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**UNITED NATIONS EDUCATIONAL,
SCIENTIFIC AND CULTURAL ORGANIZATION**

**DIPLOMATIC CONFERENCE ON THE SECOND PROTOCOL
TO THE HAGUE CONVENTION FOR THE PROTECTION OF CULTURAL
PROPERTY IN THE EVENT OF ARMED CONFLICT¹**

(The Hague, 15 - 26 March 1999)

SUMMARY REPORT

1. The Diplomatic Conference convened jointly by the Netherlands and UNESCO on the Second Protocol to the Hague Convention for the Protection of Cultural Property in the Event of Armed Conflict was held at The Hague, at the invitation of the Government of the Netherlands, from 15 to 26 March 1999.
2. Of the current 95 States Parties, 74 participated in the Conference. Nineteen States not party to the Convention as well as Palestine were represented as Observers at the Conference. Of international organisations, the International Committee of the Red Cross (ICRC) and the International Committee of the Blue Shield (ICBS), a four-member international non-governmental organisation (International Council on Archives (ICA), International Council of Museums (ICOM), International Council on Monuments and Sites (ICOMOS) and International Federation of Library Associations and Institutions (IFLA)) were represented.
3. The Conference was opened by Mr J. J. Van Aartsen, Minister of Foreign Affairs of the Netherlands, Dr F. Van Der Ploeg, Secretary of State of the Netherlands for Culture and Dr. Federico Mayor, Director-General of UNESCO. They summarised reasons for the review of the Convention which resulted in the elaboration of the Draft Second Protocol and the need for a new concept of the protection of cultural heritage during hostilities in the contemporary world. The link with the First Hague Peace Conference in 1899 was noted for the development of international law, international relations and humanitarian law.
4. The Conference elected by consensus Mr Adriaan Bos (the Netherlands) as Chairperson. On his proposal, the Conference decided to proceed as far as possible on the basis of consensus. It then elected its Bureau, consisting of Mr J. Jelen (Hungary) Rapporteur, and Argentina, Senegal, Syrian Arab Republic and Thailand as Vice-Presidents and adopted its agenda. It further elected the Credentials Committee (Germany, Islamic Republic of Iran and Russian Federation) chaired by Mr R. Hilger (Germany) and the

¹ The current report reflects the main issues of the March 1999 Hague Diplomatic Conference on the Second Protocol to the Hague Convention. The full proceedings will be published at a later date.

Drafting Committee chaired by Mr Ch. Held (Switzerland) and composed of representatives of Australia, Cameroon, China, Egypt, France, Russian Federation, Spain, Switzerland and the United Kingdom.

5. The Chairperson then opened general discussion. Some delegates thought that the Draft Second Protocol represented an amendment to the Convention and consequently that the procedure under Article 39 of the Convention should be applied; others were in favour of adopting a new Convention and yet others preferred the adoption of an Optional Second Protocol. Several States stressed that the adoption of the Second Protocol should not affect the rights and obligations of States Parties to the Convention which might decline to be bound by the Second Protocol.

6. The deficiencies of the current rules on “special protection” and the need for an improved system were mentioned. Also noted was the need to strike a balance between military interest and the interest in the protection of human life, and in the protection of cultural property. The importance of provisions on “military necessity” was also stressed. Some States thought that other instruments of international humanitarian law were not sufficiently reflected in the Draft Second Protocol. Another view expressed the importance of a clear, coherent instrument that could realistically be accepted.

7. Considerable interest was expressed in the important issues of criminal responsibility and international jurisdiction for enforcement and in legal co-operation. Some participants thought that the penal sanctions should exactly reflect those in Additional Protocol I to the Geneva Conventions. As to individual criminal responsibility, some States felt that the Second Protocol should establish a different legal regime from that which already exists in the 1998 Statute of the International Criminal Court, but others felt that it should follow it, since the concept of individual criminal responsibility and that of State responsibility had already been embraced by the international community in those instruments.

8. The establishment of an Intergovernmental Committee was preferred by some Delegations but an alternative structure also received some support. One State mentioned the importance of the draft provisions on occupied territory, and another doubted the wisdom of compulsory contributions to a fund. Five States (China, Denmark, Ireland, United Kingdom and United States of America) announced progress towards their participation in the Hague Convention.

