



# **Draft Cultural Property (Armed Conflicts) Bill**

January 2008

Our aim is to improve the quality of life for all through cultural and sporting activities, support the pursuit of excellence, and champion the tourism, creative and leisure industries.



# **Draft Cultural Property (Armed Conflicts) Bill**

**Presented to Parliament by the Minister of State for Culture, Media and Sport**

**By Command of Her Majesty**

**January 2008**

**Cm 7298**

**£12.85**

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# **Draft Cultural Property (Armed Conflicts) Bill**

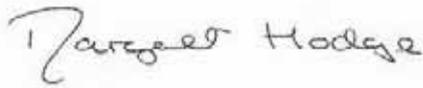
Ministerial Foreword

## **Foreword by the Minister of State for Culture, Media and Sport**

This Bill will help to ensure the security of the nation's most important cultural property in the event of armed conflict and will send a signal to the international community that the UK takes seriously its obligations under international humanitarian law to respect and safeguard the cultural property of other nations.

This Bill is required to enable the UK to ratify the 1954 Hague Convention for the Protection of Cultural Property in the Event of Armed Conflict (the Hague Convention) and accede to its two Protocols (1954 and 1999). The Convention, adopted following the massive destruction which took place during the Second World War, provides a system to protect cultural property from the effects of international and domestic armed conflict. Parties to the Convention are required to respect cultural property situated within the territory of other Parties by not attacking it, and to respect cultural property within their own territory by not using it for purposes which are likely to expose it to destruction or damage during armed conflict.

During the pre-legislative scrutiny process the Government would welcome any comments on this draft Bill from interested parties. Comments should be sent by e-mail to [stephen.hodgson@culture.gsi.gov.uk](mailto:stephen.hodgson@culture.gsi.gov.uk).

A handwritten signature in black ink that reads "Margaret Hodge". The signature is written in a cursive style with a large initial 'M'.

Margaret Hodge





# **Draft Cultural Property (Armed Conflicts) Bill**

Draft Bill



# **Cultural Property (Armed Conflicts) Bill**

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**B I L L**

TO

Make provision with a view to the accession by the United Kingdom to the Hague Convention for the Protection of Cultural Property in the Event of Armed Conflict of 1954 and the protocols to that convention of 1954 and 1999; and for connected purposes

**B**E IT ENACTED by the Queen’s most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:—

**PART 1**

KEY DEFINITIONS

**1 “The Convention” and related expressions**

(1) In this Act—

“the Convention” means the Convention for the Protection of Cultural Property in the Event of Armed Conflict, done at the Hague on 14th May 1954, 5

“the Regulations for the execution of the Convention” means the Regulations for the execution of the Convention for the Protection of Cultural Property in the Event of Armed Conflict, 10

“the First Protocol” means the Protocol to the Convention for the Protection of Cultural Property in the Event of Armed Conflict, done at the Hague on 14th May 1954, and

“the Second Protocol” means the Second Protocol to the Hague Convention of 1954 for the Protection of Cultural Property in the Event of Armed Conflict, done at the Hague on 26th March 1999. 15

(2) The texts of those instruments are set out in Schedules 1 to 4.

**2 “Cultural property”**

In this Act “cultural property” has the meaning given in Article 1 of the Convention. 20

**PART 2**

## SERIOUS BREACH OF SECOND PROTOCOL

**3 Offence of serious breach of Second Protocol**

- (1) A person commits an offence if—
- (a) the person does an intentional act of a kind described in any of sub-paragraphs (a) to (e) of paragraph 1 of Article 15 of the Second Protocol, 5
  - (b) the act is a violation of the Convention or the Second Protocol, and
  - (c) the person knows or has reason to suspect that the property to which the act relates is of a kind described in any of paragraphs (a) to (c) of Article 1 of the Convention. 10
- (2) It does not matter whether the act is done in the United Kingdom or elsewhere.
- (3) If the act is of a kind described in paragraph 1(a), (b) or (c) of Article 15 of the Second Protocol it does not matter whether the person is a UK national.
- (4) If the act is of a kind described in paragraph 1(d) or (e) of that Article and is done outside the United Kingdom an offence is committed only if the person is— 15
- (a) a UK national, or
  - (b) a person subject to UK service jurisdiction.
- (5) “UK national” means— 20
- (a) a British Citizen, a British overseas territories citizen, a British National (Overseas) or a British Overseas Citizen,
  - (b) a person who under the British Nationality Act 1981 is a British subject,
  - (c) a British protected person within the meaning of that Act, or
  - (d) a body incorporated under the law of any part of the United Kingdom.
- (6) “Person subject to UK service jurisdiction” means— 25
- (a) a person subject to service law within the meaning of the Armed Forces Act 2006, or
  - (b) a civilian subject to service discipline within the meaning of that Act.

**4 Ancillary offences**

- (1) An offence ancillary to an offence under section 3 is capable of being committed outside the United Kingdom, but only by a person who would have been liable for the section 3 offence had that person committed it. 30
- (2) In the application of this Part to England and Wales, references to an offence that is ancillary to an offence under section 3 are to—
- (a) attempting or conspiring to commit that offence, or 35
  - (b) an offence under section 4(1) or 5(1) of the Criminal Law Act 1967 (c. 58) (assisting an offender or concealing the commission of an offence) where the relevant offence mentioned there is an offence under section 3 of this Act.
- (3) In the application of this Part to Northern Ireland, references to an offence that is ancillary to an offence under section 3 are to— 40
- (a) attempting or conspiring to commit that offence, or

- (b) an offence under section 4(1) or 5(1) of the Criminal Law Act (Northern Ireland) 1967 (c. 18 (N.I.)) (assisting an offender or concealing the commission of an offence) where the relevant offence mentioned there is an offence under section 3 of this Act.
  - (4) In the application of this Part to Scotland, references to an offence that is ancillary to an offence under section 3 are to –
    - (a) being art and part in the commission of that offence,
    - (b) inciting a person to commit that offence,
    - (c) attempting or conspiring to commit that offence,
    - (d) perverting, or attempting to pervert, the course of justice in connection with that offence, or
    - (e) defeating, or attempting to defeat, the ends of justice in connection with that offence.
  - (5) A reference in this Part to an offence that is ancillary to an offence under section 3 includes a reference to an offence that is, in turn, ancillary to such an ancillary offence, and so on.
  - (6) Subsections (2) to (4) apply for the purposes of subsection (5) as if any reference to an offence under section 3 were a reference to the earlier ancillary offence.
- 5 Responsibility of commanders and other superiors**
- (1) A person described in this section as responsible for an offence is to be treated as aiding, abetting, counselling or procuring the commission of the offence.
  - (2) A military commander is responsible for an offence committed by forces under the commander’s effective command and control if –
    - (a) the offence is committed as a result of the commander’s failure to exercise control properly over those forces,
    - (b) the commander either knew or, owing to the circumstances at the time, should have known that the forces were committing or about to commit the offence, and
    - (c) the commander failed to take all necessary and reasonable measures within the commander’s power to prevent or repress the commission of the offence or to submit the matter to the competent authorities for investigation and prosecution.
  - (3) In subsection (2) –
    - (a) references to a military commander include a reference to a person effectively acting as a military commander, and
    - (b) in relation to such a person, the reference to effective command and control is to effective authority and control.
  - (4) With respect to superior and subordinate relationships not described in subsection (2), a superior is responsible for an offence committed by a subordinate who is under the superior’s effective authority and control if –
    - (a) the offence is committed as a result of the superior’s failure to exercise control properly over the subordinate,
    - (b) the superior either knew, or consciously disregarded information which clearly indicated, that the subordinate was committing or about to commit the offence,
    - (c) the offence concerned activities that were within the superior’s effective responsibility and control, and

- (d) the superior failed to take all necessary and reasonable measures within the superior’s power to prevent or repress the commission of the offence or to submit the matter to the competent authorities for investigation and prosecution.
- (5) References in subsections (2) and (4) to an offence are to – 5
- (a) an offence under section 3, or
- (b) an offence ancillary to such an offence.
- (6) In interpreting and applying the provisions of this section (which corresponds to article 28 of the Statute of the International Criminal Court done at Rome on 17th July 1998) a court must take account of any relevant judgment or decision of the International Criminal Court. 10
- (7) Nothing in this section affects any criminal liability that arises apart from this section.
- 6 Liability of company officers for offences by company**
- (1) If an offence to which this section applies is committed by a body corporate and is proved – 15
- (a) to have been committed with the consent or connivance of an officer, or
- (b) to be attributable to any neglect on the officer’s part,
- the officer (as well as the body corporate) is guilty of the offence and liable to be proceeded against and punished accordingly. 20
- (2) This section applies to –
- (a) an offence under section 3, and
- (b) an offence ancillary to such an offence.
- (3) “Officer”, in relation to a body corporate, means – 25
- (a) a director, manager, secretary or other similar officer of the body, or
- (b) a person purporting to act in any such capacity.
- (4) If the affairs of a body corporate are managed by its members, subsection (1) applies in relation to the acts and defaults of a member in connection with functions of management as if the member were a director of the body.
- 7 Penalties** 30
- (1) A person guilty of an offence to which this section applies is liable, on conviction on indictment, to imprisonment for a term not exceeding 30 years.
- (2) This section applies to –
- (a) an offence under section 3, and
- (b) an offence ancillary to such an offence. 35
- 8 Attorney General’s consent to prosecutions**
- (1) Proceedings for an offence to which this section applies may be brought –
- (a) in England and Wales, only by or with the consent of the Attorney General;
- (b) in Northern Ireland, only by or with the consent of the Advocate General for Northern Ireland. 40

- (2) This section applies to—
  - (a) an offence under section 3, and
  - (b) an offence ancillary to such an offence.
- (3) In relation to any time before the commencement of section 27(1) of the Justice (Northern Ireland) Act 2002 (c. 26) the reference in subsection (1)(b) to the Advocate General for Northern Ireland has effect as a reference to the Attorney General for Northern Ireland. 5

### PART 3

#### CULTURAL EMBLEM

## 9 The emblem 10

- (1) In this Part—
  - “the cultural emblem” means the distinctive emblem of the Convention as set out in an order made by the Secretary of State, and
  - “the cultural emblem triangle” means a design consisting of the cultural emblem repeated three times (to form a triangle with one emblem below) as set out in an order made by the Secretary of State. 15
- (2) An order under subsection (1) shall be made by statutory instrument, which shall be laid before Parliament after being made.

## 10 Offence of unauthorised use

- (1) It is an offence for a person— 20
  - (a) to use the cultural emblem otherwise than as authorised by section 11, 12 or 13, or
  - (b) to use any other design that so closely resembles the cultural emblem as to be capable of being mistaken for it.
- (2) A person guilty of an offence under this section is liable on summary conviction to a fine not exceeding level 5 on the standard scale. 25
- (3) Proceedings for an offence under this section may be brought—
  - (a) in England and Wales, only with the consent of the Director of Public Prosecutions;
  - (b) in Northern Ireland, only with the consent of the Director of Public Prosecutions for Northern Ireland. 30

## 11 Use authorised by appropriate national authority

- (1) Use of the cultural emblem is authorised by this section if the use is in accordance with permission granted by the appropriate national authority for the part of the United Kingdom in which the use takes place. 35
- (2) But use of the cultural emblem in relation to immovable cultural property is authorised by this section only if a copy of the permission is displayed alongside the cultural emblem.
- (3) Permission granted under this section—
  - (a) may be general or specific; 40
  - (b) may be withdrawn.

**12 Other authorised use: moveable property**

- (1) Use of the cultural emblem is authorised by this section if the use is for the purpose of identifying moveable cultural property.
- (2) Use of the cultural emblem triangle is authorised by this section if the use is for the purpose of identifying cultural property that is undergoing protected transportation. 5
- (3) Cultural property is undergoing protected transportation if it enjoys the protection provided for in Article 12 or 13 of the Convention.

**13 Other authorised use: personnel**

- (1) Use of the cultural emblem is authorised by this section if the use is for the purpose of identifying— 10
  - (a) a person mentioned in Article 2 or 7 of the Regulations for the execution of the Convention (persons responsible for control), or
  - (b) a person designated for the purpose of this paragraph by any of the appropriate national authorities. 15
- (2) The appropriate national authority for a part of the United Kingdom may designate a person for the purpose of subsection (1)(b) only if the authority believes the person to be engaged in the protection of cultural property in that part of the United Kingdom.

**14 Defences**

20

- (1) If a person is charged with an offence under section 10 by reason of using a design, it is a defence to show that subsection (2), (3) or (4) applies.
- (2) This subsection applies if the use of the design is for a purpose for which the accused lawfully used it before the commencement of this section.
- (3) This subsection applies if— 25
  - (a) the design is registered as a trade mark,
  - (b) the use is in relation to goods or services for which the trade mark is registered,
  - (c) the trade mark was registered in relation to those goods or services before the commencement of this section, and 30
  - (d) the use of the design is not an infringement of the trade mark.
- (4) This subsection applies if—
  - (a) the use of the design is on goods,
  - (b) the design was applied to the goods before the accused acquired them, and 35
  - (c) the person who applied the design to the goods falls within subsection (5).
- (5) A person falls within this subsection if the person—
  - (a) manufactured the goods or dealt with them in the course of trade, and
  - (b) lawfully used the design in relation to similar goods before the commencement of this section. 40

- (6) If there is sufficient evidence to raise an issue with respect to a defence under this section, the court must assume that the defence is made out unless the prosecution proves beyond reasonable doubt that it is not.

## 15 Forfeiture

- (1) If a person is convicted of an offence under section 10 by reason of using a design on an article, or in connection with an article, the court by which the person is convicted may order the forfeiture of the article. 5
- (2) The court may also make such provision as appears to it to be necessary for giving effect to the forfeiture.
- (3) That provision may include, in particular, provision relating to the retention, disposal or destruction of the article. 10
- (4) Provision made under this section may be varied at any time by the court that made it.

## 16 “Appropriate national authority”

- For the purposes of this Part— 15
- (a) the Secretary of State is the appropriate national authority for England;
- (b) the Welsh Ministers are the appropriate national authority for Wales;
- (c) the Scottish Ministers are the appropriate national authority for Scotland;
- (d) the Northern Ireland Department of Culture, Arts and Leisure is the appropriate national authority for Northern Ireland. 20

## PART 4

### PROPERTY EXPORTED FROM OCCUPIED TERRITORY

#### *Definitions*

- ## 17 “Unlawfully exported cultural property” &c. 25
- (1) For the purposes of this Part property is “unlawfully exported cultural property” if it has, at any time, been unlawfully exported from territory that is occupied by a party to the First or Second Protocol.
- (2) For the purposes of this Part exportation is “unlawful” if— 30
- (a) it is in contravention of the laws of the territory from which the property is exported, or
- (b) it is in contravention of any rule of international law.
- (3) In determining for the purposes of this Part whether territory is occupied regard must be had to Article 42 of the Regulations respecting the Laws and Customs of War on Land annexed to the Convention respecting the Laws and Customs of War on Land (Hague IV), done at the Hague on 18 October 1907. 35
- (4) If in any proceedings an issue arises as to whether cultural property is unlawfully exported cultural property, a certificate by the Secretary of State is conclusive evidence as to whether, at a particular time, territory is or was occupied by a party to the First or Second Protocol. 40

*Dealing in unlawfully exported cultural property***18 Offence of dealing in unlawfully exported cultural property**

- (1) It is an offence for a person to deal in unlawfully exported cultural property, knowing or having reason to suspect that it has been unlawfully exported.
- (2) Subsection (1) does not apply to property imported into the United Kingdom before the commencement of this section. 5
- (3) A person deals in unlawfully exported cultural property if (and only if) the person –
- (a) acquires, disposes of, imports or exports it,
  - (b) agrees with another to do an act mentioned in paragraph (a), or 10
  - (c) makes arrangements under which another does such an act or under which another agrees with a third person to do such an act.
- (4) “Acquires” means buys, hires, borrows or accepts.
- (5) “Disposes of” means sells, lets on hire, lends or gives.
- (6) A person guilty of an offence under this section is liable – 15
- (a) on conviction on indictment, to imprisonment for a term not exceeding 7 years;
  - (b) on summary conviction, to imprisonment for a term not exceeding 12 months or a fine not exceeding the statutory maximum (or both).
- (7) The reference in subsection (6)(b) to 12 months has effect as a reference to 6 months – 20
- (a) in the application of this section to England and Wales, in relation to an offence committed before the commencement of section 282 of the Criminal Justice Act 2003 (c. 44), and
  - (b) in the application of this section to Northern Ireland. 25

**19 Forfeiture in connection with dealing offence**

- (1) The court by or before which a person is convicted of an offence under section 18 may order the forfeiture of the property in respect of which the offence was committed.
- (2) The court may also make such provision as appears to it to be necessary for giving effect to the forfeiture. 30
- (3) That provision may include, in particular, provision relating to the retention or disposal of the property.
- (4) Provision made under this section may be varied at any time by the court that made it. 35

**20 Liability of company officers for offences by company**

- (1) If an offence under section 18 is committed by a body corporate and is proved –
- (a) to have been committed with the consent or connivance of an officer, or
  - (b) to be attributable to any neglect on the officer’s part, 40

the officer (as well as the body corporate) is guilty of the offence and liable to be proceeded against and punished accordingly.

