of, and any acts of vandalism directed against, cultural property. They shall refrain from requisitioning movable cultural property situated in the territory of another High Contracting Party. 4. They shall refrain from any act directed by way of reprisals against cultural property.” (Article 4)

There is also an express prohibition of reprisals or otherwise prohibited acts whereby, even if another High Contracting Party fails to comply with the Convention, counter-action is still not allowed: “5. No High Contracting Party may evade the obligations incumbent upon it under the present Article, in respect of another High Contracting Party, by reason of the fact that the latter has not applied the measures of safeguard referred to in Article 3.” (Article 4)

Other important obligations accepted by the States Parties to the 1954 Convention are the provisions relating to Occupation. These require any Contracting State in occupation of all or part of the territory of another Party to support so far as possible the established structure of cultural property protection in the occupied lands. However, should the competent national authorities be unable to handle the tasks the occupying power itself must 'take the most necessary measures of preservation' (Article 5). This is followed by a rather obscurely worded provision that: “Any High Contracting Party whose government is considered their legitimate government by members of a resistance movement, shall, if possible, draw

their attention to the obligation to comply with those provisions of the Convention dealing with respect for cultural property.” (Article 5)

The other fundamental concept of the Convention is the obligation of States Parties in respect of peacetime preparation for the protection of cultural property, defined as 'safeguarding': “The High Contracting Parties undertake to prepare in time of peace for the safeguarding of cultural property situated within their own territory against the foreseeable effects of an armed conflict, by taking such measures as they consider appropriate.” (Article 3).

Chapter I of the Convention concludes with important provisions requiring the peacetime training of the armed forces: “1. The High Contracting Parties undertake to introduce in time of peace into their military regulations or instructions such provisions as may ensure observance of the present Convention, and to foster in the members of their armed forces a spirit of respect for the culture and cultural property of all peoples. 2. The High Contracting Parties undertake to plan or establish in peace-time, within their armed forces, services or specialist personnel whose purpose will be to secure respect for cultural property and to co-operate with the civilian authorities responsible for safeguarding it.” (Article 7)

Chapter II (Articles 8-11) of the 1954 Hague Convention introduces and regulates the concept of 'Special Protection'. Under this UNESCO, after consulting all High Contracting Parties may place on a special list at the request of the state concerned, a limited number of temporary refuges or shelters for movable cultural property, and also 'centres containing monuments and other immovable property of very great importance', subject to the defending State being both able and willing to demilitarize the location and its surroundings.

Chapter III provides protection and immunity, modelled closely on that granted to ambulances under the Hague and Geneva Conventions, for official transport used in both internal and international transfers of cultural property, subject to prior authorization and international supervision of the movement (1954 Convention Articles 12-14; Regulations Articles 17-19).

Chapters IV-VII cover a wide range of provisions requiring belligerents to provide for the protection of authorized personnel engaged in the protection of cultural property (Article 16), details relating to the use of the official emblem of Hague Convention (a blue and white shield), and issues relating to the interpretation and application of the Convention (Articles 15-18). Again all of these are closely modelled on parallel provisions relating to humanitarian protection found in the 1949 Geneva Conventions.

Of particular, and growing, importance was the decision of the 1954 Intergovernmental Conference to follow Common Article 3 of the 1949 Geneva Conventions, and extend the protection of cultural property beyond the traditional definition of 'war' into the difficult area of internal armed conflicts, such as civil wars, 'liberation' wars and armed independence campaigns, and – probably – to major armed terrorist campaigns: “1. In the event of an armed conflict not of an international character occurring within the territory of one of the High Contracting Parties, each party to the conflict shall be bound to apply, as a minimum, the provisions of the present Convention which relate to respect for cultural property. 2. The parties to the conflict shall endeavour to bring into force, by means of special agreements, all or part of the other provisions of the present Convention. 3. The United Nations Educational, Scientific and Cultural Organization may offer its services to the parties to the conflict. 4. The application of the preceding provisions shall not affect the legal status of the parties to the conflict.” (Article 19)

In the years since the adoption of the 1954 Convention non-international armed conflicts, particularly those relating to internal strife along national, regional, ethnic, linguistic or religious lines, have become an increasingly common feature of the world order and in losses of monuments, museums, libraries and other cultural repositories. A cynic might argue that possibly the exploding 'heritage' movement that has

developed in almost all parts of the world in the past half-century has done far too good a job in promoting the understanding of the cultural heritage, including museums, monuments, sites, archives and libraries, and in particular in presenting these as proud symbols of the cultural, religious or ethnic identity of nations, peoples and communities. Whatever the reason, it is clear that the period since the end of World War Two has seen deliberate iconoclastic attacks on, and destruction of, cultural heritage symbols unprecedented in modern times, more reminiscent of the religious conflicts of the Crusades, the Protestant revolution and religious wars of the sixteenth and seventeenth centuries.