9. The Chapter-by-Chapter discussions began with substantive issues raised by Chapter 2 (**General protection of cultural property**) of the Draft, discussion on Chapter 1 being postponed until these had been dealt with. With respect to the **Standard of general protection of cultural property** (draft Article 4), a few States wanted significant changes to the description of cultural property, considering that the draft weakened the provisions of the Hague Convention and was contrary to the provisions of Additional Protocol I to the Geneva Convention.

10. As to the **Loss of general protection**, some States felt that draft Article 5 should be reformulated to coincide with the relevant provisions of Additional Protocol I to the Geneva Convention. Others wanted a redraft to remove possible justification for attacks on cultural property.

11. When considering draft Article 6 on **Conditions for military operations** and its relation to the provision of Article 4(2) of the Convention on the notion of “imperative military necessity”, some States wanted a more precise and limited definition, outlining the conditions under which the concept could be invoked to better regulate the conduct of States. Others felt there should be more reliance on the provisions already existing in other instruments of international humanitarian law, notably Additional Protocol I to the Geneva Conventions while yet others doubted that the Draft made provision both for the attacker and the attacked. It was proposed that the authorisation for attack against cultural property (Article 6(a)) should be modified: some States wanted a higher level of approval, and others wanted more flexibility.

12. There were two views on draft Article 7 (**Precautions against attack**) as to provision or not of a waiver where urgent circumstances required. On the **Protection of cultural property in occupied territory** (draft Article 10) there was disagreement as to whether an occupying State should be permitted to excavate in occupied territories; e.g. to protect a damaged site. The terms “integrity” and “authenticity” and the term “illicit” were said to need clarification and the language of Chapter 2 changed to better reflect its supplementary relationship to the Convention. Finally, some States expressed the need to avoid any changes that might lead to ambiguity, especially at the operational level.

13. Mr T. Desch (Austria) chaired an informal Working Group on draft Articles 4 – 9 and reported back to the Plenary. Draft Article 3 raised little discussion. The new draft Article 4 (**Respect for cultural property**) was intended to clarify “imperative military necessity” in Article 4(2) of the Convention, by specifying situations where this might be invoked as well as inserting restrictions against its abuse. In determining that cultural property is a military objective, the use of cultural property for military purposes is significant. Two new draft Articles were formulated: Article 5 (**Precautions in attack**), based on Article 57 of Additional Protocol I, and Article 6 (**Precautions against the effects of hostilities**), inspired by Article 58 of Additional Protocol I. A new draft Article 7 (old draft Article 10) on the **Protection of cultural property in occupied territory** allowed the Occupying Power to carry out archaeological excavations but only in close co-operation with the national authorities of the occupied territory. In Plenary one delegate expressed his strong opposition to the new Article 9(2) on archaeological excavations in occupied territory by pointing out that in some occupied territories, activities of national institutions are curtailed or even subjected to closure. The Chairperson pointed out that this Article, as well as the remainder of Chapter 2, was reached by consensus and on his appeal to accept the redrafted version, the delegate agreed.

14. A number of States supported what they considered to be the new level of protection contained in Chapter 3 (**Enhanced special protection**). Certain States felt that “enhanced special protection” should be extended to include the surroundings of cultural property. A few States felt there was no need for the new level of protection proposed but others felt that, since the provisions of the Convention had been unsuccessful, these supplementary provisions were essential.

15. Many States felt that the provisions of draft Article 11 on **Enhanced special protection** should reflect those of Chapter 2 of the Convention and better distinguish the higher level of protection this Article provides; for example it should reflect Article 8 of the Convention which requires that specially protected cultural property must not be near a military objective nor used for military purposes. A substantial majority of the Delegations

felt that the provisions of Article 11(a) should be revised to refer to “humankind” as opposed to “all peoples”; emphasizing the common interest in safeguarding important cultural heritage. One State felt that the text should reflect the right of a country to protect its cultural property as a human right. With regard to Article 11(b) and (c), some felt that making the granting of “enhanced special protection” dependent on legislative and administrative actions taken at the national level, removed the superior level of this type of protection as accorded in Article 11(a) of the Draft Second Protocol, to a level no higher than the protection provisions of Article 8 of the Convention. Others felt that sub-paragraphs (b) and (c) did not take into consideration the difficulties that could arise in a federal State, nor the difficulty that poorer countries could have in implementing these provisions, especially without international technical assistance.