- (2) “Officer”, in relation to a body corporate, means –
  - (a) a director, manager, secretary or other similar officer of the body, or
  - (b) a person purporting to act in any such capacity. 5
- (3) If the affairs of a body corporate are managed by its members, subsection (1) applies in relation to the acts and defaults of a member in connection with functions of management as if the member were a director of the body.

## 21 Revenue and Customs investigation

- (1) The Commissioner’s for Her Majesty’s Revenue and Customs may conduct a criminal investigation into any offence specified in subsection (2). 10
- (2) The offences are –
  - (a) an offence under section 18 involving importation or exportation,
  - (b) attempting or conspiring to commit such an offence, and
  - (c) an offence under Part 2 of the Serious Crime Act 2007 (encouraging or assisting crime) in connection with an offence under section 18 above involving importation or exportation. 15
- (3) In this section “criminal investigation” has the meaning given by section 35(5)(b) of the Commissioners for Revenue and Customs Act 2005 (c. 11).

*Forfeiture otherwise than in connection with offence* 20

## 22 Property liable to forfeiture

- (1) Unlawfully exported cultural property is liable to forfeiture if it is imported into the United Kingdom after the commencement of this section.
- (2) Schedule 5 provides the procedure for forfeiture.

## 23 Search and seizure warrants 25

- (1) A justice of the peace may issue a warrant under this section in respect of any premises on which the justice is satisfied that there are reasonable grounds for suspecting that property liable to forfeiture under section 22 is likely to be found.
- (2) A warrant under this section authorises a constable – 30
  - (a) to enter and search the premises specified in the warrant, and
  - (b) to seize any property found there which the constable has grounds for believing is liable to forfeiture under section 22.
- (3) A person exercising a power conferred by a warrant under this section may, if necessary, use reasonable force in the exercise of the power. 35
- (4) Property seized under this section must be retained by a constable pending forfeiture or disposal in accordance with Schedule 5.
- (5) In Schedule 1 to the Criminal Justice and Police Act 2001 (c. 16) (powers which

relate to the seizure of property in bulk), in Part 1, at the end insert –

“*Cultural Property (Armed Conflicts) Act 2007*

73J The power of seizure conferred by section 23 of the Cultural Property (Armed Conflicts) Act 2007 (seizure of property liable to forfeiture under section 22 of that Act).”

5

- (6) In this section “premises” has the same meaning as in the Police and Criminal Evidence Act 1984 (c. 60) (see section 23 of that Act).

## **24 Retention of property in custody of constable**

- (1) This section applies to property that –
- (a) has been seized for a purpose connected with the investigation or prosecution of a suspected offence under section 18, and
  - (b) is in the custody of a constable.
- (2) A constable may apply to a justice of the peace for an order that the property must be retained by a constable pending forfeiture or disposal in accordance with Schedule 5.
- (3) The justice may make the order if satisfied that there are reasonable grounds for suspecting that the property may be liable to forfeiture under section 22 (and in accordance with that Schedule).
- (4) It is lawful for property to which this section applies to be retained by a constable –
- (a) pending the making or determination of an application under subsection (2), or
  - (b) in accordance with an order under subsection (3).
- (5) The following do not apply to property retained in reliance on subsection (4) –
- (a) the Police (Property) Act 1897 (c. 30) (property seized in the investigation of an offence);
  - (b) section 31 of the Police (Northern Ireland) Act 1998 (c. 32) (which makes similar provision in Northern Ireland).

## **25 Retention of property in custody of Revenue and Customs**

- (1) Section 24 applies to property in the custody of an officer of Revenue and Customs, or a member of the Revenue and Customs Prosecutions office, as it applies to property in the custody of a constable.
- (2) For this purpose, section 24 has effect as if any reference to a constable were to –
- (a) an officer of Revenue and Customs, or
  - (b) a member of the Revenue and Customs Prosecutions Office.

## **26 Property in custody of others**

- (1) This section applies to property that –
- (a) has been seized for a purpose connected with the investigation or prosecution of a suspected offence under section 18, and

- (b) is in the custody of a person who is not a constable, an officer of Revenue and Customs or a member of the Revenue and Customs Prosecutions Office.
- (2) The person must transfer the property to a constable as soon as is reasonably practicable after it ceases to be needed for that purpose (and a constable may then make an application under section 24(2)). 5
- (3) It is lawful for property to which this section applies to be retained by the person pending compliance with subsection (2).

## PART 5

### PROPERTY REMOVED FOR SAFEKEEPING 10

#### 27 Immunity from seizure or forfeiture

- (1) While a thing is protected under this section it may not be seized or forfeited under any enactment or rule of law.
- (2) Protection under this section does not otherwise affect any civil or criminal liability that a person may incur in relation to the thing. 15
- (3) Cultural property that is being transported from outside the United Kingdom to a place within the United Kingdom is protected under this section if it enjoys the protection provided for in Article 12 of the Convention.
- (4) Cultural property that is in transit through the United Kingdom is protected under this section if it enjoys the protection provided for in Article 12 of the Convention. 20
- (5) Cultural property for which the United Kingdom is depositary is protected under this section if it is under the control of the Secretary of State or a person or institution to whom the Secretary of State has entrusted its safekeeping.
- (6) The United Kingdom is depositary for any cultural property for which Article 18 of the Regulations for the execution of the Convention so provides. 25
- (7) A vehicle is protected under this section if it is transporting cultural property to which subsection (3) or (4) applies.
- (8) The reference in subsection (1) to seizure or forfeiture of a thing includes a reference to— 30
  - (a) taking control of the thing under Schedule 12 to the Tribunals, Courts and Enforcement Act 2007;
  - (b) execution or distress (in England and Wales or Northern Ireland);
  - (c) diligence or sequestration (in Scotland);
  - (d) seizure, confiscation or forfeiture, or any other measure relating to the custody or control of the thing, in the course of a criminal investigation or criminal proceedings; 35
  - (e) the making or enforcement of an order relating to the custody or control of the thing in civil proceedings.
- (9) In this section— 40
  - “enactment” includes an enactment comprised in, or in an instrument made under, an Act of the Scottish Parliament;
  - “vehicle” means any form of transport.

**PART 6**

## GENERAL

**28 Commencement**

- (1) The preceding provisions of this Act come into force on such day as the Secretary of State may by order appoint. 5
- (2) An order under subsection (1)–
- (a) must be made by statutory instrument,
  - (b) may make different provision for different purposes, and
  - (c) may include transitional provision and savings.

**29 Extent**

10

- (1) This Act extends to–
- (a) England and Wales,
  - (b) Scotland, and
  - (c) Northern Ireland.
- (2) Her Majesty may by Order in Council provide for any of the provisions of this Act to extend, with or without modifications, to– 15
- (a) any of the Channel Islands;
  - (b) the Isle of Man;
  - (c) any British overseas territory.

**30 Crown application**

20

This Act binds the Crown but does not affect Her Majesty in Her private capacity.

**31 Short title**

This Act may be cited as the Cultural Property (Armed Conflicts) Act 2007.

## SCHEDULES

### SCHEDULE 1

Section 1(2)

#### CONVENTION

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; 5

**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; 10

**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; 15

**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; 20

Have agreed upon the following provisions:

#### **Chapter I. General provisions regarding protection**

#### **Article 1. Definition of cultural property**

For the purposes of the present Convention, the term ‘cultural property’ shall cover, irrespective of origin or ownership: 25

(a) movable or immovable property of great importance to the cultural heritage of every people, such as monuments of architecture, art or history, whether religious or secular; archaeological sites; groups of buildings which, as a whole, are of historical or artistic interest; works of art; manuscripts, books and other objects of artistic, historical or archaeological interest; as well as scientific collections and important collections of books or archives or of reproductions of the property defined above; 30

(b) buildings whose main and effective purpose is to preserve or exhibit the movable cultural property defined in sub-paragraph (a) such as museums, large libraries and depositories of archives, and refuges 35

- intended to shelter, in the event of armed conflict, the movable cultural property defined in sub-paragraph (a);
- (c) centers containing a large amount of cultural property as defined in sub-paragraphs (a) and (b), to be known as ‘centers containing monuments’.

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### **Article 2. Protection of cultural property**

For the purposes of the present Convention, the protection of cultural property shall comprise the safeguarding of and respect for such property.

### **Article 3. Safeguarding of cultural property**

The High Contracting Parties undertake to prepare in time of peace for the safeguarding of cultural property situated within their own territory against the foreseeable effects of an armed conflict, by taking such measures as they consider appropriate.

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### **Article 4. Respect for cultural property**

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

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2. The obligations mentioned in paragraph 1 of the present Article may be waived only in cases where military necessity imperatively requires such a waiver.

3. The High Contracting Parties further undertake to prohibit, prevent and, if necessary, put a stop to any form of theft, pillage or misappropriation of, and any acts of vandalism directed against, cultural property. They shall refrain from requisitioning movable cultural property situated in the territory of another High Contracting Party.

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4. They shall refrain from any act directed by way of reprisals against cultural property.

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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.

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### **Article 5. Occupation**

1. Any High Contracting Party in occupation of the whole or part of the territory of another High Contracting Party shall as far as possible support the competent national authorities of the occupied country in safeguarding and preserving its cultural property.

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2. Should it prove necessary to take measures to preserve cultural property situated in occupied territory and damaged by military operations, and should the competent national authorities be unable to take such measures, the Occupying Power shall, as far as possible, and in close co-operation with such authorities, take the most necessary measures of preservation.

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3. Any High Contracting Party whose government is considered their legitimate government by members of a resistance movement, shall, if possible, draw their attention to the obligation to comply with those provisions of the Convention dealing with respect for cultural property.

**Article 6. Distinctive marking of cultural property**

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In accordance with the provisions of Article 16, cultural property may bear a distinctive emblem so as to facilitate its recognition.

**Article 7. Military measures**

1. The High Contracting Parties undertake to introduce in time of peace into their military regulations or instructions such provisions as may ensure observance of the present Convention, and to foster in the members of their armed forces a spirit of respect for the culture and cultural property of all peoples.

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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.

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**Chapter II. Special protection**

**Article 8. Granting of special protection**

1. There may be placed under special protection a limited number of refuges intended to shelter movable cultural property in the event of armed conflict, of centers containing monuments and other immovable cultural property of very great importance, provided that they:

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(a) are situated at an adequate distance from any large industrial center or from any important military objective constituting a vulnerable point, such as, for example, an aerodrome, broadcasting station, establishment engaged upon work of national defense, a port or railway station of relative importance or a main line of communication;

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(b) are not used for military purposes.

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2. A refuge for movable cultural property may also be placed under special protection, whatever its location, if it is so constructed that, in all probability, it will not be damaged by bombs.

3. A center containing monuments shall be deemed to be used for military purposes whenever it is used for the movement of military personnel or material, even in transit. The same shall apply whenever activities directly connected with military operations, the stationing of military personnel, or the production of war material are carried on within the center.

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4. The guarding of cultural property mentioned in paragraph I above by armed custodians specially empowered to do so, or the presence, in the vicinity of such cultural property, of police forces normally responsible for the maintenance of public order shall not be deemed to be used for military purposes.

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5. If any cultural property mentioned in paragraph 1 of the present Article is situated near an important military objective as defined in the said paragraph, it may nevertheless be placed under special protection if the High Contracting Party asking for that protection undertakes, in the event of

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armed conflict, to make no use of the objective and particularly, in the case of a port, railway station or aerodrome, to divert all traffic therefrom. In that event, such diversion shall be prepared in time of peace.

6. Special protection is granted to cultural property by its entry in the 'International Register of Cultural Property under Special Protection'. This entry shall only be made, in accordance with the provisions of the present Convention and under the conditions provided for in the Regulations for the execution of the Convention. 5

#### **Article 9. Immunity of cultural property under special protection**

The High Contracting Parties undertake to ensure the immunity of cultural property under special protection by refraining, from the time of entry in the International Register, from any act of hostility directed against such property and, except for the cases provided for in paragraph 5 of Article 8, from any use of such property or its surroundings for military purposes. 10

#### **Article 10. Identification and control** 15

During an armed conflict, cultural property under special protection shall be marked with the distinctive emblem described in Article 16, and shall be open to international control as provided for in the Regulations for the execution of the Convention.

#### **Article 11. Withdrawal of immunity** 20

1. If one of the High Contracting Parties commits, in respect of any item of cultural property under special protection, a violation of the obligations under Article 9, the opposing Party shall, so long as this violation persists, be released from the obligation to ensure the immunity of the property concerned. Nevertheless, whenever possible, the latter Party shall first request the cessation of such violation within a reasonable time. 25

2. Apart from the case provided for in paragraph 1 of the present Article, immunity shall be withdrawn from cultural property under special protection only in exceptional cases of unavoidable military necessity, and only for such time as that necessity continues. Such necessity can be established only by the officer commanding a force the equivalent of a division in size or larger. Whenever circumstances permit, the opposing Party shall be notified, a reasonable time in advance, of the decision to withdraw immunity. 30

3. The Party withdrawing immunity shall, as soon as possible, so inform the Commissioner-General for cultural property provided for in the Regulations for the execution of the Convention, in writing, stating the reasons. 35

### **Chapter III. Transport of cultural property**

#### **Article 12. Transport under special protection**

1. Transport exclusively engaged in the transfer of cultural property, whether within a territory or to another territory, may, at the request of the High Contracting Party concerned, take place under special protection in accordance with the conditions specified in the Regulations for the execution of the Convention. 40

2. Transport under special protection shall take place under the international supervision provided for in the aforesaid Regulations and shall display the distinctive emblem described in Article 16.

3. The High Contracting Parties shall refrain from any act of hostility directed against transport under special protection.

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#### **Article 13. Transport in urgent cases**

1. If a High Contracting Party considers that the safety of certain cultural property requires its transfer and that the matter is of such urgency that the procedure laid down in Article 12 cannot be followed, especially at the beginning of an armed conflict, the transport may display the distinctive emblem described in Article 16, provided that an application for immunity referred to in Article 12 has not already been made and refused. As far as possible, notification of transfer should be made to the opposing Parties. Nevertheless, transport conveying cultural property to the territory of another country may not display the distinctive emblem unless immunity has been expressly granted to it.

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2. The High Contracting Parties shall take, so far as possible, the necessary precautions to avoid acts of hostility directed against the transport described in paragraph 1 of the present Article and displaying the distinctive emblem.

#### **Article 14. Immunity from seizure, capture and prize**

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1. Immunity from seizure, placing in prize, or capture shall be granted to:

- (a) cultural property enjoying the protection provided for in Article 12 or that provided for in Article 13;
- (b) the means of transport exclusively engaged in the transfer of such cultural property.

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2. Nothing in the present Article shall limit the right of visit and search.

### **Chapter IV. Personnel**

#### **Article 15. Personnel**

As far as is consistent with the interests of security, personnel engaged in the protection of cultural property shall, in the interests of such property, be respected and, if they fall into the hands of the opposing Party, shall be allowed to continue to carry out their duties whenever the cultural property for which they are responsible has also fallen into the hands of the opposing Party.

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### **Chapter V. The distinctive emblem**

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#### **Article 16. Emblem of the convention**

1. The distinctive emblem of the Convention shall take the form of a shield, pointed below, persaltire blue and white (a shield consisting of a royal-blue square, one of the angles of which forms the point of the shield, and of a royal-blue triangle above the square, the space on either side being taken up by a white triangle).

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2. The emblem shall be used alone, or repeated three times in a triangular formation (one shield below), under the conditions provided for in Article 17.