So far as dissemination of the 1954 Convention is concerned, the High Contracting Parties undertake to do so widely within their countries, certainly among the military, and if possible to the civilian population (Article 25), to communicate their national translations (beyond the French, English, Russian and Spanish texts of the 1954 Hague Conference) to other Parties (through UNESCO), and to submit periodic reports to UNESCO at least once every four years on the measures being taken to implement the Convention (Article 26). In fact it is evident that only a small minority of High Contracting Parties have made serious efforts to disseminate knowledge of the Convention more widely within their countries, and the same is true of the submission of the required periodic reports (Boylan 1993: 43, 89-90, 199-200).

Bearing in mind the importance of measures for enforcement, and indeed the Nuremberg War Crimes Tribunal rulings, the provisions for enforcement action and sanctions were remarkably weak and rather vague: "The High Contracting Parties undertake to take, within the framework of their ordinary criminal jurisdiction, all necessary steps to prosecute and impose penal or disciplinary sanctions upon those persons, of whatever nationality, who commit or order to be committed a breach of the present Convention." (Article 28)

The concluding Articles of the Convention dealt with a range of mainly technical legal issues, including a provision permitting the application of the Convention to colonies and other dependent territories, formalizing the relationship of the new Convention to existing general laws of war, and provisions relating to both individual denunciation by a High Contracting Party and for inter-governmental revision of the Convention and Regulations (Articles 28-40).

The 1954 Hague Regulations, which form an integral part of the Convention, set out first (Chapter I, Articles 1-10) the practical procedures to be followed in relation to the compiling by the Director-General of UNESCO of an international list of persons qualified to carry out the functions of Commissioners-General, and procedures to be followed in the event of armed conflict, including the arrangements for the appointment of cultural representatives, Commissioners-General and the responsibilities of the Protecting Powers (appointed in accordance with the Hague 1907 and Geneva 1949 principles).

The second part (Chapter II, Articles 11-16) of the Regulations deals with the practical arrangements and procedures for the granting and registration of 'Special Protection', including the notification of all proposals to every High Contracting Party and arrangements for the submitting of objections and for eventual arbitration on these if necessary, as well as provisions for the cancelling of 'Special Protection' where appropriate.

Chapter III of the Regulations (Articles 17-19) sets out in some detail the procedures for the transport of movable cultural property to a place of safety (possibly abroad) for protection, with the approval of the neutral Commissioner-General overseeing cultural heritage matters during the conflict; while the final part, Chapter IV, regulates the use of the Official Emblem and the identity cards and other identifying markers of persons duly authorized to undertake official duties in relation to the implementation of the Convention (Articles 20 - 21).

At a comparatively late stage in the 1954 Hague Conference proceedings it became clear that there was an irreconcilable split. The majority of Delegations wanted to include in the new Convention binding

controls over transfers of movable cultural property within war zones and occupied territories. However, a number of countries argued strongly against this position, arguing variously that such measures would either damage the international art and antiquities trade, interfere with private property rights within their countries or, in most cases, both.

The final compromise over these objections was to separate out such measures into a separate legal instrument: the Protocol for the Protection of Cultural Property in the Event of Armed Conflict (now known as the First Protocol following the March 1999 Diplomatic Conference to update the Convention – see below). The 1954 Protocol has two unambiguous purposes. First, a State Party to the Protocol undertakes to take active measures to prevent all exports of movable cultural property as defined in the Hague Convention from any territory which it may occupy during an armed conflict. Second, all High Contracting Parties undertake to seize and hold to the end of hostilities any cultural property from war zones which has been exported in contravention of the first principle of the Protocol. In marked contrast with the position taken by the United States and Soviet Union at the Berlin (Potsdam) Conference of July–August 1945, less than a decade earlier, the Protocol also provides that such cultural property shall never be retained after the end of hostilities as war reparations.