16. Some States thought that the provisions of Article 12 on **The granting of enhanced special protection** should be moved to Chapter 6 (**Institutional issues**) since they concerned procedural matters under the responsibility of the Committee. Others felt that this draft Article should better clarify the relationship between special protection under the Convention, and “enhanced special protection” under the Draft Second Protocol. One State proposed that Article 12(2) should allow Parties from one State to request inscription on the International List of Cultural Property under Enhanced Special Protection of cultural property located in a second State, in order to protect the cultural property of minorities. Two Delegates suggested amending Article 12(3) to clarify that a recommendation of a non-governmental organization had no effect without a request by a State (Article 12(2)) and a decision by the Committee. While some States welcomed Article 12(5), permitting objections to the inclusion of cultural property in the List, others felt that a belligerent State should abstain when a vote is taken; while yet others wanted the provision clarified to show that the Committee could overrule objections. While it was considered that Article 12(6) on emergency measures should remain unchanged, some States felt a need for the process to be simplified.

17. A request was made to restructure draft Article 13 on the **Immunity of cultural property under enhanced special protection** to clarify when immunity could be lost. Another view was that this draft Article should clearly indicate “Party” in a singular sense in order to prevent any interpretation to include collective action.

18. Many States wanted to clarify conditions for the **Loss of enhanced special protection** under Article 14. Some argued for closing any possible loophole by making the conditions for loss “direct and indirect support of military operations”. Others felt that the wording of Article 14 gave an unacceptable advantage to the side using such cultural property. Some participants were in favour of reconsidering phrases such as “other than its normal function” and “significant and direct support”. The ICRC Representative pointed out that, in Additional Protocol I to the Geneva Conventions, protection is no longer limited to only a few unique objects: attack is now allowed only on military objectives, all other objects being protected. The protection accorded to these significant items should therefore be substantially higher than the general protection.

19. As to draft Article 15 (**Conditions for military operations**), the view was expressed that Article 15(a) was not practical at an operational level and that such responsibility should either be accorded to the highest level of operational command, or a proviso such as “where circumstances permit” added. The ICRC Representative stated that “enhanced special protection” would apply only to supremely important cultural property and, since any attack

on such objects would have very significant political implications, it should only be authorised at the highest political level.

20. Some States wanted to reformulate draft Article 16 on the **Suspension of immunity of cultural property under enhanced special protection** to include informing a State whose cultural property has had its “enhanced special protection” removed.

21. Ms L. Terrillon-McKay (Canada) chaired an informal Working Group on draft Articles 11 – 17 and reported back to the Plenary. The use of the term “enhanced protection” instead of “enhanced special protection” was recommended, sub-paragraphs *b* and *c* were amalgamated into sub-paragraph *b* and a new sub-paragraph *c* in Article 11 inserted on the obligation not to use cultural property under enhanced protection for military purposes or to shield military objectives. Draft Article 12 on **The granting of enhanced protection** was redrafted to include procedural elements of draft Article 30 on **Procedure before the Committee relating to enhanced special protection**. The redrafted Article 14 on the **Loss of immunity of cultural property under enhanced protection**, made use of elements of Article 57 of Additional Protocol I to the Geneva Conventions with emphasis on the use of cultural property for military purposes.

22. In Plenary the use of “P” and “p” for Parties throughout the text was discussed. With regard to the new Article 13(1)(b), one Delegate was in favour of seeing the compromise word “use” replaced by the word “function” when defining the conditions under which immunity of property under enhanced protection could be lost thus bringing Chapter 3 in conformity with the relevant provisions of Chapter 2. The majority stressed that the different wording marked the distinction between the different levels of protection in each Chapter. In a spirit of compromise, the State concerned agreed to withdraw its objections.

23. Discussion of Chapter 6 (**Institutional issues**) revealed two options for Parties to the new Protocol: an Intergovernmental Committee or a Bureau. Some doubted that whether an intergovernmental body because of its political character was the best forum for taking decisions on the protection of cultural property of importance to all humankind and preferred an impartial, expert body. Others favoured the political weight and representative character of an Intergovernmental Committee for such decisions. The financial and institutional implications for the administration of the new Protocol made others prefer a Bureau, perhaps with some simplification of its functions.