#### **Article 17. Use of the emblem**

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1. The distinctive emblem repeated three times may be used only as a means of identification of:
  - (a) immovable cultural property under special protection;
  - (b) the transport of cultural property under the conditions provided for in Articles 12 and 13; 5
  - (c) improvised refuges, under the conditions provided for in the Regulations for the execution of the Convention.
2. The distinctive emblem may be used alone only as a means of identification of:
  - (a) cultural property not under special protection; 10
  - (b) the persons responsible for the duties of control in accordance with the Regulations for the execution of the Convention;
  - (c) the personnel engaged in the protection of cultural property;
  - (d) the identity cards mentioned in the Regulations for the execution of the Convention. 15
3. During an armed conflict, the use of the distinctive emblem in any other cases than those mentioned in the preceding paragraphs of the present Article, and the use for any purpose whatever of a sign resembling the distinctive emblem, shall be forbidden.
4. The distinctive emblem may not be placed on any immovable cultural property unless at the same time there is displayed an authorization duly dated and signed by the competent authority of the High Contracting Party. 20

## **Chapter VI. Scope of application of the Convention**

### **Article 18. Application of the Convention**

1. Apart from the provisions which shall take effect in time of peace, the present Convention shall apply in the event of declared war or of any other armed conflict which may arise between two or more of the High Contracting Parties, even if the state of war is not recognized by one or more of them. 25
2. The Convention shall also apply to all cases of partial or total occupation of the territory of a High Contracting Party, even if the said occupation meets with no armed resistance. 30
3. If one of the Powers in conflict is not a Party to the present Convention, the Powers which are Parties thereto shall nevertheless remain bound by it in their mutual relations. They shall furthermore be bound by the Convention, in relation to the said Power, if the latter has declared that it accepts the provisions thereof and so long as it applies them. 35

### **Article 19. Conflicts not of an international character**

1. In the event of an armed conflict not of an international character occurring within the territory of one of the High Contracting Parties, each party to the conflict shall be bound to apply, as a minimum, the provisions of the present Convention which relate to respect for cultural property. 40
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. 45

3. The United Nations Educational, Scientific and Cultural Organization may offer its services to the parties to the conflict.

4. The application of the preceding provisions shall not affect the legal status of the parties to the conflict.

## **Chapter VII. Execution of the Convention** 5

### **Article 20. Regulations for the execution of the Convention**

The procedure by which the present Convention is to be applied is defined in the Regulations for its execution, which constitute an integral part thereof.

### **Article 21. Protecting powers**

The present Convention and the Regulations for its execution shall be applied with the co-operation of the Protecting Powers responsible for safeguarding the interests of the Parties to the conflict. 10

### **Article 22. Conciliation procedure**

1. The Protecting Powers shall lend their good offices in all cases where they may deem it useful in the interests of cultural property, particularly if there is disagreement between the Parties to the conflict as to the application or interpretation of the provisions of the present Convention or the Regulations for its execution. 15

2. For this purpose, each of the Protecting Powers may, either at the invitation of one Party, of the Director-General of the United Nations Educational, Scientific and Cultural Organization, or on its own initiative, propose to the Parties to the conflict a meeting of their representatives, and in particular of the authorities responsible for the protection of cultural property, if considered appropriate on suitably chosen neutral territory. The Parties to the conflict shall be bound to give effect to the proposals for meeting made to them. 20

The Protecting Powers shall propose for approval by the Parties to the conflict a person belonging to a neutral Power or a person presented by the Director General of the United Nations Educational, Scientific and Cultural Organization, which person shall be invited to take part in such a meeting in the capacity of Chairman. 25

### **Article 23. Assistance of UNESCO**

1. The High Contracting Parties may call upon the United Nations Educational, Scientific and Cultural Organization for technical assistance in organizing the protection of their cultural property, or in connexion with any other problem arising out of the application of the present Convention or the Regulations for its execution. The Organization shall accord such assistance within the limits fixed by its programme and by its resources. 35

2. The Organization is authorized to make, on its own initiative, proposals on this matter to the High Contracting Parties. 40

### **Article 24. Special agreements**

1. The High Contracting Parties may conclude special agreements for all matters concerning which they deem it suitable to make separate provision.

2. No special agreement may be concluded which would diminish the protection afforded by the present Convention to cultural property and to the personnel engaged in its protection.

#### **Article 25. Dissemination of the Convention**

The High Contracting Parties undertake, in time of peace as in time of armed conflict, to disseminate the text of the present Convention and the Regulations for its execution as widely as possible in their respective countries. They undertake, in particular, to include the study thereof in their programmes of military and, if possible, civilian training, so that its principles are made known to the whole population, especially the armed forces and personnel engaged in the protection of cultural property.

#### **Article 26. Translations reports**

1. The High Contracting Parties shall communicate to one another, through the Director-General of the United Nations Educational, Scientific and Cultural Organization, the official translations of the present Convention and of the Regulations for its execution.

2. Furthermore, at least once every four years, they shall forward to the Director-General a report giving whatever information they think suitable concerning any measures being taken, prepared or contemplated by their respective administrations in fulfillment of the present Convention and of the Regulations for its execution.

#### **Article 27. Meetings**

1. The Director-General of the United Nations Educational, Scientific and Cultural Organization may, with the approval of the Executive Board, convene meetings of representatives of the High Contracting Parties. He must convene such a meeting if at least one-fifth of the High Contracting Parties so request.

2. Without prejudice to any other functions which have been conferred on it by the present Convention or the Regulations for its execution, the purpose of the meeting will be to study problems concerning the application of the Convention and of the Regulations for its execution, and to formulate recommendations in respect thereof.

3. The meeting may further undertake a revision of the Convention or the Regulations for its execution if the majority of the High Contracting Parties are represented, and in accordance with the provisions of Article 39.

#### **Article 28. Sanctions**

The High Contracting Parties undertake to take, within the framework of their ordinary criminal jurisdiction, all necessary steps to prosecute and impose penal or disciplinary sanctions upon those persons, of whatever nationality, who commit or order to be committed a breach of the present Convention.

Final provisions

#### **Article 29. Languages**

1. The present Convention is drawn up in English, French, Russian and Spanish, the four texts being equally authoritative.

2. The United Nations Educational, Scientific and Cultural Organization shall arrange for translations of the Convention into the other official languages of its General Conference.

**Article 30. Signature**

The present Convention shall bear the date of 14 May, 1954 and, until the date of 31 December, 1954, shall remain open for signature by all States invited to the Conference which met at The Hague from 21 April, 1954 to 14 May, 1954.

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**Article 31. Ratification**

1. The present Convention shall be subject to ratification by signatory States in accordance with their respective constitutional procedures.

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2. The instruments of ratification shall be deposited with the Director-General of the United Nations Educational, Scientific and Cultural Organization.

**Article 32. Accession**

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From the date of its entry into force, the present Convention shall be open for accession by all States mentioned in Article 30 which have not signed it, as well as any other State invited to accede by the Executive Board of the United Nations Educational, Scientific and Cultural Organization. Accession shall be effected by the deposit of an instrument of accession with the Director-General of the United Nations Educational, Scientific and Cultural Organization.

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**Article 33. Entry into force**

1. The present Convention shall enter into force three months after five instruments of ratification have been deposited.

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2. Thereafter, it shall enter into force, for each High Contracting Party, three months after the deposit of its instrument of ratification or accession.

3. The situations referred to in Articles 18 and 19 shall give immediate effect to ratifications or accessions deposited by the Parties to the conflict either before or after the beginning of hostilities or occupation. In such cases the Director-General of the United Nations Educational, Scientific and Cultural Organization shall transmit the communications referred to in Article 38 by the speediest method.

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**Article 34. Effective application**

1. Each State Party to the Convention on the date of its entry into force shall take all necessary measures to ensure its effective application within a period of six months after such entry into force.

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2. This period shall be six months from the date of deposit of the instruments of ratification or accession for any State which deposits its instrument of ratification or accession after the date of the entry into force of the Convention.

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**Article 35. Territorial extension of the Convention**

Any High Contracting Party may, at the time of ratification or accession, or at any time thereafter, declare by notification addressed to the Director-

General of the United Nations Educational, Scientific and Cultural Organization, that the present Convention shall extend to all or any of the territories for whose international relations it is responsible. The said notification shall take effect three months after the date of its receipt.

**Article 36. Relation to previous conventions** 5

1. In the relations between Powers which are bound by the Conventions of The Hague concerning the Laws and Customs of War on Land (IV) and concerning Naval Bombardment in Time of War (IX), whether those of 29 July, 1899 or those of 18 October, 1907, and which are Parties to the present Convention, this last Convention shall be supplementary to the 10  
aforementioned Convention (IX) and to the Regulations annexed to the aforementioned Convention (IV) and shall substitute for the emblem described in Article 5 of the aforementioned Convention (IX) the emblem described in Article 16 of the present Convention, in cases in which the 15  
present Convention and the Regulations for its execution provide for the use of this distinctive emblem.

2. In the relations between Powers which are bound by the Washington Pact of 15 April, 1935 for the Protection of Artistic and Scientific Institutions and of Historic Monuments (Roerich Pact) and which are Parties to the present Convention, the latter Convention shall be supplementary to the Roerich 20  
Pact and shall substitute for the distinguishing flag described in Article III of the Pact the emblem defined in Article 16 of the present Convention, in cases in which the present Convention and the Regulations for its execution provide for the use of this distinctive emblem.

**Article 37. Denunciation** 25

1. Each High Contracting Party may denounce the present Convention, on its own behalf, or on behalf of any territory for whose international relations it is responsible.

2. The denunciation shall be notified by an instrument in writing, deposited with the Director-General of the United Nations Educational, Scientific and Cultural Organization. 30

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 35  
repatriating cultural property are completed, whichever is the later.

**Article 38. Notifications**

The Director-General of the United Nations Educational, Scientific and Cultural Organization shall inform the States referred to in Articles 30 and 32, as well as the United Nations, of the deposit of all the instruments of 40  
ratification, accession or acceptance provided for in Articles 31, 32 and 39 and of the notifications and denunciations provided for respectively in Articles 35, 37 and 39.

**Article 39. Revision of the Convention and of the Regulations for its execution** 45

1. Any High Contracting Party may propose amendments to the present Convention or the Regulations for its execution. The text of any proposed amendment shall be communicated to the Director-General of the United

- Nations Educational, Scientific and Cultural Organization who shall transmit it to each High Contracting Party with the request that such Party reply within four months stating whether it:
- (a) desires that a Conference be convened to consider the proposed amendment; 5
  - (b) favours the acceptance of the proposed amendment without a Conference; or
  - (c) favours the rejection of the proposed amendment without a Conference.
2. The Director-General shall transmit the replies, received under paragraph 1 of the present Article, to all High Contracting Parties. 10
3. If all the High Contracting Parties which have, within the prescribed time-limit, stated their views to the Director-General of the United Nations Educational, Scientific and Cultural Organization, pursuant to paragraph 1(b) of this Article, inform him that they favour acceptance of the amendment without a Conference, notification of their decision shall be made by the Director-General in accordance with Article 38. The amendment shall become effective for all the High Contracting Parties on the expiry of ninety days from the date of such notification. 15
4. The Director-General shall convene a Conference of the High Contracting Parties to consider the proposed amendment if requested to do so by more than one-third of the High Contracting Parties. 20
5. Amendments to the Convention or to the Regulations for its execution, dealt with under the provisions of the preceding paragraph, shall enter into force only after they have been unanimously adopted by the High Contracting Parties represented at the Conference and accepted by each of the High Contracting Parties. 25
6. Acceptance by the High Contracting Parties of amendments to, the Convention or to the Regulations for its execution, which have been adopted by the Conference mentioned in paragraphs 4 and 5, shall be effected by the deposit of a formal instrument with the Director-General of the United Nations Educational, Scientific and Cultural Organization. 30
7. After the entry into force of amendments to the present Convention or to the Regulations for its execution, only the text of the Convention or of the Regulations for its execution thus amended shall remain open for ratification or accession. 35
- Article 40. Registration**
- In accordance with Article 102 of the Charter of the United Nations, the present Convention shall be registered with the Secretariat of the United Nations at the request of the Director-General of the United Nations Educational, Scientific and Cultural Organization. 40

## SCHEDULE 2

Section 1(2)

### REGULATIONS FOR THE EXECUTION OF THE CONVENTION

#### Chapter I. Control

**Article 1. International list of persons**

On the entry into force of the Convention, the Director-General of the United Nations Educational, Scientific and Cultural Organization shall compile an international list consisting of all persons nominated by the High Contracting Parties as qualified to carry out the functions of Commissioner-General for Cultural Property. On the initiative of the Director-General of the United Nations Educational, Scientific and Cultural Organization, this list shall be periodically revised on the basis of requests formulated by the High Contracting Parties.

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**Article 2. Organization of control**

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As soon as any High Contracting Party is engaged in an armed conflict to which Article 18 of the Convention applies:

- (a) It shall appoint a representative for cultural property situated in its territory; if it is in occupation of another territory, it shall appoint a special representative for cultural property situated in that territory;
- (b) The Protecting Power acting for each of the Parties in conflict with such High Contracting Party shall appoint delegates accredited to the latter in conformity with Article 3 below;
- (c) A Commissioner-General for Cultural Property shall be appointed to such High Contracting Party in accordance with Article 4.

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**Article 3. Appointment of delegates of Protecting Powers**

The Protecting Power shall appoint its delegates from among the members of its diplomatic or consular staff or, with the approval of the Party to which they will be accredited, from among other persons.

**Article 4. Appointment of Commissioner-General**

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1. The Commissioner-General for Cultural Property shall be chosen from the international list of persons by joint agreement between the Party to which he will be accredited and the Protecting Powers acting on behalf of the opposing Parties.

2. Should the Parties fail to reach agreement within three weeks from the beginning of their discussions on this point, they shall request the President of the International Court of Justice to appoint the Commissioner-General, who shall not take up his duties until the Party to which he is accredited has approved his appointment.

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**Article 5. Functions of delegates**

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The delegates of the Protecting Powers shall take note of violations of the Convention, investigate, with the approval of the Party to which they are accredited, the circumstances in which they have occurred, make representations locally to secure their cessation and, if necessary, notify the Commissioner-General of such violations. They shall keep him informed of their activities.

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**Article 6. Functions of the Commissioner-General**

1. The Commissioner-General for Cultural Property shall deal with all matters referred to him in connexion with the application of the Convention, in conjunction with the representative of the Party to which he is accredited and with the delegates concerned.

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2. He shall have powers of decision and appointment in the cases specified in the present Regulations.

3. With the agreement of the Party to which he is accredited, he shall have the right to order an investigation or to conduct it himself.

4. He shall make any representations to the Parties to the conflict or to their Protecting Powers which he deems useful for the application of the Convention. 5

5. He shall draw up such reports as may be necessary on the application of the Convention and communicate them to the Parties concerned and to their Protecting Powers. He shall send copies to the Director-General of the United Nations Educational, Scientific and Cultural Organization, who may make use only of their technical contents. 10

6. If there is no Protecting Power, the Commissioner-General shall exercise the functions of the Protecting Power as laid down in Articles 21 and 22 of the Convention. 15

#### **Article 7. Inspectors and experts**

1. Whenever the Commissioner-General for Cultural Property considers it necessary, either at the request of the delegates concerned or after consultation with them, he shall propose, for the approval of the Party to which he is accredited, an inspector of cultural property to be charged with a specific mission. An inspector shall be responsible only to the Commissioner-General. 20

2. The Commissioner-General, delegates and inspectors may have recourse to the services of experts, who will also be proposed for the approval of the Party mentioned in the preceding paragraph. 25

#### **Article 8. Discharge of the mission of control**

The Commissioners-General for Cultural Property, delegates of the Protecting Powers, inspectors and experts shall in no case exceed their mandates. In particular, they shall take account of the security needs of the High Contracting Party to which they are accredited and shall in all circumstances act in accordance with the requirements of the military situation as communicated to them by that High Contracting Party. 30

#### **Article 9. Substitutes for Protecting Powers**

If a Party to the conflict does not benefit or ceases to benefit from the activities of a Protecting Power, a neutral State may be asked to undertake those functions of a Protecting Power which concern the appointment of a Commissioner-General for Cultural Property in accordance with the procedure laid down in Article 4 above. The Commissioner-General thus appointed shall, if need be, entrust to inspectors the functions of delegates of Protecting Powers as specified in the present Regulations. 35  
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#### **Article 10. Expenses**

The remuneration and expenses of the Commissioner-General for Cultural Property, inspectors and experts shall be met by the Party to which they are accredited. Remuneration and expenses of delegates of the Protecting Powers shall be subject to agreement between those Powers and the States whose interests they are safeguarding. 45

## **Chapter II. Special protection**

### **Article 11. Improvised refuges**

1. If, during an armed conflict, any High Contracting Party is induced by unforeseen circumstances to set up an improvised refuge and desires that it should be placed under special protection, it shall communicate this fact forthwith to the Commissioner-General accredited to that Party. 5

2. If the Commissioner-General considers that such a measure is justified by the circumstances and by the importance of the cultural property sheltered in this improvised refuge, he may authorize the High Contracting Party to display on such refuge the distinctive emblem defined in Article 16 of the Convention. He shall communicate his decision without delay to the delegates of the Protecting Powers who are concerned, each of whom may, within a time limit of 30 days, order the immediate withdrawal of the emblem. 10

3. As soon as such delegates have signified their agreement or if the time limit of 30 days has passed without any of the delegates concerned having made an objection, and if, in the view of the Commissioner-General, the refuge fulfils the conditions laid down in Article 8 of the Convention, the Commissioner-General shall request the Director-General of the United Nations Educational, Scientific and Cultural Organization to enter the refuge in the Register of Cultural Property under Special Protection. 15  
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### **Article 12. International Register of Cultural Property under Special Protection**

1. An 'International Register of Cultural Property under Special Protection' shall be prepared. 25

2. The Director-General of the United Nations Educational, Scientific and Cultural Organization shall maintain this Register. He shall furnish copies to the Secretary-General of the United Nations and to the High Contracting Parties.