The 1954 Intergovernmental Conference was attended by official delegates of a majority of the Sovereign States in membership of the United Nations at that date, and most participating States signed the Final Act over the following months. However the number of States that formally ratified the Convention and Protocol was disappointing. Forty years on from the adoption of the 1954 Hague Convention 82 countries (less than half of the United Nations member states) had become parties to the Convention itself, and of these 14 had accepted only the main Convention, while rejecting the additional protection offered to movable cultural property by the Protocol. Thanks to a major effort by UNESCO, the situation has improved considerably over recent years, though there are still substantial gaps. In particular, few African or Latin American countries have adopted the 1954 Convention, while the failure of three of the five permanent members of the UN Security Council – China, United Kingdom and United States – to ratify the Convention undoubtedly greatly weakens its authority and effectiveness.

Those drafting the 1954 Convention probably envisaged war in terms of well-defined international conflicts between structured and well-disciplined military commands on the pattern of the two World Wars. However, even in historic terms, this was probably a mistake: more than half of all the armed conflicts resulting in fatalities that occurred between 1820 and 1945 were mainly internal rather than external conflicts, or mixed conflicts, and certainly, the great majority of the perhaps almost two hundred armed conflicts that have occurred in the world since 1954 have been sub-conventional and guerrilla wars. Even in the case of more organized and centrally directed military operations involving States or territory subject to the 1954 Hague Convention and Protocol, only rarely were its principles and detailed terms honoured by all parties during conflicts and subsequent occupations, including those affecting many regions of great cultural heritage.

There were, however, some important advances in the protection of cultural property more generally during the 1970s and subsequently. For example, following long and difficult negotiations the 1970 General Conference of UNESCO adopted the *Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property* (UNESCO 1985), which aimed to outlaw the widespread trafficking in both smuggled and stolen works of art and other cultural property. Two years later UNESCO adopted the *World Heritage Convention* (1972), which provided for the designation of sites and zones of pre-eminent world importance as 'World Heritage Sites'. This Convention covers both cultural and, for the first time, natural sites, which included the important provision that States Parties to it must actively promote respect for the national and international patrimony throughout the population, and to establish and maintain adequate systems and organizational structures for the necessary practical measures.

Public concern and horror mounted over the events in disintegrating Yugoslavia from late 1990 onwards, particularly the extended sieges and bombardments of Vukovar and the World Heritage city of Dubrovnik, both in Croatia, and then of the historic centres of Sarajevo and Mostar (among many other places) in Bosnia Herzegovina. By this time UNESCO and a number of key member governments had already turned their attention to apparent ineffectiveness of the 1954 Hague Convention, and had decided to embark upon a major review of the treaty. The government of The Netherlands offered UNESCO additional funds out of the Dutch budget for projects supporting the United Nation's International Decade of International Law, 1990–99 to supplement UNESCO's own budget for work on the Hague Convention, and using these funds in September 1992 UNESCO asked me if I would carry out such a review of the 1954 Hague Convention, Regulations and Protocol, not so much from the strictly legal standpoint, but to try to identify the practical reasons for its apparent ineffectiveness in so many cases.

My report was considered first in draft form at a meeting of experts from nineteen countries held in the Ministry of Foreign Affairs, The Hague, in June 1993, where the total of more than 40 recommendations addressed to governments, UNESCO, the United Nations and non-governmental organizations were reviewed. The finalized version of the Report in both English and French editions was presented to the autumn meeting of the UNESCO Executive Board, which agreed to its publication and widespread distribution free of charge (Boylan 1993). It was also agreed to invite all States Parties to the 1954 Convention to a formal meeting of States during the next UNESCO General Conference to discuss the issues raised, and to redouble UNESCO's efforts to persuade more States to adopt the 1954 Convention and Protocol, and all countries that had not ratified or otherwise adopted them to do so without further delay, a move to which there was a moderately encouraging response.

In the same year, discussions were initiated by Dr Leo Van Nispen on behalf of the International Council on Monuments and Sites (ICOMOS) on the establishment of a kind of 'Red Cross' for the Cultural Heritage, proposing the title 'International Committee of the Blue Shield' – the official symbol of cultural heritage protection under the 1954 Hague Convention being a blue and white shield. After initial meetings and seminars involving monuments and sites and museum and gallery specialists and organizations, particularly ICOMOS and the International Council of Museums (ICOM), Blue Shield (ICBS) was broadened to bring in the UNESCO-recognized bodies for the other two areas of cultural property protected by the Hague Convention; the International Council of Archives (ICA) and the International Federation of Library Associations and Institutions (IFLA). The ICBS was finally formally constituted as a standing emergency co-ordination and response committee of the four non-governmental organizations in 1996, with the two specially relevant inter-governmental organizations, UNESCO and the International Centre For Conservation, Rome, (ICCROM), as the closest possible partners and as permanent observers at all ICBS meetings. Following this there have been a growing number of moves to parallel the rapidly emerging co-operation and solidarity between the four ICBS professional bodies at the international level by the development of national Blue Shield organizations, beginning with Belgium and Canada.