24. In view of the linkage between the functions of the Committee and Chapter 3 (**Enhanced Special Protection**) it was proposed that Chapter 6 be reformulated to include certain provisions of draft Articles 12, 16 and 17 as well as to define clearly the respective roles of the Intergovernmental Committee and those of the advisory bodies. Some Delegations were in favour of granting the Committee the responsibility of monitoring of the provisions of the Convention. Other Delegations wished to clarify draft Article 29 (1)(d) on the use of the resources of the Fund and to insert a provision obliging the Committee to report on the use of the Fund in draft Article 29(1)(g). While many States were in favour of making contributions for **The Fund** (Article 32) voluntary, others felt that contributions should be compulsory to ensure its viability.

25. Most States stressed that Chapter 4 (**Jurisdiction and Responsibility**), together with Chapter 3 (**Enhanced special protection**), constituted the core of the Draft Second Protocol and would determine its success, since they remedied the Convention on special protection

and enforcement of sanctions and illustrated its supplementary character. One Delegate wished to clarify whether the sanctions under Chapter 4 should be of a more general nature as in Article 28 of the Convention, or whether they should be more specific as they are in the Draft Second Protocol, feeling that difficulties might arise if some States were obliged to adopt new national legislation.

26. With regard to draft Article 18 on **Grave breaches**, many States expressed their appreciation of the distinction between grave breaches and other violations which they felt reflected the approach of Additional Protocol I to the Geneva Conventions (particularly its Article 85(4)(d)) and of the Statute of the International Criminal Court, thus avoiding the creation of a new category of crimes and ensuring a large participation of the international community. Another view was that this draft Article introduced new categories of offences and crimes and this should be avoided in a supplementary instrument. Yet others accepted the draft Article in its present form since draft Articles 18(a) and (b) were applicable only to cultural property under "enhanced special protection". Draft Articles 18(c), (d) and (e), on the other hand, provided that, if violations against generally protected cultural property were of a systematic nature, were unlawful or wanton, thus creating extensive damage, or cultural property was the victim of reprisals, such violations would also be considered as grave breaches. The ICRC representative noted that in its enumeration of grave breaches, this draft Article did not include either intentional attack or pillage, both of which were now accepted as war crimes in the Statute of the International Criminal Court.

27. As to draft Article 19 on **Other violations**, guidelines were proposed for introduction into 19(1) to indicate the type of national legislation to be adopted. Some Delegations wanted the obligation to enact legislation at national level (Article 19(2)) only for breaches enumerated in draft Article 18. One State noted the difficulty for some developing countries to enact the necessary legislation, since they often lacked adequate records of their cultural property. Finally, while some felt that the second paragraph could be moved to draft Article 21 since it dealt more with matters of jurisdiction, others felt that this paragraph should not only be separate, but also apply to Articles 18 and 19 of the Draft Second Protocol.

28. There was general satisfaction at the inclusion of the notion of **Individual criminal responsibility** (draft Article 20). Some States wished to harmonize the definition with other existing instruments of international humanitarian law such as Additional Protocol I to the Geneva Conventions or the Statute of the International Criminal Court and to avoid the inclusion of ancillary crimes such as those in draft Article 20(2). Opinions were divided on the criminalisation of attempts. Some were in favour of clarifying draft Article 20(4) and making it applicable only to grave crimes. In respect of draft Article 20(6) on superior orders, some States wished to follow the provisions of Article 33 of the Statute of the International Criminal Court because, at the operational level, the soldier would be more constrained by his obligation to obey a higher grade officer.

29. Speaking on draft Article 21 on **Jurisdiction**, the ICRC representative noted that the notion of international jurisdiction was already reflected in existing instruments of international humanitarian law, such as Article 8(a) of the Statute of the International Criminal Court. The experience of ICRC was that a two-tier system tended to heighten the difficulty of persuading States to enact national legislation. To adopt clear guidelines on international criminal jurisdiction, there must be a specific list of grave breaches as well as of acts creating criminal responsibility, both generally accepted as falling under international

jurisdiction. Another view was that it was not appropriate to deal with international criminal law in a supplementary instrument.

30. Some States supported draft Article 22 on the **Responsibility of parties to a conflict** because, in their view, it reflected generally accepted rules of customary international law. Others referred to existing work in the United Nations International Law Commission, and wished to delete it. The ICRC representative noted that Article 91 of Additional Protocol I to the Geneva Conventions provided for the responsibility of States for all acts committed by persons forming part of their armed forces.

31. Draft Article 23 on **Mutual assistance in criminal matters** was welcomed by some States as necessary for effective enforcement, others considered that it differed from provisions already existing in other instruments of international humanitarian law. Some Delegates argued for its retention unchanged because existing provisions in international humanitarian law were too vague, especially on the issues of extradition and co-operation.