3. The Register shall be divided into sections, each in the name of a High Contracting Party. Each section shall be subdivided into three paragraphs, headed: Refuges, Centers containing Monuments, Other Immovable Cultural Property. The Director-General shall determine what details each section shall contain. 30

### **Article 13. Requests for registration** 35

1. Any High Contracting Party may submit to the Director-General of the United Nations Educational, Scientific and Cultural Organization an application for the entry in the Register of certain refuges, centers containing monuments or other immovable cultural property situated within its territory. Such application shall contain a description of the location of such property and shall certify that the property complies with the provisions of Article 8 of the Convention. 40

2. In the event of occupation, the Occupying Power shall be competent to make such application.

3. The Director-General of the United Nations Educational, Scientific and Cultural Organization shall, without delay, send copies of applications for registration to each of the High Contracting Parties. 45

#### Article 14. Objections

1. Any High Contracting Party may, by letter addressed to the Director-General of the United Nations Educational, Scientific and Cultural Organization, lodge an objection to the registration of cultural property. This letter must be received by him within four months of the day on which he sent a copy of the application for registration. 5
2. Such objection shall state the reasons giving rise to it, the only valid grounds being that:
  - (a) the property is not cultural property;
  - (b) the property does not comply with the conditions mentioned in Article 8 of the Convention. 10
3. The Director-General shall send a copy of the letter of objection to the High Contracting Parties without delay. He shall, if necessary, seek the advice of the International Committee on Monuments, Artistic and Historical Sites and Archaeological Excavations and also, if he thinks fit, of any other competent organization or person. 15
4. The Director-General, or the High Contracting Party requesting registration, may make whatever representations they deem necessary to the High Contracting Parties which lodged the objection, with a view to causing the objection to be withdrawn. 20
5. If a High Contracting Party which has made an application for registration in time of peace becomes involved in an armed conflict before the entry has been made, the cultural property concerned shall at once be provisionally entered in the Register, by the Director-General, pending the confirmation, withdrawal or cancellation of any objection that may be, or may have been, made. 25
6. If, within a period of six months from the date of receipt of the letter of objection, the Director-General has not received from the High Contracting Party lodging the objection a communication stating that it has been withdrawn, the High Contracting Party applying for registration may request arbitration in accordance with the procedure in the following paragraph. 30
7. The request for arbitration shall not be made more than one year after the date of receipt by the Director-General of the letter of objection. Each of the two Parties to the dispute shall appoint an arbitrator. When more than one objection has been lodged against an application for registration, the High Contracting Parties which have lodged the objections shall, by common consent, appoint a single arbitrator. These two arbitrators shall select a chief arbitrator from the international list mentioned in Article 1 of the present Regulations. If such arbitrators cannot agree upon their choice, they shall ask the President of the International Court of Justice to appoint a chief arbitrator who need not necessarily be chosen from the international list. The arbitral tribunal thus constituted shall fix its own procedure. There shall be no appeal from its decisions. 40
8. Each of the High Contracting Parties may declare, whenever a dispute to which it is a Party arises, that it does not wish to apply the arbitration procedure provided for in the preceding paragraph. In such cases, the objection to an application for registration shall be submitted by the Director-General to the High Contracting Parties. The objection will be 45

confirmed only if the High Contracting Parties so decide by a two-third majority of the High Contracting Parties voting. The vote shall be taken by correspondence, unless the Director-General of the United Nations Educational, Scientific and Cultural Organization deems it essential to convene a meeting under the powers conferred upon him by Article 27 of the Convention. If the Director-General decides to proceed with the vote by correspondence, he shall invite the High Contracting Parties to transmit their votes by sealed letter within six months from the day on which they were invited to do so. 5

**Article 15. Registration** 10

1. The Director-General of the United Nations Educational, Scientific and Cultural Organization shall cause to be entered in the Register, under a serial number, each item of property for which application for registration is made, provided that he has not received an objection within the time-limit prescribed in paragraph 1 of Article 14. 15

2. If an objection has been lodged, and without prejudice to the provision of paragraph 5 of Article 14, the Director-General shall enter property in the Register only if the objection has been withdrawn or has failed to be confirmed following the procedures laid down in either paragraph 7 or paragraph 8 of Article 14. 20

3. Whenever paragraph 3 of Article 11 applies, the Director-General shall enter property in the Register if so requested by the Commissioner-General for Cultural Property.

4. The Director-General shall send without delay to the Secretary-General of the United Nations, to the High Contracting Parties, and, at the request of the Party applying for registration, to all other States referred to in Articles 30 and 32 of the Convention, a certified copy of each entry in the Register. Entries shall become effective thirty days after despatch of such copies. 25

**Article 16. Cancellation**

1. The Director-General of the United Nations Educational, Scientific and Cultural Organization shall cause the registration of any property to be cancelled: 30

- (a) at the request of the High Contracting Party within whose territory the cultural property is situated;
- (b) if the High Contracting Party which requested registration has denounced the Convention, and when that denunciation has taken effect; 35
- (c) in the special case provided for in Article 14, paragraph 5, when an objection has been confirmed following the procedures mentioned either in paragraph 7 or in paragraph 8 or Article 14. 40

2. The Director-General shall send without delay, to the Secretary-General of the United Nations and to all States which received a copy of the entry in the Register, a certified copy of its cancellation. Cancellation shall take effect thirty days after the despatch of such copies.

**Chapter III. Transport of cultural property** 45

**Article 17. Procedure to obtain immunity**

1. The request mentioned in paragraph I of Article 12 of the Convention shall be addressed to the Commissioner-General for Cultural Property. It shall mention the reasons on which it is based and specify the approximate number and the importance of the objects to be transferred, their present location, the location now envisaged, the means of transport to be used, the route to be followed, the date proposed for the transfer, and any other relevant information. 5

2. If the Commissioner-General, after taking such opinions as he deems fit, considers that such transfer is justified, he shall consult those delegates of the Protecting Powers who are concerned, on the measures proposed for carrying it out. Following such consultation, he shall notify the Parties to the conflict concerned of the transfer, including in such notification all useful information. 10

3. The Commissioner-General shall appoint one or more inspectors, who shall satisfy themselves that only the property stated in the request is to be transferred and that the transport is to be by the approved methods and bears the distinctive emblem. The inspector or inspectors shall accompany the property to its destination. 15

#### **Article 18. Transport abroad**

Where the transfer under special protection is to the territory of another country, it shall be governed not only by Article 12 of the Convention and by Article 17 of the present Regulations, but by the following further provisions: 20

- (a) while the cultural property remains on the territory of another State, that State shall be its depositary and shall extend to it as great a measure of care as that which it bestows upon its own cultural property of comparable importance; 25
- (b) the depositary State shall return the property only on the cessation of the conflict; such return shall be effected within six months from the date on which it was requested; 30
- (c) during the various transfer operations, and while it remains on the territory of another State, the cultural property shall be exempt from confiscation and may not be disposed of either by the depositor or by the depositary. Nevertheless, when the safety of the property requires it, the depositary may, with the assent of the depositor, have the property transported to the territory of a third country, under the conditions laid down in the present article; 35
- (d) the request for special protection shall indicate that the State to whose territory the property is to be transferred accepts the provisions of the present Article. 40

#### **Article 19. Occupied territory**

Whenever a High Contracting Party occupying territory of another High Contracting Party transfers cultural property to a refuge situated elsewhere in that territory, without being able to follow the procedure provided for in Article 17 of the Regulations, the transfer in question shall not be regarded as misappropriation within the meaning of Article 4 of the Convention, provided that the Commissioner-General for Cultural Property certifies in writing, after having consulted the usual custodians, that such transfer was rendered necessary by circumstances. 45

#### **Chapter IV. The distinctive emblem** 50

**Article 20. Affixing of the emblem**

1. The placing of the distinctive emblem and its degree of visibility shall be left to the discretion of the competent authorities of each High Contracting Party. It may be displayed on flags or armlets; it may be painted on an object or represented in any other appropriate form. 5

2. However, without prejudice to any possible fuller markings, the emblem shall, in the event of armed conflict and in the cases mentioned in Articles 12 and 13 of the Convention, be placed on the vehicles of transport so as to be clearly visible in daylight from the air as well as from the ground. The emblem shall be visible from the ground: 10

- (a) at regular intervals sufficient to indicate clearly the perimeter of a centre containing monuments under special protection;
- (b) at the entrance to other immovable cultural property under special protection.

**Article 21. Identification of persons** 15

1. The persons mentioned in Article 17, paragraph 2(b) and (c) of the Convention may wear an armlet bearing the distinctive emblem, issued and stamped by the competent authorities.

2. Such persons shall carry a special identity card bearing the distinctive emblem. This card shall mention at least the surname and first names, the date of birth, the title or rank, and the function of the holder. The card shall bear the photograph of the holder as well as his signature or his fingerprints, or both. It shall bear the embossed stamp of the competent authorities. 20

3. Each High Contracting Party shall make out its own type of identity card, guided by the model annexed, by way of example, to the present Regulations. The High Contracting Parties shall transmit to each other a specimen of the model they are using. Identity cards shall be made out, if possible, at least in duplicate, one copy being kept by the issuing Power. 25

4. The said persons may not, without legitimate reason, be deprived of their identity card or of the right to wear the armlet. 30

## SCHEDULE 3

Section 1(2)

## FIRST PROTOCOL

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. 35

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. 40

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. 5
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** 10
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. 15
- 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. 20
- (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. 25 30
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. 35
- (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. 40 45

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. 5
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. 10
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. 15
- (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. 20
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. 25  
30
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. 35
- (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. 40
- (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. 45

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.

#### SCHEDULE 4

Section 1(2)

5

#### SECOND PROTOCOL

#### **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; 10

**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; 15

**Considering** that the rules governing the protection of cultural property in the event of armed conflict should reflect developments in international law; 20

**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** 25

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; 30
- (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; 35
- (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; 40
- (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;

<ul style="list-style-type: none"> <li>(h) “List” means the International List of Cultural Property under Enhanced Protection established in accordance with Article 27, subparagraph 1(b);</li> <li>(i) “Director-General” means the Director-General of UNESCO;</li> <li>(j) “UNESCO” means the United Nations Educational, Scientific and Cultural Organization;</li> <li>(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.</li> </ul>	<p>5</p>
<b>Article 2 Relation to the Convention</b>	10
This Protocol supplements the Convention in relations between the Parties.	
<b>Article 3 Scope of application</b>	
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.	15
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.	20
<b>Article 4 Relationship between Chapter 3 and other provisions of the Convention and this Protocol</b>	
The application of the provisions of Chapter 3 of this Protocol is without prejudice to:	
<ul style="list-style-type: none"> <li>(a) the application of the provisions of Chapter I of the Convention and of Chapter 2 of this Protocol;</li> <li>(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.</li> </ul>	<p>25</p> <p>30</p>
<b>Chapter 2 General provisions regarding protection</b>	
<b>Article 5 Safeguarding of cultural property</b>	
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.	35
	40
<b>Article 6 Respect for cultural property</b>	
With the goal of ensuring respect for cultural property in accordance with Article 4 of the Convention:	45

- (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 5
  - (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; 10 15
- (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 subparagraph (a), an effective advance warning shall be given whenever circumstances permit. 20

#### **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: 25

- (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; 30
- (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 35
- (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. 40

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

The Parties to the conflict shall, to the maximum extent feasible: 45

- (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; 5
  - (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. 10
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.
- Chapter 3 Enhanced Protection** 15
- 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; 20
  - (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. 25
- 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. 30
  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. 35
  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. 40
  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 45

- 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. 5
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. 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. 15
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. 20 25
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. 30

#### **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. 35

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

1. Cultural property under enhanced protection shall only lose such protection: 40
- (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: 45

- (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; 5
- (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 10
- (iii) reasonable time is given to the opposing forces to redress the situation.
- Article 14 Suspension and cancellation of enhanced protection** 15
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. 20
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. 25
4. Before taking such a decision, the Committee shall afford an opportunity to the Parties to make their views known. 30
- 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: 35
- (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; 40
- (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. 45
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**

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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.

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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.

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#### **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.

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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.

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#### **Article 18 Extradition**

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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.

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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. 5

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. 10

#### **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. 15

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. 20

#### **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. 25

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. 30  
35

#### **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: 40

- (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. 45

## **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. 5
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. 10
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. 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. 20
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. 25
2. The Meeting of the Parties shall adopt its Rules of Procedure.
3. The Meeting of the Parties shall have the following functions: 30
  - (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 sub-paragraph 1(a);
  - (c) to provide guidelines for, and to supervise the use of the Fund by the Committee; 35
  - (d) to consider the report submitted by the Committee in accordance with Article 27 sub-paragraph 1(d);
  - (e) to discuss any problem related to the application of this Protocol, and to make recommendations, as appropriate. 40
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 extraordinary sessions whenever it deems necessary. 5
  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. 10
- 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. 15
  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. 20
- 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. 25
- 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; 30
    - (c) to monitor and supervise the implementation of this Protocol and promote the identification of cultural property under enhanced protection; 35
    - (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; 40
    - (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. 45

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. 5 10

#### **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. 15

#### **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 20
  - (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). 25
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. 30
4. The resources of the Fund shall consist of: 35
  - (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; 40
    - (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 45
  - (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. 5
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: 10
- (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; 15
  - (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. 20

**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. 25

**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. 30
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. 35
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** 40

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 45

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. 5

## **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. 10

### **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. 15

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. 20  
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### **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. 30

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. 35

### **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. 40

### **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**

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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.

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

**Article 42 Accession**

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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**

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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**

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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.

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**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.

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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.

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**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**

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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.

SCHEDULE 5

Section 22

UNLAWFULLY EXPORTED CULTURAL PROPERTY: FORFEITURE

10

*Application of Schedule*

- 1 This Schedule provides the procedure for forfeiture under section 22.

*Notice of seizure or retention*

- 2 (1) This paragraph applies to—
- (a) property seized under section 23, and 15
  - (b) property retained in pursuance of an order made by virtue of section 24 or 25.
- (2) The person who has custody of the property must give notice under this paragraph to any person who to the custodian's knowledge owned the property at the time it was seized or (as the case may be) the order was made. 20
- (3) Notice under this paragraph—
- (a) must be in writing, and
  - (b) must set out the grounds for the seizure of the property or (as the case may be) its retention.
- (4) In the case of property seized under section 23, notice need not be given under this paragraph if the property was seized in the presence of— 25
- (a) the owner, or
  - (b) a servant or agent of the owner.
- 3 (1) Notice under paragraph 2 is duly given if— 30
- (a) it is delivered personally to the person,
  - (b) it is addressed to the person and left at the appropriate address,
  - (c) it is addressed to the person and sent by post to that address, or
  - (d) in the case of a person who has no address within the United Kingdom or the Isle of Man, or whose address is unknown, it is published in the London, Edinburgh or Belfast Gazette. 35
- (2) “The appropriate address”, in relation to a person, means—
- (a) in the case of a body corporate, its registered or principal office;
  - (b) in any other case, the person's usual or last known place of residence or business.