After two preliminary meetings of experts in 1993 and 1994, during the 1995 biennial General Conference of UNESCO, a meeting of States Parties to the 1954 Hague Convention was convened, with all other member States of UNESCO and the UN (plus representatives of key non-governmental organizations) invited to attend as observers. This meeting supported the moves towards some kind of updating of the Convention, as recommended in my 1993 Report and by the two expert meetings, either by the revision of the Convention itself, or by the adoption of a new International Instrument linked to it, such as an Additional Protocol, under the international law of treaties. This in turn was followed by a further experts' drafting meeting hosted by the government of Austria and then a further meeting of States Parties and observers during the next UNESCO General Conference in 1997.

In the course of the latter meeting the Government of The Netherlands formally announced that it intended to invite all UNESCO and UN member states to a formal Diplomatic Conference in The Hague to review and, if felt fit, revise or supplement the 1954 Hague Convention, as a further contribution to the World Decade of International Law. After some slippage in the Netherlands' provisional timetable due to delays in completing the negotiations for the establishment of a Permanent International Criminal Court, finally agreed by a Diplomatic Conference in Rome in May–June 1998, invitations were issued in late 1998 by the Dutch Minister of Foreign Affairs calling a two week Diplomatic Conference to revise or supplement the 1954 Hague Convention.

This Conference opened on 15 March 1999 in the Congress Centre, The Hague. This was a specially significant, even symbolic, location, being just a short distance from the Peace Palace where the original 1954 Convention had been drawn up, and on the same city block as the Courts of the International Criminal Tribunal for Yugoslavia, where criminal trials of men accused of both humanitarian and cultural war crimes were taking place. The 84 national delegations participating were made up of more than 300 diplomats and legal, military and cultural experts, and there were also representatives from both inter-governmental and non-governmental international organizations, including the International Committee of the Red Cross. The Conference Secretariat was provided by UNESCO's Division of Cultural Heritage, with much support from the Dutch Ministry of Foreign Affairs.

Also officially accredited to the Conference were the four leading UNESCO-linked international non-governmental organizations: the International Council on Archives (ICA) the International Federation of Library Associations and Institutions (IFLA), the International Council of Museums (ICOM) and the International Council on Monuments and Sites (ICOMOS), through a joint delegation under the auspices of the International Committee of the Blue Shield (ICBS). This delegation was led by myself, and supported from time to time by Manus Brinkman, Secretary-General of ICOM, and Mme Marie-Thèrese Varlamoff, the IFLA representative on the ICBS.

After two gruelling weeks, 15–26 March 1999, during which things often looked very bleak because of deep-seated differences between States, it was decided to adopt a new supplementary legal instrument to the 1954 Hague *Convention on the Protection of Cultural Property in the Event of Armed Conflict*, in the form of an Additional Protocol, named the Second Protocol (the original 1954 Protocol being renamed the First Protocol). The new measure was formally adopted by unanimous consensus of the Conference on the evening of Friday 26 March, with the Heads of all national Delegations taking part in the Diplomatic Conference signing the formal 'Final Act' (Boylan1999). However, this does not automatically commit any State then to proceed to sign and ratify the new treaty itself. National legislative and other legal procedures vary considerably from country to country, and usually require often prolonged consideration at the political level (and in this case consideration of the military aspects also) and, in most cases, major new primary legislation at the national level.

The new Protocol represents much the greatest advance in international cultural protection measures for decades – certainly since the 1972 World Heritage Convention, and probably since the original 1954 Hague Convention. It is also the most substantial development in the general field of International Humanitarian Law since the drawing up of the Geneva Convention Additional Protocols of 1977.

After the necessary preamble and definitions in Chapter 1, the new Chapter 2 greatly clarifies and amplifies the provisions of Hague 1954 in respect of 'protection' in general. There are now much clearer explanations of, for example, the very limited cases in which 'imperative military necessity' can be claimed in order to allow an attack on cultural property – in effect substantially reducing the possible use of this, (a long-standing problem dating back to the original 1899 and 1907 Hague Laws of War). The obligations of States in relation to peacetime preparation and training have also been clarified and expanded, giving amongst many other things a major emphasis on the obligation to develop adequate

inventories and catalogues of both monuments and sites and museum collections. The Chapter also clarifies (and limits very considerably) what an occupying power may do in relation to cultural property within occupied territories, placing very narrow limits on archaeological excavations and the alteration or change of use of cultural property, and requiring the occupying power to prohibit and prevent all illicit export, removal or change of ownership of cultural property.