32. Mr. H. Fischer (Germany) agreed to chair an informal Working Group to work on the reformulation of the provisions of Chapter 4 in the light of all these observations. Reporting back to the Plenary, the Chairman stated that the redraft had succeeded in reaching a balance between the rights of the attacker and those of the defender. The redraft provided for enforcement machinery not provided in the Convention.

33. Chapter 5 (**The protection of cultural property in armed conflicts of a non-international character**) containing one draft Article 24 (**Non-international armed conflicts**) elicited diverging views. Some States doubted its applicability and others wished to limit its scope, yet others wanted clarification. Some thought that draft Articles 24(2) to (4) were inconsistent with the provisions of Article 19 of the Convention and some of the other provisions of the Draft Second Protocol. However, in view of the loss of cultural heritage in recent non-international armed conflict, a large number of States welcomed the provisions of Chapter 5. Some States suggested that these provisions should be included under Article 2 on the scope of the Draft Second Protocol.

34. The ICRC representative explained that non-international armed conflicts are very complex and that was precisely why they should be under the same regime as international armed conflicts. Government forces in non-international conflicts are trained to respect certain obligations and those fighting against them should be subject to the same obligations.

35. Ms A. Connelly (Ireland) agreed to chair an informal Working Group to work on draft Article 24 together with Chapter 1 of the Draft. This Group considered and redrafted the provisions and reported to the Plenary. General agreement was reached on the applicability of the Second Protocol to non-international armed conflicts, occurring within the territory of one of the Parties. There being divergent views on the extent to which the provisions on serious violations of the Protocol should apply in such situations, this Chapter had been redrafted.

36. In Plenary the ICRC representative questioned the clarity of the use of the word "Party" in the redrafted Article 22 and proposed to add the term "to the conflict" at the end of Article 22(1). However, a number of States opposed this as it could lead to difficulties in interpretation because the word "Parties" in this instance refers both to Parties to the Protocol and Parties to the conflict. Finally, this proposal was not accepted. In this context, the

Chairman of the Drafting Committee made the following statement: The Drafting Committee considered that the term 'parties to a conflict' could also apply to non-State parties to a conflict by virtue of Article 22 which provides that the Second Protocol applies to non-international armed conflicts and that this Protocol is to be interpreted in that sense.

37. Mr J. Jelen (Hungary) agreed to chair an informal Working Group to work on the provisions of Chapter 6. This Group reported back to the Plenary that the revised text of Chapter 6 represented a compromise between the two options proposed. The Plenary meeting decided that this body should be called an intergovernmental committee. The new text of Chapter 6 included a clear enumeration of the functions of the supervisory body, and guidelines for the use of the Fund, which no longer has compulsory contributions. The Working Group also added other professional non-governmental organizations which might advise the new supervisory body. A resolution was discussed and amended concerning the Fund and received no opposition.

38. As to Chapter 7 (**Dissemination of Information and International Assistance**), some delegates thought that means of **Dissemination** (draft Article 33) should not be limited to the provisions of 33(3)(b) to (d). Others considered it more ambitious than Article 25 of the Convention and the relevant provisions of Additional Protocol I to the Geneva Conventions and wished to modify or delete it.

39. When discussing draft Article 34 on the **International Co-operation**, some Delegations wished to refer to Articles 18 and 19 of the Draft Second Protocol in order to prevent confusion or subjective interpretation. Others preferred to replace the term "serious violations" by the term "grave breaches" with a view to harmonizing the terminology of the new Protocol.

40. In Plenary, one State felt that Article 32(1) of the redraft relating to **International Assistance** (former draft Article 35) was inconsistent with redrafted Articles 27(1) and 29(1)(a) related to the administration of the Fund; it would also include the notion of international assistance for the preparation of sites for enhanced protection and refer to Article 5 of the Second Protocol. The Chairman of the Working Group pointed out that the current version of the text took into account many differing interests and ensured the cohesion between Chapters 6 and 7. Finally, the Chairman of the Conference referred to a draft resolution to be adopted by the Conference and asked whether the draft resolution would not solve this problem. This compromise was then accepted.