*Forfeiture*

- 4 (1) The appropriate court may, on an application by the Secretary of State, order the forfeiture of any property that is liable to forfeiture under section 22.
- (2) In this Schedule “the appropriate court” means—
- (a) in relation to England and Wales and Northern Ireland, the High Court, and
- (b) in relation to Scotland, the Court of Session. 5
- (3) A forfeiture order may be made in respect of property seized under section 23 only if the application is made within four months beginning with the seizure. 10
- (4) A forfeiture order may be made in respect of property retained in pursuance of an order made by virtue of section 24 or 25 only if the application is made within four months beginning with the order under that section.
- (5) References in this Schedule to a forfeiture order are to an order under this paragraph. 15

*Compensation*

- 5 (1) Sub-paragraph (2) applies if a court proposes to make a forfeiture order in respect of any property.
- (2) The court may assess an amount to be paid by way of compensation to any person who has acquired an interest in the property since it was unlawfully exported from occupied territory. 20
- (3) The court may make such an assessment only if it is satisfied that the person acquired the interest in good faith and without knowledge of the fact that the property has been unlawfully exported from occupied territory.
- (4) An assessment does not oblige anyone to pay the compensation. 25
- (5) But if an assessment is made—
- (a) the forfeiture order does not take effect until the compensation is paid (whether by the Secretary of State or otherwise), and
- (b) the forfeiture order lapses if the compensation is not paid within the period of four months beginning with the day on which the forfeiture order is made. 30

*Interim orders*

- 6 (1) The appropriate court may by order make such provision as it thinks appropriate about the safekeeping of property that is or may be the subject of an application for a forfeiture order. 35
- (2) If the property is not yet the subject of an application for a forfeiture order the court may make an order under this paragraph only if it is satisfied that there is an arguable case that the property is liable to forfeiture under section 22.
- (3) An order under this paragraph may be made only on an application by the Secretary of State. 40
- (4) An order under this paragraph may, in particular, include provision—

- (a) prohibiting a person from dealing in the property;
  - (b) requiring it to be kept at a particular location;
  - (c) stipulating conditions under which it must be kept;
  - (d) requiring or authorising a person to take steps for its conservation.
- (5) An order made in the circumstances mentioned in sub-paragraph (2) lapses if no application for the forfeiture of the property is made within four months beginning with the day on which the order is made. 5
- (6) An order under this paragraph may be amended or discharged by the court that made it.
- Repatriation of forfeited property* 10
- 7 The Secretary of State must make arrangements for the purpose of ensuring that property forfeited in accordance with this Schedule is returned to any authority to whom he considers there is an obligation to return it under the First Protocol.
- Return of property to owner if not forfeited* 15
- 8 (1) This paragraph applies to property that has been seized under section 23, or retained in pursuance of an order made by virtue of section 24 or 25, if—
- (a) an application for the forfeiture of the property is refused and no appeal against the refusal (or any subsequent appeal) is pending,
  - (b) proceedings on an application for the forfeiture of the property are discontinued, 20
  - (c) a forfeiture order made in respect of the property has lapsed, or
  - (d) no application for its forfeiture has been made within the period mentioned in paragraph 4(3) or (4).
- (2) The property must be returned to its owner as soon as is reasonably practicable. 25
- (3) If it is not reasonably practicable to return the property within the period of 12 months beginning with day on which the duty to return it arises, the property may be disposed of in such manner as the person who for the time being has custody of the property thinks appropriate. 30
- (4) For the purposes of sub-paragraph (1)(a) an appeal is pending if—
- (a) an appeal has been brought but has not been determined or withdrawn,
  - (b) an application for permission to appeal has been made but has not been determined or withdrawn, or 35
  - (c) no such application has been made but the period for bringing an appeal is still running (disregarding the possibility of an appeal out of time).
- “Owner”*
- 9 References in this Schedule to the owner of property include, if there is more than one owner, any of them. 40





# **Draft Cultural Property (Armed Conflicts) Bill**

Explanatory Notes



# **CULTURAL PROPERTY (ARMED CONFLICTS) BILL**

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## **EXPLANATORY NOTES**

### **INTRODUCTION**

1. These explanatory notes relate to the draft Cultural Property (Armed Conflicts) Bill which is being published in December 2007. They have been prepared by the Department for Culture, Media and Sport in order to assist the reader of the Bill and to help inform debate on it. They do not form part of the Bill.
2. The notes need to be read in conjunction with the Bill. They are not, and are not meant to be, a comprehensive description of the Bill. So where a clause or part of a clause does not seem to require any explanation or comment, none is given.
3. The Bill extends to the whole of the UK.

### **BACKGROUND**

4. The Cultural Property (Armed Conflicts) Bill is designed to enable the United Kingdom to ratify the 1954 Hague Convention for the protection of cultural property in the event of armed conflict (the Hague Convention) and accede to its two Protocols (1954 and 1999). The Convention, adopted following the massive destruction which took place in the Second World War, provides for a system of general and special protection of cultural property in situations of international and non-international armed conflict. Parties to the Convention are required to respect both cultural property situated within their own territory and cultural property within the territory of other Parties, by refraining from using it, or its immediate surroundings, for purposes which are likely to expose it to destruction or damage in the event of armed conflict, and by refraining from committing any hostile act against the property.
5. It was followed by two Protocols. The first, in 1954 (the “First Protocol”), deals with obligations in relation to cultural property in occupied territory on both the occupying power, and countries who find cultural property which has been exported from occupied territory in their jurisdictions. The second in 1999 (“the Second

Protocol”) extends, and clarifies the obligations under the Convention. In particular, it identifies five acts, each a serious violation of the Protocol, which are to be considered an offence under the Protocol.

## **SUMMARY**

6. Part 2 of the Bill (clauses 3 – 8) incorporates the offence created by Article 15 of the Second Protocol into domestic law, making provision in relation to ancillary offences committed abroad, and extending criminal liability to commanders and superiors who fail to prevent the commission of an offence in certain circumstances.

7. Part 3 of the Bill (clauses 9 – 16) prohibits the unauthorised use of the cultural emblem, the symbol created by the Convention to identify cultural property which is protected under the Convention, by making it an offence to use it otherwise than as authorised by, or under the Bill. It identifies authorised uses of the emblem, and gives the appropriate national authority power to designate further authorised uses.

8. Part 4 of the Bill (clauses 17 – 26) makes provision in relation to cultural property which has been unlawfully exported from occupied territory. Clause 18 creates a new offence of dealing in such cultural property. Clauses 19 – 21 make further provision in relation to that offence, providing for the forfeiture of the cultural property concerned, the liability of officers of a body corporate, and giving the Commissioner’s for Her Majesty’s Revenue and Customs power to investigate offences in relation to the importation or exportation of such property. Part 4 also provides, in clause 22, that unlawfully exported cultural property is liable to forfeiture, and provides powers of search and seizure, and of retention of such cultural property so that it may be returned in fulfilment of our obligation under the First Protocol.

9. Part 5 of the Bill (clause 27) provides immunity from seizure or forfeiture of cultural property which is entitled to special protection under Article 12 of the Convention because it is being transported to the UK, or through the UK to another destination, for safekeeping during a period of armed conflict.

## **OVERVIEW OF STRUCTURE**

10. The Act is divided into six parts. These Parts are as follows:

- Part 1: Key Definitions
- Part 2: Serious Breach of the Second Protocol
- Part 3: Cultural Emblem
- Part 4: Property Exported from Occupied Territory

- Part 5: Property Removed for Safekeeping
- Part 6: General

11. It also contains five Schedules. These are:

- Schedule 1: The Convention for the Protection of Cultural Property in the Event of Armed Conflict
- Schedule 2: Regulations for the Execution of the Convention
- Schedule 3: The First Protocol
- Schedule 4: The Second Protocol
- Schedule 5: Unlawfully Exported Cultural Property: Forfeiture

## **TERRITORIAL EXTENT**

12. The Bill will extend to England and Wales, Scotland and Northern Ireland.

## **TERRITORIAL APPLICATION: WALES**

13. Clauses 11 and 13 of the Bill give the Welsh Ministers power to grant permission for the use of the cultural emblem in Wales, and to designate those people who are entitled to use the cultural emblem as a means of identification. The same powers are given to the Secretary of State, the Scottish Ministers, and the Northern Ireland Department of Culture, Arts and Leisure in relation to England, Scotland and Northern Ireland respectively.

## **COMMENTARY**

### **PART 1: KEY DEFINITIONS**

#### **Clause 1: “The Convention” and related expressions**

14. This clause provides definitions of terms used within the Act.

#### **Clause 2: “Cultural Property”**

15. This defines ‘cultural property’ by reference to the definition given in Article 1 of the Convention. Article 1, with the rest of the Convention, is set out in Schedule 1 to the Bill. The definition is:

”(a) movable or immovable property of great importance to the cultural heritage of every people, such as monuments of architecture, art or history, whether religious or secular; archaeological sites; groups of buildings which, as a whole,

are of historical or artistic interest; works of art; manuscripts, books and other objects of artistic, historical or archaeological interest; as well as scientific collections and important collections of books or archives or of reproductions of the property defined above;

(b) buildings whose main and effective purpose is to preserve or exhibit the movable cultural property defined in sub-paragraph (a) such as museums, large libraries and depositories of archives, and refuges intended to shelter, in the event of armed conflict, the movable cultural property defined in sub-paragraph (a) above;

(c) centres containing a large amount of cultural property as defined in sub-paragraphs (a) and (b), to be known as "centres containing monuments".

## **PART 2: SERIOUS BREACH OF THE SECOND PROTOCOL**

### **Clause 3: Offence of serious breach of Second Protocol**

16. *Subsection (1)* sets out the elements of the offence created in this clause. An offence is committed where a person intentionally does one of the five acts listed in Article 15(1) of the Second Protocol, which is set out in Schedule 4 to the Bill, knowing or having reason to suspect that the property which has, for example, been made the object of attack is cultural property. In addition, the act concerned must be a violation of the Convention or the Second Protocol. Action taken by the armed forces of a country which is not a party to the Convention or the Second Protocol, and is not therefore bound by the obligations set out in the Convention and the Protocol, will not amount to an offence under this clause, as it cannot be a violation of the Convention or the Second Protocol. Article 16(2)(b) of the Second Protocol makes it clear, subject to one exception set out in that article, that members of the armed forces and nationals of a State which is not a Party to that Protocol do not incur individual criminal responsibility by virtue of the Second Protocol unless they are serving in the armed forces of a State which is a Party to the Protocol.

17. *Subsection (2)* makes it clear that an act which is done in another country may be an offence under this clause.

18. *Subsection (3)* ensures that someone can be prosecuted whether or not they are a UK national, in relation to the first three acts listed in Article 15 of the Second Protocol. Under Article 16(1) of the Second Protocol, we are required to establish our jurisdiction over anyone who has made cultural property under enhanced protection the object of attack, or used such cultural property or its immediate surrounds in support of military action, or who is guilty of extensive destruction or appropriation of protected cultural property, where they are present in the UK. This applies regardless of the nationality of the person concerned, or the amount of time for which they are

present in this country. Accordingly, *subsection (3)* provides that an offence in relation to these acts may be committed by someone of any nationality (though, as noted above, this is subject to Article 16(2)(b) of the Second Protocol).

19. Article 16(1) requires a less extensive jurisdiction to be taken over offenders who have made cultural property which is protected under the Convention, but is not entitled to enhanced protection, the object of attack, or who have been guilty of theft, pillage or misappropriation of protected cultural property, or acts of vandalism against such property. *Subsection (4)* therefore provides that an offence in relation to these acts is only committed where the person concerned is a UK national or subject to UK service jurisdiction.

20. *Subsections (5) and (6)* define the terms “UK national” and “person subject to UK jurisdiction” for the purposes of this clause.

#### **Clause 4: Ancillary offences**

21. *Subsection (1)* makes it clear that an ancillary offence to the offence of serious breach of the Second Protocol provided for in clause 3 may be committed in a country outside the United Kingdom, provided that the perpetrator could have been prosecuted had he committed the main offence. So, where the offence concerned is ancillary to the acts listed in Article 15(1)(d) or 15(1)(e) of the Second Protocol, the perpetrator may only be prosecuted if he is a UK national, or subject to UK service jurisdiction. If the offence is ancillary to the acts listed in Article 15(1)(a), 15(1)(b) or 15(1)(c), a perpetrator of any nationality may be prosecuted (provided that he is not within the terms of Article 16(2)(b)).

22. *Subsections (2), (3), and (4)* define what is meant by “an offence that is ancillary to an offence under section 3” in relation to each of the jurisdictions in the United Kingdom.

23. *Subsection (5)* ensures that the provision made in relation to ancillary offences applies in relation to offences which are not ancillary to the principal offence, but to an offence which is itself an ancillary offence. This would apply, for example, where someone has accepted money for the purpose of concealing an attempt to commit the principal offence. He would be guilty of an offence under section 5 of the Criminal Law Act 1967, which is ancillary to the offence of attempt to commit the offence of serious breach of the Second Protocol, which is also an ancillary offence.

#### **Clause 5: Responsibility of commanders and other superiors**

24. This clause provides for an additional form of criminal responsibility, namely that of commanders and superiors for the acts of their subordinates. This concept is one of the recognised general principles of international law referred to in Article 15.2 of the Second Protocol. The Statute of the International Criminal Court was accepted

during the negotiations on the Second Protocol as an authoritative restatement of the general principles of international law in relation to criminal liability, and the wording of the section is based on Article 28 of the Statute of the International Criminal Court (similar provision is made in section 65 of the International Criminal Court Act 2001), and, as *subsection (6)* makes clear, courts will be obliged to take account of the jurisprudence of the International Criminal Court in interpreting and applying this clause.

25. The wording in *subsections (2) and (4)* draws a distinction between the standards expected of military and quasi-military commanders in relation to military forces under their command, and other superiors such as government officials or heads of civilian organisations, as it is recognised that the latter may not have the same degree of control over the actions of their subordinates. The commander will incur liability under this provision where he knew, or owing to the circumstances at the time should have known, that his forces were committing an offence. A superior will only be liable where he or she knew or consciously disregarded information indicating that the subordinate was committing an offence.

26. *Subsections (1) and (7)* make it clear that liability under this provision is a form of aiding and abetting and that it does not preclude any criminal liability which arises apart from this clause. Under section 8 of the Accessories and Abettors Act 1861, a person who has aided or abetted the commission of an offence is liable to be prosecuted, and is subject to the same penalty, as a principal offender.

**Clause 6: Liability of company officers for offences by company**

27. Where an offence has been committed by a body corporate, this clause ensures that it is possible to prosecute officers of a corporate body as well as the body concerned where the commission of the offence by that body was due to their negligence, or they have consented to, or connived at, the commission of the offence.

**Clause 7: Penalties**

28. This clause provides for the maximum penalty for the offence of serious breach of the Second Protocol, and for offences which are ancillary to such offences.

**Clause 8: Attorney General's consent to prosecutions**

29. This clause ensures that prosecutions for the offence of serious breach of the Second Protocol, or for related ancillary offences may not be brought in England and Wales without the consent of the Attorney General. In Northern Ireland, the consent of the Advocate General is required.

### **PART 3: CULTURAL EMBLEM**

#### **Clause 9: The emblem**

30. This clause defines the cultural emblem introduced by the Convention to identify cultural property which is protected under that Convention. The Secretary of State is given power to make a statutory instrument which will set out both the cultural emblem, and the cultural emblem triangle. The permitted uses of these emblems are set out in Article 17 of the Convention, and this is reflected in Part 3 of the Bill.

#### **Clause 10: Offence of unauthorised use**

31. This clause creates a new offence, of unauthorised use of the cultural emblem. It is also an offence to use another design which is capable of being mistaken for the emblem because it so closely resembles it. The offence is punishable by a fine, and proceedings may only be brought with the consent of the Director of Public Prosecutions in England and Wales, or for Northern Ireland.

#### **Clause 11: Use authorised by the appropriate national authority**

32. *Subsection (1)* gives to the appropriate national authority the power to give permission for particular uses of the cultural emblem as being “authorised” for the purposes of this part of the Bill. “Appropriate national authority” is defined in clause 16 of the Bill as the Secretary of State, in relation to England, and the devolved authorities in the other parts of the United Kingdom. Permission which has been given may be withdrawn. *Subsection (2)* imposes an additional requirement where the cultural property concerned is immovable cultural property. In this case, a copy of the permission given must be displayed with the emblem.

#### **Clause 12: Other authorised use: movable property**

33. This clause identifies uses of the cultural emblem, and the cultural emblem triangle, which are authorised in relation to movable cultural property.

#### **Clause 13: Other authorised use: personnel**

34. This clause authorises the use of the cultural emblem to identify two classes of people. The first class consists of those personnel who have duties of control under the Convention in relation to cultural property, such as the representative for cultural property appointed under Article 2 of the Regulations, or the Commissioner-General for Cultural Property who must be appointed to Parties to the Convention engaged in armed conflict. The second class consists of personnel who have been designated by the appropriate national authority as being engaged in the property of cultural property in the appropriate part of the United Kingdom.

**Clause 14: Defences**

35. This clause sets out three defences to the offence of unauthorised use. Under *subsection (2)* it is not an offence to use the cultural emblem for a purpose for which it had previously been lawfully used by the accused before this clause comes into force.

36. Under *subsection (3)* it is not an offence to use the emblem where it forms part of a trademark which was registered before the clause comes into force, and the trademark is being used lawfully in relation to the goods or services for which it was registered.

37. Under *subsections (4) and (5)* it is not an offence to use a design on goods provided that the design was applied to the goods by their manufacturer or someone trading in those goods before they came into the possession of the accused, and the person applying the design was using it lawfully in relation to the same type of goods before the section came into force. Use of the emblem by the manufacturer or trader would come within the terms of the defences set out in *subsections (2) and (3)* of this clause. The defence in *subsections (4) and (5)* is intended to ensure that the purchaser of such goods does not commit an offence.

**Clause 15: Forfeiture**

38. This clause gives the court which convicts someone of the offence of unauthorised use of the emblem the power to order the forfeiture of the articles in respect of which the offence was committed, and where appropriate, their destruction.

**Clause 16: “Appropriate national authority”**

39. This clause defines the term “appropriate national authority” in relation to each part of the United Kingdom. That term is used in clauses 11 and 13 of the Bill.