Chapter 3 creates a new category of 'Exceptional Protection' for the most important sites, monuments and institutions. This will be an international designation publicised in advance (rather along the lines of the World Heritage List under the 1972 *World Heritage Convention*). The detailed provisions restrict even further than the new Chapter 2 provisions the 1954 'Imperative Military Necessity' exemption: even in the case of gross misuse by the enemy, it will be lawful to attack or retaliate only if the cultural property is currently being actually used in direct support of the fighting etc., and even then there must be no reasonable alternative. Further, any military response must always be proportionate to the risk and strictly limited in both nature and time.

One of the two areas in which there is a very major advance in international humanitarian law and international criminal law is the new Chapter 4. This establishes a range of five new explicit crimes in relation to breaches of cultural protection and respect contrary to either the original 1954 Convention, the First Protocol, or the cultural protection provisions of the 1977 Additional Geneva Protocols. States adopting the 1999 Protocol will have to legislate for these and in normal cases will be expected to prosecute such crimes in their normal civilian or military courts. However, there is also provision for universal international jurisdiction – giving the possibility of criminal prosecution anywhere else in the world, at least within a State Party to the Second Protocol, and the most serious new crimes will be extraditable. (These provisions, perhaps above all others, will require major new legislation at the national level in the case of each country adopting it, and for this reason alone the process of ratification will inevitably be a relatively slow one.)

Chapter 5 deals with non-international conflicts, such as civil wars and internal 'liberation' conflicts, and aims to clarify and strengthen considerably the Hague 1954 provisions, which above all others been consistently ignored by rebel and other irregular forces, as well as by the defending national forces at times. The 'cultural war crimes' provisions (including universal international jurisdiction) of Chapter 4 will apply unambiguously to such conflicts in future.

The other major advance and significant innovation is Chapter 6, which establishes for the first time permanent institutional arrangements in respect of the application of the 1954 Convention. There will be two-yearly meetings of the States Parties (compared with a 22 year gap between the 1973 and 1995 meetings!), and the States will elect a twelve member 'Committee for the protection of cultural property in the event of armed conflict' which will meet at least once a year, and more frequently in cases of urgency. The Committee will have a duty to monitor and promote generally, and consider applications for both 'Exceptional Protection' and financial assistance from a (voluntary contributions) Fund to be established under the Protocol.

For the first time there will be a clear role for 'civil society' – represented by the non-governmental sector – within the Hague Convention system. The International Committee of the Blue Shield (by name) and its constituent 'eminent professional organizations' (i.e. the four UNESCO-recognized world NGOs for archives–ICA, libraries–IFLA, monuments and sites–ICOMOS and museums–ICOM), together with ICCROM and the International Committee of the Red Cross, will have important standing advisory roles in relation to the Committee and the regular meetings of States Parties. They will also be consulted on proposals such as the new 'Exceptional will have Protection' designation under Chapter 3, and an advisory role in the implementation of the new Second Protocol Committee and its work at all levels, (paralleling

directly the official role that ICOMOS and ICCROM have had under the World Heritage Convention since 1972).

Chapter 7 strengthens the 1954 provision in relation to information, training etc. about the Convention, Protocols and general principles of cultural protection. There is now a call for States to raise awareness among the general public and within the education system, not just among military personnel and cultural sector officials, as in the 1954 text. (This important development had to be non-binding in the final text because of the large number of federated States where the central government no longer controls or influences directly the school curriculum – though there remains a further important recognition of the importance and role attached to 'civil society' and public opinion nevertheless).

As indicated above, with highly important constitutional issues to be addressed at the national level, such as the further extension of the principle of international jurisdiction for the most serious of the new, explicitly designated, war crimes, it will take a significant length of time for each country to go through the process of first gaining national government approval for the principles of the Second Protocol, and then legislating to bring it into effect. Further, the Protocol will only come into effect when at least twenty States have deposited formal instruments of ratification with the Director-General of UNESCO – a process that will clearly take several years. It was however, encouraging to see that by Monday 17 May 1999, during the week of celebrations to mark the 100th anniversary of the 1899 Hague Peace Conference and Convention, and less than two months after the Diplomatic Conference, and now (June 2002) 44 States are signatories and 12 (or the required minimum of 20 to bring it into force) have formally ratified the Second Protocol, so there is every reason to hope that the new Hague Convention regime will be operating by the time of the Convention's 50th anniversary in 2004.