41. As to draft Article 37 on the **Protection of international and national members of the Blue Shield Organisation and other persons**, some Delegations wished to extend this protection to other NGOs and international workers. One State thought "shall protect" was too heavy an obligation while the ICRC Representative suggested a version based on Article 71 of Additional Protocol I to the Geneva Conventions. Certain Delegates proposed that protection be withdrawn from Blue Shield workers if they involved themselves in the hostilities. Furthermore, it was felt that the provisions of paragraph 1(a) needed to be more specific. Following a discussion in Plenary draft Article 37 was deleted on the basis that the relevant provisions of the Convention and Additional Protocol I sufficed.

42. Considering Chapter 8 (**Execution of this Protocol**), some wanted deletion of draft Articles 38 on the **Protecting Powers** and 39 on **Conciliation procedure**, on the basis that Articles 21 and 22 of the Hague Convention sufficed. Responding to doubts as to the

applicability of the system of Protecting Powers in non-international armed conflicts, the ICRC Representative stressed the importance of maintaining this notion, mentioning existing precedents in the Geneva Conventions. Some States felt that the use of the word “neutral” in draft Article 39(2) could be confusing. Others felt that draft Articles 39 and 40 (**Conciliation in absence of Protecting Powers**) should be reformulated in order not to exclude the intervention of the Director-General of UNESCO even where Protecting Powers had been appointed.

43. During the discussion of draft Article 42 on **Meetings** some States enquired why the Director-General should report on the General Assembly of Parties to the Executive Board. Others queried the relationship between the General Assembly of Parties and the new supervisory body. With regard to paragraph 2 two options were proposed: to redraft it in conformity with Article 39 of the Convention or to delete it.

44. In discussing Chapter 9 (**Final clauses**), and especially draft Article 43 on **Languages**, some felt that all the language versions of the Second Protocol should be equally authentic. One State suggested that this draft Article should reflect the corresponding ones in the Convention, while another pointed out that Article 33(2) of the Vienna Convention on the Law of Treaties 1969 provides for authoritative versions of a treaty in languages in which it was not negotiated. Another view was that all “authentic” texts had to be negotiated at the Conference. It was decided that the Second Protocol would be prepared in six authentic languages (Arabic, Chinese, English, French, Russian and Spanish) and that the translations in all these languages would be sent to the Drafting Committee with a view of harmonising terminology and verifying the texts.

45. As to draft Article 44 on **Reservations**, some States thought a “no reservations” clause without precedent in international humanitarian law and that it might prevent universal acceptance of the Second Protocol and preferred following the relevant provisions of the 1969 Vienna Convention on the Law of Treaties. Other States, arguing for its retention, stressed that the provisions of the Draft Second Protocol were of fundamental importance and deserved special legal status, urging that these were very detailed provisions on a specific topic and that a no-reservations principle was therefore permissible (as a precedent, the Convention on the Prohibition of the Use, Stockpiling, Production and Transfer of Anti-personnel Mines and on their Destruction 1997). Finally, a consensus was developed that Article 19 of the 1969 Vienna Convention sufficiently covered the case and, therefore, the draft Article was deleted.

46. The Secretariat provided a redraft of Chapter 9 (**Final Clauses**) based on the different views and suggestions made during the discussions. In Plenary, the terminology of Articles 42 – 46 was harmonized in conformity with the 1969 Vienna Convention.

47. The meeting then turned to the discussion of Chapter 1 (**Introduction**). Following discussion of draft Article 1 on **Definitions** in the Plenary, the final decision of the Plenary was that this Article was adequate, subject to two modifications related to the definition of “military objective” and “illicit”.

48. With respect to draft Article 2 on **Relation to the Convention**, questions were raised as to the status of States not party to the Convention and whether the Draft Second Protocol was supplementary or an amendment. This Chapter was considered further with Chapter 5 in the Working Group chaired by Ms Connelly. On return to Plenary, it was proposed to divide

draft Article 2 on the **Relation to the Convention** into three separate Articles, one on the general relationship of the Second Protocol to the Convention, a second on the scope of application of the Second Protocol, and a third on the relationship between Chapter 3 (**Enhanced Protection**) and other provisions of the Convention and of the Second Protocol. Most States thought the new Protocol should be supplementary to the Convention and could be validly adopted by the Diplomatic Conference. However, three States were in favour of applying Article 39(5) of the Convention. The redrafted provision on the scope of application, a new paragraph related to the relationship between new Chapter 3 (**Enhanced Protection**) and other provisions of the Convention and of the Second Protocol were adopted.

49. The Plenary continued its work by discussing the Preamble. Several small modifications were proposed. A new paragraph stipulated expressly that issues not regulated by the Second Protocol would be governed by the rules of customary international law.