**PART 4: PROPERTY EXPORTED FROM OCCUPIED TERRITORY**

40. Under the First Protocol to the Convention, the United Kingdom is under an obligation to take cultural property which has been exported from occupied territory and imported into the United Kingdom into its custody, and to return that property to the competent authorities at the close of hostilities. Further, under Article 21 of the Second Protocol, the United Kingdom is obliged to take measures to suppress any illicit export, other removal or transfer of ownership of cultural property from occupied territory in violation of the Convention or the Second Protocol. This Part of the Bill is intended to enable the government to implement those obligations.

**Clause 17: “Unlawfully exported cultural property” &c**

41. This clause states what is meant by “unlawfully exported cultural property” for the purposes of this Part of the Bill. The cultural property in question must have been

exported from occupied territory, and its export must have been unlawful under either the laws of the territory in question, or under rules of international law such as the First Protocol. The unlawful export need not have taken place after this Bill came into force – cultural property unlawfully exported from occupied territory at any time after the First Protocol came into force, may come within the definition of “unlawfully exported cultural property”. So, for example, outstanding icons stolen from church in an occupied territory in the 1970s and smuggled out of that territory would fall within the definition of “unlawfully exported cultural property”.

42. Under *subsection (3)* it is made clear that the test for “occupied territory” is drawn from Article 42 of the 1907 Hague Regulations respecting the Laws and Customs of War on Land. Under that provision “Territory is considered occupied when it is actually placed under the authority of the hostile army. The occupation applies only to territory where such authority is established and in a position to assert itself.”

43. Under *subsection (4)* provides that, where a certificate is given by the Secretary of State as to whether or not particular territory is occupied territory, that certificate will be conclusive evidence of that fact. However, such a certificate need not be given in all cases. Alternative evidence may be provided to prove the status of a particular territory.

**Clause 18: Offence of dealing in unlawfully exported cultural property**

44. *Subsection (1)* makes it an offence to deal in cultural property which has been unlawfully exported from occupied if the perpetrator either knew or had reason to suspect that the cultural property concerned had been unlawfully exported. The prosecution will have to prove that the property satisfied the definition of “cultural property” given in Article 1 of the Convention, but it will not be necessary to show that the perpetrator was aware of this.

45. *Subsection (2)* ensures that an offence is only committed where the property concerned was imported into the United Kingdom after the commencement of this clause. “Import” for these purposes includes any way in which the property is brought into the United Kingdom. No offence will be committed in relation to cultural property which is not imported into the United Kingdom.

46. *Subsections (3), (4) and (5)* define “dealing” for the purpose of this section, identifying each of the activities which may result in the commission of an offence. Although many agreements regarding dishonest dealing in an object will be covered by the law of conspiracy, *subsection (3)(b)* ensures that where, for example, A and B make an agreement to acquire unlawfully exported cultural property, and B does not have the requisite knowledge, A can still be prosecuted for this offence.

47. Under *Subsections (6) and (7)* the offence will be triable either way. Where the accused is convicted in the crown court, the maximum penalty will be imprisonment for a term of seven years, or a fine (under the Criminal Justice Act 2003, section 163, someone convicted of an offence in the crown court may be given a fine instead of, or in addition to, a sentence of imprisonment). Where the accused is convicted in the magistrates' court the maximum penalty will be imprisonment for a term of 12 months, or a fine not exceeding the statutory maximum (currently £5,000). Section 282 of the Criminal Justice Act 2003 increases the maximum sentence of imprisonment which may be imposed by the Magistrates Court to 12 months. *Subsection (7)(a)* ensures that the same sentence may be imposed before section 282 comes into force.

**Clause 19: Forfeiture in connection with dealing offence.**

48. This clause ensures that, where someone has been convicted of the offence of dealing with unlawfully exported cultural property, the court may order the forfeiture of that property, and may make further provision for its retention or disposal.

**Clause 20: Liability of company officers for offences by company.**

49. Similarly to clause 6, this clause ensures that, where the offence of dealing with unlawfully exported cultural property has been committed by a body corporate, it is possible to prosecute officers of a corporate body as well as the body concerned where the commission of the offence by that body was due to their negligence, or they have consented to, or connived at, the commission of the offence.

**Clause 21: Revenue and customs prosecutions**

50. This clause provides for the Commissioner's for Her Majesty's Revenue and Customs to conduct investigations in relation to the offence of dealing with unlawfully exported cultural property where the dealing concerned took the form of the importation or exportation of the cultural property in question.

**Clause 22: Property liable to forfeiture**

51. This clause makes cultural property which has been unlawfully exported from occupied territory liable to forfeiture, provided that it has been imported into the United Kingdom after the clause comes into force, whether or not a criminal offence has been committed in relation to the cultural property in question. The procedure which must be followed to obtain the forfeiture of cultural property is set out in Schedule 5 to the Bill.

**Clause 23: Search and seizure warrants.**

52. This clause ensures that the police may apply to a justice of the peace for a warrant authorising them to enter the premises identified in the warrant in order to search for cultural property which has been unlawfully exported from occupied territory, and where such property is discovered as a result of the search, that they

may seize it. The police must be able to demonstrate to the justice of the peace that there are reasonable grounds for believing that such cultural property is situated in the premises in question. The issue of a warrant under this clause is subject to the safeguards set out in section 15 of the Police and Criminal Evidence Act 1984, and must be executed in accordance with the requirements in section 16 of that Act. *Subsection (3)* provides that someone exercising a power under such a warrant has authority to use reasonable force where this is necessary, for example, to gain access to the premises in question, or to open locked storage space.

53. Once cultural property has been seized under this provision, it must be retained by the police until the procedure set out in Schedule 5 has been followed.

54. *Subsection (5)* ensures that the additional powers of seizure provided for by section 50 of the Criminal Justice and Police Act 2001 will apply. Where a person searching premises under the authority of a warrant issued under this clause discovers material which he has reasonable grounds for believing may contain cultural property which he is entitled to seize, but it is not reasonably practicable for this to be determined on the premises themselves, that material, or as much of it as is necessary to decide the matter, may be removed for examination elsewhere.

**Clause 24: Retention of property in the custody of a constable.**

55. This clause gives a justice of the peace power to authorise the continued retention of property which was originally seized in connection with the investigation or prosecution of the offence of dealing in unlawfully exported cultural property, on the application of a constable. This may happen, for example, where cultural property was originally seized as evidence in relation to an offence of dealing in unlawfully exported cultural property, but either it is decided that no criminal proceedings should be brought, or any criminal proceedings brought result in the acquittal of the accused, so that the power under which the police originally seized that property no longer applies.

56. Under *subsection (2)*, an application for such an order may be made by a constable. Once retention of the property has been authorised, it must be retained by the police until it has been dealt with under the provisions of Schedule 5.

57. *Subsection (3)* sets out the grounds on which an order for continued retention may be made. The justice of the peace must be satisfied that there are reasonable grounds for suspecting that the property may be liable to forfeiture under clause 22. Property is liable to forfeiture under that clause where it is cultural property within the meaning of the Convention, it has been unlawfully exported from occupied territory, and it was imported into the UK after the commencement of clause 22.

58. *Subsection (4)* provides that it is lawful for property to be retained by a constable pending the making of a determination by a justice of the peace under subsection (2), or in accordance with an order made by a justice under subsection (3).

59. *Subsection (5)* disapplies the Police (Property) Act 1897, and the related Act under the law of Northern Ireland, which make provision with respect to the disposal of property in the possession of the police.

**Clause 25: Retention of property in custody of Revenue and Customs**

60. This clause applies the previous clause (clause 24) to property in the custody of an officer of Revenue and Customs or a member of the Revenue and Customs Prosecutions office in the same way as it applies to property in the custody of a constable. For this purpose, references to a constable in clause 24 are modified accordingly.

**Clause 26: Property in the custody of others**

61. Under *subsection (2)* property originally seized in connection with the investigation or prosecution of an offence which is held by anyone other than the police or a person mentioned in clause 25 must be transferred to the custody of the police once it ceases to be needed for that purpose. This will enable the police to make an application for the continued retention of the property.

**Schedule 5: Unlawfully Exported Cultural Property: Forfeiture**

62. Where property has been seized under clause 23 or is retained in accordance with an order made under clause 24 or 25 of this Bill, *paragraphs 2 and 3* require notice to be given to the person believed by the police or HMRC to be the owner of cultural property which is being seized, and make provision in relation to that notice.

63. *Paragraph 4* gives the Secretary of State power to make an application to the High Court, or, in relation to Scotland, to the Court of Session, for the forfeiture of cultural property which has been unlawfully exported from occupied territory. In respect of property seized under clause 23, such an application must be made no later than four months from the date on which either the cultural property was seized. In respect of property retained in pursuance of an order made under clause 24 or 25 of the Bill, such an application must be made within four months beginning with the date on which the order was made. If no application is made within that period, the cultural property must be returned to its owner as defined in *paragraph 9* of Schedule 5. Forfeiture of the cultural property will only be granted where the Secretary of State is able to prove that the property concerned is cultural property within the meaning of the Convention and that it was in fact unlawfully exported from occupied territory within the meaning of clause 17 of the Bill.

64. *Paragraph 5* gives the court power to award compensation to a person provided that it is satisfied that that person acquired the cultural property concerned both in good faith, and without knowledge of the fact that it had been unlawfully exported from occupied territory. If the court does make a compensation assessment, the compensation which has been assessed to be due must be paid before the forfeiture order can take effect. Compensation may be paid by the authorities who are seeking the return of the cultural property in question, or by the Secretary of State. If the compensation due has not been paid within four months of the date on which the forfeiture order was made, the order ceases to have any effect, and the cultural property concerned must be returned to its owner as defined in *paragraph 9* of Schedule 5.

65. *Paragraph 6* gives the court power to make interim orders which are considered to be appropriate for the safekeeping of the property. For example, where cultural property is in a fragile condition, requiring work to stabilise it, the court would be able to order that it should be transferred to the custody of a museum for the necessary conservation work to be carried out.

66. Under *paragraph 7* where a forfeiture order is made, the Secretary of State is under a duty to ensure that the cultural property concerned is returned in accordance with the United Kingdom's obligations under the First Protocol to the Hague Convention. Under *paragraph 3* of that Protocol, such cultural property must be returned, at the close of hostilities, to the competent authorities of the territory previously occupied.

67. *Paragraph 8* of Schedule 5, as noted above, imposes a duty on the person who has custody of cultural property which has been seized to return it to the owner, as soon as reasonably practicable, unless a forfeiture order has been made, and has come into effect. The only exception to this duty applies, under *subparagraph (3)* where the person who has custody has been unable to return the cultural property to its owner within a period of twelve months. In this case, that person may dispose of it as they think appropriate.

## **PART 5: PROPERTY REMOVED FOR SAFEKEEPING**

### **Clause 27: Immunity from seizure or forfeiture**

68. Under Article 14 of the Convention, the United Kingdom is required to grant immunity from seizure to any cultural property which enjoys special protection under Article 12 of the Convention. This applies to transports of cultural property which are being removed from their original territory for safekeeping, and in accordance with the conditions set out in the Regulations for the Execution of the Convention (set out in Schedule 2 to the Bill). *Clause 27* of the Bill ensures that such cultural property may not be seized or forfeited while it is in the United Kingdom.

69. As *subsections (3) and (4)* make clear, the immunity applies both to cultural property which is being transported to the United Kingdom, and to cultural property which is in transit through the United Kingdom *en route* to another destination for safekeeping. In the case of cultural property which is being transported to the United Kingdom, for which the United Kingdom has agreed to act as depositary accepting the obligations under Regulation 18 of the Regulations for the Execution of the Convention, *subsection (5)* provides that the cultural property is protected while it remains in the custody of the Secretary of State, or any other person or institution which has been made responsible for the safekeeping of the cultural property by the Secretary of State. If the cultural property leaves the custody of such an institution- as where it is stolen, it is no longer protected, and may be seized by the police so that it can be returned to the institution in question.

70. *Subsection (7)* ensures that the same protection applies to any vehicle which is being used to transport cultural property protected under Article 12 of the Convention.

71. *Subsection (8)* clarifies the extent of the protection which will be given to objects under this clause. It includes immunity against all forms of execution which might be made against an object protected under the clause, any order made in civil proceedings and any measure taken in criminal proceedings (or for the purposes of a criminal investigation) which might affect the control or custody of an object. The protection given is intended to exclude any form of seizure or detention of an object lent to an exhibition in this country whether by a claimant to the object, a creditor or by law enforcement authorities.

## **PART 6: GENERAL**

### **Clause 28: Commencement**

72. This clause gives the Secretary of State power to specify the commencement dates for the provisions of the Bill by order.

### **Clause 29: Extent**

73. By virtue of *clause 27* the Bill will extend throughout the United Kingdom. In addition, under *subsection (2)*, by Order in Council, its provisions can be extended to cover any of the Channel Islands, the Isle of Man and any British overseas territory.

### **Clause 30: Crown Application**

74. This clause applies the provisions contained in the Bill including enforcement powers such as powers of entry to public servants and activities and premises carried out or used by or on behalf of the Crown. The Bill will not, however, apply to the Queen in her private capacity.

## **FINANCIAL EFFECTS**

75. The financial effects to Consolidated fund and National Loans Fund of this Act should be negligible. The only areas of additional expenditure likely to be incurred are through enforcement (it is not foreseen that these will be significant) and through compensating good faith purchasers of property which is to be returned to its country of origin.

## **PUBLIC SERVICE MANPOWER**

76. The Bill does not require significant changes to public service manpower. The proposals in it should be met within existing resources.

## **IMPACT ASSESSMENT**

77. An Impact Assessment has been published on the DCMS website, at [link]. The sectors who may incur costs under this legislation are the enforcement authorities and central government (for which costs will be dependent on prosecutions and how much cultural property needs to be seized and returned) and dealers in cultural property, who will need to undertake due diligence checks into cultural property they propose to acquire to ensure that it has not been unlawfully exported from occupied territory. We do not expect these costs to be substantial.

78. The Bill will produce significant non-monetarised benefits, codifying the system by which the UK military protects cultural property when operating abroad, the introduction of the emblem for identifying objects and structures of cultural importance, and the return of objects illegally removed from occupied territories

## **EUROPEAN CONVENTION OF HUMAN RIGHTS**

79. Section 19 of the Human Rights Act 1998 requires the Minister in charge of a Bill in either House of Parliament to make a statement about the compatibility of the provisions of the Bill with the Convention rights protected by the Human Rights Act. We believe that the Minister will be able to make the following statement “In my view the provisions of the Cultural Property (Armed Conflicts) Bill are compatible with the Convention rights.”

80. Parts 2, 3 and 4 of the Bill introduce new criminal offences. These offences do not raise any issues under Article 6 of the European Convention on Human Rights

(“ECHR”). They do not impose any burden of proof on the defendant, or in any way restrict the guarantees of a fair trial provided under Article 6 of the ECHR.

81. Under Article 7 of the ECHR, offences must be based in law, which is sufficiently accessible, and the effects of which are reasonably foreseeable, so that an individual is able to foresee the consequences of his actions. The provisions relating to each offence are readily accessible in the Bill. The Part 2 offence is defined by reference to the acts defined as “offences” in Article 15(1) of the Second Protocol. That article, with the other provisions of the Protocol and Conventions, are set out in full in Schedules to the Bill. It is also clear from the offences what conduct will amount to an offence. Accordingly, these provisions comply with the requirements of Article 7 of the ECHR.

82. Part 4 of the Bill includes powers of entry, search and seizure in relation to unlawfully exported cultural property which restrict the right under Article 8 of the convention to respect for private and family life, home and correspondence. These powers are being introduced in pursuance of a legitimate aim – the protection of the cultural heritage of occupied territories, and the implementation of the United Kingdom’s obligations under international law. They seek to meet a real and pressing need – the extent of the looting to which the cultural heritage of an occupied territory may be subject has recently been illustrated in Iraq, and they are a proportionate response to that aim. The power to issue warrants authorising entry, search and seizure is subject to judicial supervision and attended by the safeguards set out in sections 15 and 16 of the Police and Criminal Evidence Act 1984. We consider that these provisions satisfy the requirements of Article 8 of the ECHR.

83. Part 4 of the Bill provides for the forfeiture of cultural property which has been unlawfully exported from occupied territory, even where an offence has been committed under English law in relation to that property. This restricts rights under Article 1, Protocol 1 to the ECHR to the peaceful enjoyment of possessions, by authorising a deprivation of possessions. It is however justified as being in the public interest, subject to condition provided for by law and striking, we believe, a fair balance between the demands of the community and the rights of the individual owner.