50. The whole text having been reviewed by the Drafting Committee, the Conference finished its work by adopting, by acclamation, the Second Protocol to the Hague Convention for the Protection of Cultural Property in the Event of Armed Conflict 1954 together with the Final Act of the Conference and a resolution. Copies appear as Annex 1 and 2 to this report. Two States made declarations (Annex 3).

51. Closing the Plenary meeting, the Chairperson congratulated the participants and observers for their efforts, diligence and spirit of consensus allowing the Conference to reach by compromise a final text, acceptable to States parties to the Convention. He expressed the hope that the Second Protocol would meet with wide acceptance.

**Final act of the Diplomatic Conference on the Second Protocol
to the Hague Convention for the Protection of Cultural Property
in the Event of Armed Conflict**

(The Hague, 15 - 26 March 1999)

1. The Diplomatic Conference convened by the Government of the Netherlands and the United Nations Educational, Scientific and Cultural Organization on the Second Protocol to the Hague Convention for the Protection of Cultural Property in the Event of Armed Conflict was held at The Hague, at the invitation of the Government of the Netherlands, from 15 to 26 March 1999, and deliberated on the basis of a draft prepared jointly by the Government of the Netherlands and the United Nations Educational, Scientific and Cultural Organisation.
2. Altogether 93 States, Members of UNESCO or the United Nations, took part in the Conference. Representatives of 74 States Parties to the Hague Convention for the Protection of Cultural Property in the Event of Armed Conflict participated in the Conference, namely representatives of: Albania, Argentina, Armenia, Australia, Austria, Azerbaijan, Belarus, Belgium, Bosnia and Herzegovina, Bulgaria, Cambodia, Cameroon, Canada, Colombia, Côte d'Ivoire, Croatia, Cuba, Cyprus, Czech Republic, the Democratic Republic of the Congo, Egypt, Estonia, Finland, France, Georgia, Germany, Ghana, Greece, Guatemala, Holy See, Hungary, India, Indonesia, Islamic Republic of Iran, Israel, Italy, Jordan, Kuwait, Lebanon, Libyan Arab Jamahiriya, Luxembourg, Mali, Malaysia, Mongolia, Morocco, Netherlands, Niger, Nigeria, Norway, Oman, Pakistan, Panama, Peru, Poland, Qatar, Romania, Russian Federation, Saudi Arabia, Senegal, Slovakia, Slovenia, Spain, Sudan, Sweden, Switzerland, Syrian Arab Republic, Tajikistan, Thailand, the former Yugoslav Republic of Macedonia, Tunisia, Turkey, Ukraine, Uzbekistan and Yemen.
3. 19 non-States Parties were represented at the Conference, namely: Algeria, Botswana, Chile, China, Denmark, Ethiopia, Ireland, Japan, Philippines, Portugal, Republic of Korea, South Africa, Suriname, Tonga, Turkmenistan, United Kingdom, United States of America, Uruguay and Vietnam. The observer delegation of Palestine was also represented.
4. The International Committee of the Red Cross (ICRC) was represented as an observer at the Conference.
5. The following international non-governmental Organization was represented by observers at the Conference: International Committee of the Blue Shield (ICBS). Its representative spoke on behalf of the four following constituent bodies of this Committee - International Council on Archives (ICA), International Council of Museums (ICOM), International Council on Monuments and Sites (ICOMOS) and International Federation of Library Associations and Institutions (IFLA).
6. The Conference elected Mr A. Bos (the Netherlands) as President.

7. The Conference elected as Vice-Presidents the following countries:

Argentina
Senegal
Syrian Arab Republic
Thailand

8. The Conference also elected Mr J. Jelen (Hungary) as Rapporteur.

9. The following subsidiary bodies were set up by the Conference:

Credentials Committee:

Chair: Mr R. Hilger (Germany)
Members: Islamic Republic of Iran and Russian Federation

Drafting Committee:

Chair: Mr Ch. Held (Switzerland)
Members: Australia, Cameroon, China, Egypt, France, Russian Federation, Spain and United Kingdom

10. The basic working documents used by the Conference and its organs were the Draft Second Protocol to the Hague Convention for the Protection of Cultural Property in the Event of Armed Conflict (HC/1999/1/rev. 1) with reference document to this Draft (HC/1999/INF/1) together with its Addendum (HC/1999/INF.1/Add. 1) as well as the Synoptic report with its Addendum of comments of States party to the Convention, other States not party to the Convention and international organizations (HC/1999/4 and Add.). The Conference and its subsidiary bodies also considered proposals and comments by Governments and international Organizations on the Draft.

11. The Conference established working groups on Chapters 1 and 5 (chaired by Ms A. M. Connelly, Ireland), Chapter 2 (chaired by Mr T. Desch, Austria), Chapter 3 (chaired by Ms Terrillon-McKay, Canada), Chapter 4 (chaired by Prof. H. Fischer, Germany) and Chapter 6 (chaired by Mr J. Jelen, Hungary) in order to develop a compromise text, taking account of the views expressed in the Plenary, for redrafted provisions of the text.

The Chairperson of the working group on Chapters 1 and 5 noted the clarification provided by the working group that the word "supplements" in Article 2 signifies that the Protocol does not affect the rights and obligations of States Parties to the Convention.

The Chairperson of the working group on Chapter 4 made the following interpretative statement with regard to Article 16 (Jurisdiction):

Nothing in this Protocol, including Article 16, in any way limits the State's ability to legislate, criminalize or otherwise deal with any substantive

offences including conduct addressed in this Protocol. Nothing in Article 16 (2) (b) should be interpreted as in any way affecting the application of Article 16 (1) (a).

12. The Conference assigned to the Drafting Committee the 1st Reading of the Draft text as amended in discussions and accepted in the Plenary in the English and French versions. The Conference assigned to the Drafting Committee the authentication of the texts in Arabic, Chinese, Russian and Spanish.

13. On the basis of the deliberations of the Conference, the Conference drew up the Second Protocol to the Hague Convention for the Protection of Cultural Property in the Event of Armed Conflict. The Second Protocol, the text of which was established in English and French, is attached to the present Act.

14. The Chairman noted the agreement of the delegates to adopt Article 43 subject to the provision of official versions in Arabic, Chinese, Russian and Spanish which will be provided by UNESCO and authenticated before the day of signature.

In witness whereof the undersigned have signed the present Final Act.

The Conference further adopted a resolution which is also attached to the present Act.

Done at The Hague, this twenty-sixth day of March, 1999.

ANNEX 2

**Diplomatic Conference on the Second Protocol
to the Hague Convention for the Protection of Cultural Property
in the Event of Armed Conflict**

Resolution

The Diplomatic Conference on the Second Protocol to the Hague Convention for the Protection of Cultural Property in the Event of Armed Conflict,

Reiterating the importance of adoption and implementation of adequate legal standards to protect cultural property within the framework of national culture heritage protection policy,

Stressing that safeguarding measures such as the compilation of national inventories of cultural property, taken in peacetime, are essential in preventing foreseeable effects of armed conflicts,

Noting with appreciation the positive results reached by the use of resources of the Fund for the Protection of the World Cultural and Natural Heritage of Outstanding Universal Value established under the UNESCO Convention concerning the Protection of the World Cultural and Natural Heritage 1972 and the successful application of AFRICOM documentation standards for museum collections in African countries as well as similar co-operative developments for libraries and archives,

Recognising that a number of developing countries may have difficulty in fully implementing the provisions of the Hague Convention, its First Protocol and the present Protocol,

Urges all States party to the present Protocol to give careful consideration to requests from developing countries either at bilateral level or within the framework of intergovernmental organisations.

ANNEX 3

Belgium and Israel made the following declarations:

Belgium:

“The Belgian Delegation is delighted that the Representatives of States wishing to protect cultural property in the event of armed conflict have satisfactorily conducted their work and, therefore, will be able to sign the Final Act of the Conference dealing with this matter.

The Draft Second Protocol to the Convention for the Protection of Cultural Property in the Event of Armed Conflict concerns matters which, to a large extent, fall in Belgium within the competence of the Communities and Regions in conformity with the Constitution and laws.

Federal authorities are authorised to undertake international obligations within the limits of their competence. Moreover, they are duly represented in the Belgian Delegation.

The Kingdom of Belgium shall take the necessary steps that if it signs the Second Protocol, the above-mentioned competence of the Communities and Regions to undertake international obligations shall be formalised in an appropriate manner.”

Israel:

“It should be noted that some delegations were of the opinion that the provisions of Article 39(5) of the 1954 Hague Convention should have been applied in relation to the adoption of this Protocol.”