84. The provisions are an integral part of the procedure being introduced to enable the repatriation of unlawfully exported cultural property. No cultural property may be forfeited without an application to the court by the Secretary of State, which will give the owner of that property an opportunity to contest the fact that it has been unlawfully excavated, and to apply for compensation where he can demonstrate that the property was acquired in good faith without knowledge of the fact that it was unlawfully excavated from occupied territory. The amount of compensation due to the owner will be assessed by the court, which will be able to take account of all the

circumstances, including the conduct of the owner, and where appropriate, award the full market value of the property to the owner. If compensation is awarded, the forfeiture order cannot take effect until the compensation has actually been paid.. We do not therefore consider that these provisions contravene Article 1, Protocol 1 to the ECHR.

85. Part 5 of the Bill, which provides for immunity from seizure in relation to certain cultural property engages rights under Article 1, Protocol 1, and Article 6 of the ECHR. The immunity applies to cultural property which has special protection under the Hague Convention and is in transit through the United Kingdom to another country, or for which the United Kingdom has agreed to act as the depositary, responsible for the safekeeping of the cultural property in question during an armed conflict. Article 6 guarantees the right to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law in the determination of his civil rights and obligations. The proposed immunity will not prevent potential claimants from bringing a claim to protected cultural property before the courts, but it will prevent the courts from granting seizure or restitution of the property concerned as a remedy for such a claim. Other remedies, including the award of damages, will be available, and we consider that this limitation is a proportionate restriction on the right of access to the court under Article 6. In addition, the immunity is temporary in nature. Where cultural property is in transit through the United Kingdom, the immunity is unlikely to last for more than a few days. Where the United Kingdom has agreed to act as depositary under the Convention for cultural property the immunity will apply while the cultural property is in the UK, which will be limited to the duration of the conflict in question. The government will be able to make enquiries into the provenance of the cultural property before it agrees to accept it for safekeeping, which will limit the risk that cultural property whose ownership is disputed will be brought into the United Kingdom. We do not consider that the immunity contravenes the provisions of Article 6. For the same reasons, we consider that the immunity is in the public interest in preserving cultural property which, under the terms of the Hague Convention must be “of great importance to the cultural heritage of every people”, and that it strikes a fair balance between the interests of potential claimants and the public interest. Accordingly, it does not contravene Article 1, Protocol 1 to the ECHR.

## **COMMENCEMENT DATE**

86. The provisions in the Bill will be brought into force by order made by the Secretary of State.





# **Draft Cultural Property (Armed Conflicts) Bill**

Regulatory Impact Assessment



## Summary: Intervention & Options

<b>Department /Agency:</b> <b>Department for Culture, Media and Sport</b>	<b>Title:</b> <b>Impact Assessment of the Cultural Property (Armed Conflicts) Bill</b>	
<b>Stage:</b> Final proposal	<b>Version:</b> 3	<b>Date:</b> October 2007
<b>Related Publications:</b> The Hague Convention for the Protection of Cultural Property in the Event of Armed Conflict (1954) and its two protocols (1954 & 1999); DCMS Consultation Paper, September 2005; and Summary of Responses Received to the Government's Consultation, November 2006		

### Available to view or download at:

[http://portal.unesco.org/culture/en/ev.php-URL\\_ID=8450&URL\\_DO=DO\\_TOPIC&URL\\_SECTION=201.html](http://portal.unesco.org/culture/en/ev.php-URL_ID=8450&URL_DO=DO_TOPIC&URL_SECTION=201.html)

[http://www.culture.gov.uk/Reference\\_library/Consultations/2005\\_closed\\_consultations/54\\_protocols.htm](http://www.culture.gov.uk/Reference_library/Consultations/2005_closed_consultations/54_protocols.htm)

### What is the problem under consideration? Why is government intervention necessary?

In 2004 the Government announced its intention to ratify the 1954 Hague Convention for the Protection of Cultural Property in the Event of Armed Conflict and accede to its two Protocols (of 1954 and 1999). The Convention requires the creation of new criminal offences for serious violations of the Convention; the suppression of trade in, and return of, cultural property unlawfully exported from occupied territory; protection of the blue shield emblem; and immunity from seizure for certain cultural property. This Bill is necessary to satisfy these obligations.

### What are the policy objectives and the intended effects?

The principal objective is to ensure that the UK is able to protect cultural property, both in the UK and internationally, in the event of armed conflict. The Bill will put in place measures to protect cultural property in the event of armed conflict; enable seizure and return of cultural property unlawfully removed from occupied territory and prosecute those knowingly dealing in such material. It also creates an offence of unauthorised use of the blue shield emblem and provides immunity from seizure for the cultural property of other States moved for safekeeping to the UK.

### What policy options have been considered? Please justify any preferred option.

DCMS, in partnership with other interested Government departments, considered two options:

- 1) Introduce legislation to enable ratification of the Convention and accession to its two Protocols; or
- 2) Ratify and accede without introducing legislation.

It was considered that to ratify without introducing legislation would run a significant risk of the UK being in breach of its obligations under the Convention and being both exposed to international censure and subject to domestic judicial review.

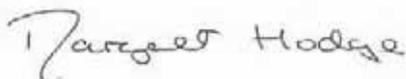
### When will the policy be reviewed to establish the actual costs and benefits and the achievement of the desired effects?

A review of the legislation will take place after 5 years.

### **Ministerial Sign-off** For final proposal/implementation stage Impact Assessments:

*I have read the Impact Assessment and I am satisfied that, given the available evidence, it represents a reasonable view of the likely costs, benefits and impact of the leading options.*

Signed by the responsible Minister:



Date: 11 October 2007

## Summary: Analysis & Evidence

<b>Policy Option: 1)</b>	<b>Description: Legislate to allow us to ratify the Convention and accede to its Protocols.</b>
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<b>COSTS</b>	<b>ANNUAL COSTS</b>		Description and scale of <b>key monetised costs</b> by 'main affected groups' Monetised costs will be minimal. The sectors likely to incur costs are owners of protected cultural property (for whom any costs will be voluntary), the enforcement authorities, central government and dealers in cultural property.
	<b>One-off</b> (Transition)	<b>Yrs</b>	
	£ 0		
	<b>Average Annual Cost</b> (excluding one-off)		
	£ Minimal		
<b>Total Cost (PV)</b>			£ Minimal
Other <b>key non-monetised costs</b> by 'main affected groups' The key non monetised cost will be that the military will not be able to use sites which have received enhanced protection for military purposes.			

<b>BENEFITS</b>	<b>ANNUAL BENEFITS</b>		Description and scale of <b>key monetised benefits</b> by 'main affected groups' The Department takes the view that the psychological, morale and cultural identity benefits of protecting the nation's most important heritage assets in times of armed conflict cannot be monetised
	<b>One-off</b>	<b>Yrs</b>	
	£ 0		
	<b>Average Annual Benefit</b> (excluding one-off)		
	£ 0		
<b>Total Benefit (PV)</b>			£ 0
Other <b>key non-monetised benefits</b> by 'main affected groups' The protection of the UK's cultural property in the event of armed conflict and the protection of international cultural property where the UK has an involvement in either its illegal trade or a country's occupation.			

Key Assumptions/Sensitivities/Risks That UK armed forces are already trained to avoid committing acts that would constitute an offence under the Bill. That there is a very low risk of any prosecutions being brought in the UK. That the UK will be unlikely to have to pay compensation for property illegally removed from a state which it is occupying.

Price Base Year 2007	Time Period Years 5	<b>Net Benefit Range</b> (NPV) £ 0	<b>NET BENEFIT</b> (NPV Best estimate) £ 0
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What is the geographic coverage of the policy/option?		United Kingdom		
On what date will the policy be implemented?		After Commencement		
Which organisation(s) will enforce the policy?		See Evidence Base		
What is the total annual cost of enforcement for these organisations?		£ Minimal		
Does enforcement comply with Hampton principles?		Yes		
Will implementation go beyond minimum EU requirements?		N/A		
What is the value of the proposed offsetting measure per year?		£ 0		
What is the value of changes in greenhouse gas emissions?		£ Negligible		
Will the proposal have a significant impact on competition?		No		
Annual cost (£-£) per organisation (excluding one-off)	Micro 0	Small 0	Medium 0	Large 0
Are any of these organisations exempt?	No	No	N/A	N/A

<b>Impact on Admin Burdens Baseline</b> (2005 Prices)		(Increase - Decrease)	
Increase of £	Decrease of £	<b>Net Impact</b>	£

Key:      **Annual costs and benefits: Constant Prices**      **(Net) Present Value**

## Evidence Base

### The Convention

The UK Government publicly announced its intention to ratify the 1954 Hague Convention and accede to both its Protocols in May 2004, on the 50th anniversary of the Convention.

The Convention for the Protection of Cultural Property in the Event of Armed Conflict (the Hague Convention) was signed at The Hague on 14 May 1954. The Convention provides for a system of general and special protection of cultural property in situations of international and non-international armed conflict.

Cultural property for this purpose is defined as movable and immovable property of great importance to the cultural heritage of every people (the full definition is rather lengthy but is set out in Article 1 of the Convention). The Convention is supplemented by two Protocols – the first adopted at the same time as the Convention, in 1954, and the second adopted in 1999 (the Second Protocol).

#### *Obligations under the Convention*

Parties to the Convention are required to respect cultural property situated within their own territory as well as within the territory of other Parties, by refraining from using the property, the appliances in use for its protection or its immediate surroundings for purposes which are likely to expose it to destruction or damage in the event of armed conflict, and by refraining from committing any hostile act against the property. They are also required to take measures in peace time to safeguard their cultural property in the event of armed conflict. Some measures which should be taken are identified in the 1999 Protocol. It is not required to make the failure to take these safeguarding measures a criminal offence.

The Convention also prescribes a distinctive emblem which may be used to identify cultural property protected by the Convention, whose use is voluntary. States Parties are required to prevent the abuse of that emblem.

The Convention also makes provision for transports of cultural property to receive special protection. This is aimed at the situation where a country wishes to move its national cultural treasures out of harm's way in the event of actual or potential armed conflict. The obligations laid on States Parties in relation to such protected transports include an obligation to grant immunity from “capture, seizure or taking in prize” to both the cultural property and the means of transport.

#### *Obligations under the 1954 Protocol*

The 1954 Protocol imposes a number of obligations on States Parties in relation to the protection of cultural property in occupied territories. State Parties must undertake to prevent the export of cultural property from territory occupied by it and to take into its custody cultural property imported into its territory either directly or indirectly from any occupied territory. At the end of the occupation, each Party is obliged to return any cultural property in its territory that was illegally exported from the occupied State and refrain from retaining it as war reparations.

#### *Obligations under the 1999 Protocol*

The 1999 Protocol introduces, among other things, a new system of enhanced protection which is designed to replace the original, and generally accepted as flawed, system of special protection. It clarifies the definition of certain terms, such as “military objective” and “military necessity” and it introduces five specific acts which need to be criminalised by State Parties. These are set out in Article 15(1) and are as follows:

- (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.

### **Why Ratify the Convention now?**

The UK decided not to ratify the Convention when it was first drafted because, along with a number of other countries, it considered that certain terms were too imprecise and that it did not provide an effective regime for the protection of cultural property. The adoption of the Second Protocol in 1999, however, has removed the concerns previously expressed by the UK over the Convention.

It is felt that ratification of the Convention will have two primary benefits for the UK:

- it will formalise the responsibilities of UK troops when operating in armed conflict overseas with regard to the protection of cultural property; and
- it will provide reciprocal protection for UK cultural property in the event that we were attacked by a State party to the Convention.

A copy of the Convention, Regulations and the two Protocols can be downloaded from the website of the United National Educational, Scientific and Cultural Organisation (UNESCO) at [www.unesco.org](http://www.unesco.org).

### **Considering the options**

The rationale behind why the UK selected the option of ratifying the Convention (as opposed to choosing not to ratify) is spelt out in the section above. The next set of options considered was whether introducing primary legislation was necessary to enable the UK to fulfil our obligations under the Convention. On balance it was felt that our obligations could not be met through the existing suite of cultural property legislation and that a new Bill was necessary. The reasoning behind that decision is spelt out below.

### **Need for UK legislation**

The Cultural Property (Armed Conflicts) Bill introduces a number of measures designed to allow the UK to fulfil its obligations under the Convention and its two Protocols. The Bill includes the following:

- It introduces offences (originally laid out in the 2nd Protocol) which are designed to protect cultural property (the Bill utilises the definition of cultural property included in the Convention) in the event of an armed conflict. These include making such property the object of attack, or its immediate surroundings, an offence.
- It introduces the Blue Shield, as an emblem that signifies cultural property protected under the Convention and its two Protocols. The emblem can (its use is voluntary) be affixed to protected cultural property. In addition to the emblem, the DCMS will be utilising other means of signifying protected cultural property (for which primary legislation is not necessary).
- It introduces a legal regime which makes it illegal to deal in cultural property illegally exported from occupied territory and allows such property to be seized and returned to a competent authority in the occupied territory after the close of hostilities, where appropriate.
- It introduces immunity from seizure for cultural property in the UK which is being transported for safekeeping during a conflict between two or more other States.

The justification for the inclusion of these provisions is as follows:

*Offences related to protection of cultural property during armed conflict*

Existing English offences in relation to the Second Protocol offences are judged to be insufficient for the following reasons:

- (a) The behaviour which article 15(1)(a) and (d) seeks to criminalise (making cultural property the object of attack) is partially covered by existing offences under section 1(1) of the Geneva Conventions Act 1957 (via Article 85(4)(d) of the First Protocol to the Geneva Conventions) and section 51 of the International Criminal Court Act 2001 (via Article 8(2)(b)(ix) of the Statute of the ICC). However, neither offence is sufficient:
  - (i) in neither case is the definition of the property protected sufficient to encompass attacks directed at all forms of cultural property, as defined in Article 1 of the Hague Convention;
  - (ii) the offences are more restricted than the offences under Article 15(1) of the 1999 Protocol.
- (b) There is no equivalent offence for Article 15(1)(b) of the 1999 Protocol (using cultural property under enhanced protection in support of military action);
- (c) A breach of Article 8(2)(b)(xiii) of the ICC Statute is a criminal offence under section 51 of the International Criminal Court Act 2001. This offence, though not specifically directed at cultural property would cover the behaviour criminalised under Article 15(1)(c). However, it does not apply in relation to non-international conflicts; and the jurisdiction we have taken to prosecute this offence is not sufficiently wide to meet our obligations under Article 16 of the 1999 Protocol.
- (d) There are also a number of existing offences in domestic law which could be used to prosecute the behaviour covered by Article 15(1)(e), where the relevant acts take place within the United Kingdom, or were committed by someone subject to naval discipline or to military or air force law. Article 15(1)(e) is one of the offences for which a more limited jurisdiction is required – we would only have to establish jurisdiction over this offence where the offence is committed within the territory of the United Kingdom, or by a United Kingdom national. However, our jurisdiction to prosecute United Kingdom nationals for the existing domestic offences committed outside the United Kingdom only applies where they are subject to military discipline, or in the service of the Crown and acting (or purporting to act) in the course of their employment. This is not sufficient even to satisfy the more restricted jurisdictional requirements for this offence. For example, it would not enable the United Kingdom to prosecute a United Kingdom national for anything done as a member of a private company offering security services in another country in the context of an armed conflict.

#### *Offences related to the Blue Shield*

Protection is already given under English law to the Red Cross and its related emblems. Section 6(1) of the Geneva Conventions Act 1957 provides that use of the protected emblems for any purpose without the authority of the Secretary of State is unlawful. Subsection (2) also makes it unlawful to use any design which so nearly resembles the protected signs that it is capable of being mistaken for the sign in question without the authority of the Secretary of State.

The Blue Shield emblem, however, cannot be regarded as a related emblem to the Red Cross and is not covered by the Geneva Conventions Act 1957. The provisions of the Bill, therefore, are designed to give the cultural emblem equivalent protection to the red cross and the red crescent.

### *The protection of cultural property from occupied territory*

The 1954 Protocol imposes obligations on Occupying States and other Parties to take measures to suppress any illicit export of cultural property from occupied territory, to take into its custody any cultural property which has been imported from any occupied territory, whether directly from the territory concerned, or indirectly via another country and to return any cultural property protected by the Convention which is in their territories at the end of hostilities. Other obligations are imposed on Occupying States to safeguard cultural property in the occupied territory, and to refrain from archaeological exploration there.

There are already some offences which may apply where cultural property has been exported from occupied territory. The Dealing in Cultural Objects (Offences) Act 2003 makes it an offence to deal dishonestly in a cultural object which is “tainted”. The definition of “tainted” in that Act is limited to objects which were removed or excavated after 30 December 2003 (the date of commencement of the Act) where the removal or excavation constituted an offence. The fact that an object has been illegally exported from another country (whether or not occupied) is not sufficient to make it tainted. Where an object has been removed or excavated contrary to the law of the occupied territory, it will be tainted within the meaning of the 2003 Act. However, the 2003 Act does not itself impose a prohibition on the import of tainted cultural goods, so that such goods will not be liable to forfeiture under the Customs and Excise Management Act 1979, and no provision is made in the Act which might enable tainted goods to be returned to the competent authorities of the country from which they originate.

Both the police and Customs officers have powers of seizure for objects which are potential evidence in relation to the investigation of an offence, under the Police and Criminal Evidence Act 1984. Even where these powers of seizure are triggered, for example, because an offence has been committed in relation to an item illegally exported from an occupied territory, the United Kingdom would not necessarily be able to comply with its obligations under the 1954 Protocol. Even if an object can be seized, the police would not have the power to retain that object indefinitely (as might be required if the occupation of the territory concerned has not ceased), or to return it to the competent authorities of the territory concerned.

The United Kingdom’s difficulty in complying with these obligations is likely to be most acute where no offence has been committed by the person in possession of an item which has been illegally exported from an occupied territory. In such a case, neither the police nor HM Revenue and Customs would have power to seize the item.

The provisions of the Bill, therefore, are designed to ensure that the government has an effective power to seize any such cultural property, retain it until the end of hostilities (and take necessary safeguarding measures in relation to it), and return it to the competent authorities.

### *The provision of immunity from seizure*

The Convention requires Parties to give immunity from “seizure, placing in prize, or capture” to any cultural property which is protected under the Convention and to the means of transport exclusively engaged in transferring protected cultural property.

Existing UK law provides immunity from seizure in limited circumstances. Two categories of property are recognised as being entitled to immunity – diplomatic property, and some state property. In order to comply with our obligations under the Convention, however, it will be necessary to provide immunity from seizure which is sufficiently extensive to cover any of the circumstances outlined in the Convention.

## **Consultation**

On 6 September 2005 DCMS launched a public consultation on the *1954 Hague Convention on the Protection of Cultural Property in the Event of Armed Conflict* and its two *Protocols of 1954 and 1999*. The consultation closed on 2 December 2005 and a total of 54 organisations and individuals responded to the consultation.

Six themes were highlighted for consultation:

- **General Protection** – the types of cultural property that should receive general protection under the Convention;
- **Coverage** – whether the protection offered by the Convention should be mandatory or voluntary;
- **Responsibility** – who should be responsible for taking the peacetime safeguarding measures illustrated in the Convention and its two Protocols;
- **Special Emblem** – whether the affixing of a special emblem to protected property should be mandatory or voluntary;
- **Special Protection** – whether the UK should make use of the provisions for special protection; and
- **Enhanced Protection** – the types of cultural property that should be given enhanced protection under the Second Protocol.

These issues were related to how the Convention would be implemented in practice in the UK following ratification and did not cover the proposed provisions of the Bill (although, clearly some of the issues raised, such as on the special emblem, were relevant to the Bill).

The Government published a response to the consultation on 4 November 2006. Copies of both the consultation document and the Government's response can be downloaded via the DCMS website at:

<http://www.culture.gov.uk/NR/rdonlyres/C234A6B1-3178-4350-8C72-C354F24D1CF9/0/HagueConvention.pdf>

<http://www.culture.gov.uk/NR/rdonlyres/A62A32AB-7A2C-4191-98C9-012F4D417A85/0/HagueGovernmentsresponsepublicationversionfinal.pdf>

### **Assessment Period**

Many of the measures contained in the Bill only operate during periods of armed conflict. The establishment of a rigorous assessment mechanism for these measures will, therefore, be difficult as it will only be possible to determine whether the measures to protect cultural property in periods of armed conflict are effective once there has been an armed conflict in which the UK is involved. Additionally, the success of the other measures is dependent upon the UK being used as a haven for both legitimate and illegitimate cultural property removed from an occupied territory. However, the measures related to inappropriate use of the blue shield and to prohibit the trade in cultural property illegally removed from occupied territory have a permanent effect and these measures can be assessed on a regular basis. Therefore, a five year assessment period has been introduced for the Bill.

### **Costs**

None of the measures proposed incur any one off costs, either monetised or non-monetised. There may be annual costs associated with the measures proposed, but these are likely to be minimal. The groups who will be affected by these costs are:

- the owners/guardians of protected cultural property;
- dealers in cultural property;
- the prosecuting authorities;
- the enforcement authorities; and
- central government.

### *Owners/guardians*

Owners/guardians of cultural property protected by the Convention may choose to affix the blue shield to their cultural property to visibly demonstrate that it is protected by the Convention. The blue shield may be affixed during peace time or only in times of armed conflict. The affixing of such an emblem is, however, an entirely voluntary matter. Neither the Bill nor the Convention require it. Cultural property will not lose its protection through the Convention because no emblem is affixed. Furthermore, the affixing of the emblem is not the only means by which enemy commanders will be able to identify protected property. It is the Government's intention to provide a password protected list to UNESCO, containing the GPS co-ordinates of all cultural property that the Government considers to be protected by the Convention. In the event of armed conflict the password will be supplied to any aggressor State and so there can be no doubt about the cultural property in the UK that is protected under the Convention. Thus, any costs incurred by private owners in affixing the emblem will be borne on a voluntary basis.

### *Dealers in cultural property*

The Bill will create a new offence of dealing in cultural property with the knowledge or reasonable suspicion that it has been illegally exported from occupied territory. It will also provide that cultural property that has been unlawfully exported from occupied territory is liable to forfeiture whether or not an offence has been committed (even when a subsequent purchase has been made in good faith – provision is made for the court to assess the compensation due in these cases). This will have an impact on both those who buy and sell cultural property such as dealers in antiquities and auction houses and those who purchase cultural property such as museums and galleries and private collectors. They will need to satisfy themselves that objects presented for sale have not been removed illegally from an occupied territory. This may require them carrying out additional due diligence measures when they are dealing in material which might be come under the scope of the proposed measures.

We do not, however, believe that these further checks will impose any significant new costs on dealers in cultural property. The provisions only apply to cultural property removed from occupied territory. The number of occupied territories around the world is currently very small (the only territories which the UK would now regard as being unequivocally occupied are the West Bank, East Jerusalem and the Golan Heights) and so the number of objects affected is small by comparison with the totality of cultural property that is traded by UK dealers.

In addition, dealers will not be required to do anything more than is required under, for example, the Code of practice for the Control of International Trading in Works of Art (compliance with which is a condition of membership of the British Antique Dealers Association and which is subscribed to by other organisations representing art and antique dealers in this country). Under that Code, Dealers undertake, not to import, export or transfer the ownership of such objects where they have reasonable cause to believe, inter alia:

- “(b) That an imported object has been acquired in or exported from its country of export in violation of that country's laws; and
- (c) That an imported object was acquired dishonestly or illegally from an official excavation site or monument or originated from an illegal, clandestine or otherwise unofficial site.”

The Code of Conduct of the Antiquities Dealers Association is also relevant and contains the following provisions that members agree to follow:

1. I undertake to the best of my ability to make my purchases in good faith. To this end I will establish the identity of the vendor and obtain a warranty that they have good title to the objects and where applicable have confirmation from the vendor that the item has been exported or imported in conformity with local laws. It is recommended that wherever possible members should arrange payment by a method that leaves an audit trail.

2. I undertake not to purchase or sell objects until I have established, to the best of my ability, that such objects were not stolen from excavations, architectural monuments, public institutions or private property.

The checks necessary to comply with these undertakings would reveal whether or not objects have been unlawfully excavated from occupied territory. Accordingly, we do not think that the Bill will in practice require dealers to incur greater costs than those to which they are already subject.

#### *Prosecuting/enforcement authorities*

As explained above, the 1954 Hague Convention and its Two Protocols, broadly speaking, imposes three categories of obligations on signatories:

- (i) to take measures to protect one's own cultural property when under attack;
- (ii) to take measures to protect another State's cultural property when one is attacking or occupying that State; and
- (iii) to take measures to stop the illegal removal and sale of cultural artefacts removed from a territory under occupation.

We believe that the costs incurred under each of these categories is likely to be very low and our reasons for this are as follows:

#### *Measures to protect the UK's cultural property when under attack*

Europe has seen a period of protracted period of peace since the conclusion of the Second World War and the creation of the European Union. The Government's assessment of the short and medium term threat of armed invasion of the UK by another country is zero. Thus, the likelihood of there needing to be any prosecutions in respect of this element of the Convention is considered to be practically zero.

#### *Measures to protect other countries' cultural property when UK forces are operating overseas*

The 1954 Hague Convention is treated by the UK military as being part of customary international law and so British troops have for a number of years been trained in the need to respect cultural property and not to subject it to unnecessary attack or damage. The Tri-Service Manual has instructions explicitly covering cultural property and this forms part of the training for all UK troops. Thus, the likelihood of UK troops being prosecuted under this Bill for damaging cultural property is extremely small. It is worth noting in this regard that although there have been instances of damage to cultural property in Iraq by coalition forces, none of these have been carried out by UK troops.

In relation to the most serious offences under Article 15(1) of the 1999 Protocol, we would be obliged to take jurisdiction over offences committed anywhere if the offender is present in UK territory. However, we are only aware of one prosecution being brought internationally in relation to the destruction of cultural property (this relates to a Serb commander's destruction of cultural property during the war with Bosnia-Herzegovina), and there is no reason to suppose that our adherence to the Convention and its Protocols would lead to demand for such prosecutions in the UK.

#### *Measures to stop the illegal removal and sale of cultural property from an occupied territory*

The cost of a police investigation may be in the region of £3,000, though this figure increases with the complexity of the investigation (figure provided by the Art and Antiques Unit, Metropolitan Police). Her Majesty's Revenue and Customs are not able to provide a similar figure for the investigations they would have to undertake as there are too many variables involved to make any calculation reliable. Figures provided by the Crown Prosecution Service suggest that a trial where the accused pleads not guilty would cost in the region of £3,000, whereas, a guilty plea would reduce that figure to £500.

However, it is worth noting that the Dealing in Cultural Objects (Offences) Act 2003 and the Iraq (United Nations Sanctions) Order 2003 both contain similar (but not identical) offences to those proposed in the Bill in relation to the illegal removal and sale of cultural property from occupied territory. There have been no prosecutions to date under either the Act or the Order. In addition, the number of countries which currently meet the agreed definition of occupied territory is very small (we are currently only aware of 3 such territories – the West Bank, the Gaza Strip and the Golan Heights. Other territories may have been occupied in the past, but we do not believe that the number of such territories is significant). Thus, while there is a possibility that there might be prosecutions under this part of the proposed Bill we believe that the chances of this happening are extremely small (and therefore it is unlikely that the costs outlined above will be incurred). It is worth noting that the First Protocol has been ratified by 93 countries and has been in existence for over 50 years. During that period we are only aware of one occasion in which the authorities of an occupied territory have sought to use the Protocol to obtain the return of cultural property unlawfully exported from their territory.

Any costs relating to the return of cultural property to its country of origin would be incurred by central government and are covered below in that section.

#### *Central Government*

Central Government will not incur any additional costs directly associated with the Bill other than the possible need to store cultural property that has been removed from an occupied territory until such time as it can be returned to a competent authority. For the reasons explained above, however, we anticipate that the number of such cases arising will be minimal.

The Government may also incur costs if it is obliged to pay compensation to the holders in good faith of cultural property which has been unlawfully exported from occupied territory and must be returned to the authorities of that territory. However, this only applies where the UK is the occupying power in relation to that territory, and therefore would be in a position and under an obligation to prevent the export of cultural property. The UK is not currently an occupying power.

The Government and its non-departmental public bodies will incur some additional costs associated with implementation of the 1954 Hague Convention and its Two Protocols in the UK. For example, the costs associated with producing and then periodically updating the list of cultural property that the Government considers to be protected by the Convention. It is anticipated, however, that these costs can be absorbed within current budgets and therefore not require any additional funds.

### **Benefits**

The main benefits of the proposals centre around the protection of cultural property in the UK and internationally and the formalising of our armed forces' responsibilities to cultural property when operating abroad. The main beneficiaries of this are the military, owners/guardians of protected cultural property, occupied States and the general public (both within the UK and internationally). The benefits of the proposal are difficult to monetise given the large and varied number of cultural assets covered by the Bill. Furthermore, many of the benefits can only be realised in the event of an armed conflict and/or occupation.

#### *General public (both within the UK and internationally)*

The purpose of the Bill (and the Convention and its two Protocols) is the protection of cultural property during times of armed conflict. The deliberate destruction of cultural property during armed conflict is often carried out with the express intention of either demoralising a defending nation by attacking the fabric of that which it holds dear or by eradicating all trace of a particular ethnic or religious group that the attackers wish to exterminate. The protection and preservation of cultural property during armed conflict is, thus, of major benefit to all people. The psychological, morale, economic and cultural identity benefits of protecting the nation's most important cultural assets (which are often used to identify a nation or race of people) in times of armed conflict would be difficult to monetise.

### *Military*

The UK military is already trained to respect cultural property when carrying out operations abroad and, wherever necessary, take reasonable steps to ensure that cultural property does not become the object of attack. The provisions of the Bill will formalise the responsibilities of military commanders in this respect and will provide both greater certainty over what is and is not permitted and provide a legal framework within which to take and validate decisions. This will provide clarity to military commanders and personnel with regard to what they can and can't do and where the responsibility for actions lie.

### *Owners/guardians*

The introduction of the protection regimes which include the use of the emblem, along with other measures to be undertaken by central government, will put in place mechanisms which, it is hoped, will prevent UK cultural property from becoming the object of attack in the event of invasion. This will have clear financial and psychological benefits to those who own or act as guardians to such property.

### *Occupied States*

The measures proposed within the Bill include introducing an offence of dealing in cultural property unlawfully removed from an occupied territory, provision for the forfeiture and return of such property to its country of origin and immunity from seizure for cultural property which is brought into the UK for safe keeping from an occupied State. These measures will assist occupied states by protecting and where necessary recovering their cultural heritage.

## **Key Assumptions/Sensitivities/Risks**

The Bill cost and benefit models outlined above are based on three assumptions:

- that UK armed forces already act in a way which would not contravene any of the offences being proposed. This assumption is based on the recent operations of the UK armed forces and the inclusion of a section in the Tri-Service Manual which outlines their general responsibilities regarding cultural property;
- that there will be a low level of offences committed under the provisions included within the Bill. This refers not only to offences committed by UK armed forces personnel (for reasons outlined above), but also those offences that relate to dealing in cultural property illegally removed from an occupied State and those concerning the illegal use of the emblem. These assumptions are based on the low number of countries which are currently considered occupied, and the low level of offences regarding the illegal use of other international humanitarian emblems (e.g. the Red Cross); and
- that it will be unlikely that the UK will be in a position of having to pay compensation to a good faith purchaser of an item of cultural property if that property needs to be returned to its country of origin (having been illegally removed). This is because the system being put in place means that the only scenario where such compensation would be payable would be where the UK is the occupying power, which we consider unlikely in the current climate.

## **Enforcement**

The Bill contains a number of offences and so the issue of enforcement is a key one. As has been explained above, it is not envisaged that these additional offences will add significantly to the workload of any of the enforcement agencies. The enforcement agencies concerned will be the Police and Her Majesty's Revenue and Customs.

Appropriate use of the blue shield will on application be authorised by a representative of the Secretary of State. In the case of immovable cultural property this will be English Heritage and in the case of movable cultural property this will be the Museums, Libraries and Archives Council. The equivalent of these organisations will exercise the same function in each of the

Devolved Administrations. As explained above, we will not be encouraging the affixing of the blue shield and, therefore, anticipate the number of cases in which such authorisation will be required will be small.

The enforcement regime will meet the Hampton Review principles.

### **Offsetting**

There are no offsetting measures planned. The proposals laid out in the Bill will not place an excessive additional regulatory burden on stakeholders and there are no areas in which existing regulations can readily be simplified.

### **Greenhouse gas emissions**

The only impact that this policy may have on greenhouse emissions relates to the potential need to transport cultural property in times of armed conflict. There is a low likelihood of such a crisis occurring and were it to occur, the impact on gas emissions would be low, as only one journey would be needed to move the cultural property in question from the location in danger to a place of safety.

### **Competition Assessment**

Using the Office of Fair Trading’s Competitive Impact filter, of the nine questions, all were answered ‘No’. As a result, it was concluded that it was highly unlikely that the proposed measures would have an impact on competition.

## **Specific Impact Tests: Checklist**

Use the table below to demonstrate how broadly you have considered the potential impacts of your policy options.

**Ensure that the results of any tests that impact on the cost-benefit analysis are contained within the main evidence base; other results may be annexed.**

<b>Type of testing undertaken</b>	<b><i>Results in Evidence Base?</i></b>	<b><i>Results annexed?</i></b>
Competition Assessment	No	No
Small Firms Impact Test	No	No
Legal Aid	No	No
Sustainable Development	No	No
Carbon Assessment	No	No
Other Environment	No	No
Health Impact Assessment	No	No
Race Equality	No	No
Disability Equality	No	No
Gender Equality	No	No
Human Rights	Yes	Yes
Rural Proofing	No	No



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