

Cultural Property (Protection in Armed Conflict) Bill

Government Bill

Explanatory note

General policy statement

The Bill meets various obligations that are required before New Zealand can accede to the First and Second Protocols to the 1954 Hague Convention on the Protection of Cultural Property in the Event of Armed Conflict (the **Convention**). Obligations required of New Zealand under the Second Protocol are met in *Part 2* of the Bill. This creates a number of criminal offences (for actions against cultural property) that are required by the Protocol, as well as related ancillary offences. Jurisdiction is established over the most serious of these offences so that they can be prosecuted, in certain circumstances, where the offence took place outside New Zealand, or when the offender was not a New Zealander, as required by the Protocol. A penalty regime is established for the offences, and extradition provisions provided for. Obligations required of New Zealand under the First Protocol to the Convention are provided for in *Part 3* of the Bill. In this Part, offences are created relating to removal of cultural property from occupied territory, and dealing in such property. The Bill links to powers in the Customs and Excise Act 1996 so as to provide the New Zealand Customs Service with the ability to seize property imported from occupied territory. A regime is provided for assessments of compensation to be made

for good faith purchasers of cultural property that may have to be returned to a (previously) occupied territory from which it was taken. It is also desirable to make provision for the protection of the special emblem of the Convention and its Protocols. The Bill does this by establishing an offence of unauthorised use of the emblem. New Zealand ratified the Convention on 24 July 2008.

Clause by clause analysis

Clause 1 is the Title clause.

Clause 2 is the commencement clause. The Bill is to come into force on a date or dates to be appointed by the Governor-General by Order in Council. This is because the Bill cannot be brought into force before New Zealand has acceded to the First and Second Protocols to the Convention. Subject to that, it may be possible for certain provisions of the Bill to be brought into force before others (for example, the offences relating to use of the Convention emblem). *Clause 2* therefore provides for different provisions to be brought into force on different dates and for different purposes.

Part 1

Preliminary provisions

Clause 3 is the general interpretation clause. Most of the definitions are self-explanatory. The clause includes a definition of New Zealand national. This term is used in relation to some of the offences created by the Bill. Where it is used and the offence is committed abroad, a person is liable only if the person is a New Zealand national or a member of the armed forces.

Clause 4 defines the term cultural property. The definition is taken from Article 1 of the Convention. The Convention begins with the premise that damage to the cultural property of any people means damage to the cultural heritage of all people. *Subclauses (2) and (3)* list examples of property that might count as cultural property. The definition of cultural property in the Bill is not the same as the definition of protected foreign object in the Protected Objects Act 1975, although some items may fall within both definitions. *Subclause (4)* defines the term enhanced protection property. Broadly speaking, it means cultural property included in the list to be maintained by UNESCO under Article 11 of the Second Protocol.

Clause 5 sets out some rules (to avoid doubt) for determining when a territory is considered to be occupied. The offences in *Part 2* of the Bill regulate conduct in situations of hostilities, including where a territory is occupied. The offences in *Part 3* involve the export, import, or transfer of cultural property from occupied territory. *Subclause (2)* incorporates the test in Article 42 of the 1907 Regulations respecting the Laws and Customs of War on Land. Article 42 says that a territory is considered to be occupied when it is actually placed under the authority of the hostile army, and occupation only extends to territory where that authority is established and in a position to assert itself. *Subclause (3)* incorporates the test in Article 18(2) of the Convention: a territory may be considered occupied even if the occupation meets with no armed resistance.

Clause 6 makes the Bill binding on the Crown.

Part 2

Serious violations of Second Protocol

Offences

Clause 7 gives effect to Article 15 of the Second Protocol. Article 15 requires parties to the Protocol to establish criminal offences under their domestic law for certain acts that constitute serious violations of the Protocol. These include making cultural property the object of attack and appropriating cultural property. An offence is committed only if the act is intentional and the person either knew or had reason to believe that the property was cultural property (or, where applicable, cultural property under enhanced protection). In addition, the act must occur in a situation of hostilities. This reflects the application of the Second Protocol, as set out in Articles 3 and 22 of the Protocol. An offence is not committed if the person is acting in accordance with the Convention and the Second Protocol, for example if the person is acting by imperative military necessity. Imperative military necessity is explained in Article 6 of the Second Protocol.

Clause 8 gives effect to Article 16 of the Second Protocol. The offences under *clause 7* apply whether they are committed in New

Zealand or abroad and regardless of nationality, subject to the following rules:

- a person is not liable for an act listed in *clause 7(2)(d) or (e)* if it is done abroad and he or she is neither a New Zealand national nor subject to the Armed Forces Discipline Act 1971:
- a person is not liable for an offence committed abroad if he or she is a member of the armed forces of a state that is neither a party to the Second Protocol nor has agreed to accept and apply its provisions, or if he or she is a national of such a state (other than a national who is a member of the armed forces of a state that is a party to that Protocol or has agreed to accept and apply its provisions).

The latter rule gives effect to Article 16(2)(b) of the Second Protocol. However, that rule only applies to a person if the offence is committed abroad. The person would be liable under the Bill if the offence is committed in New Zealand. Section 7 of the Crimes Act 1961 has effect in determining the place of commission of an offence. Under the general law, an alleged offender can only be tried for an offence when he or she is present in New Zealand.

Clause 9 creates offences of aiding, abetting, inciting, counselling, procuring, or attempting an offence under *clause 7*, and of conspiring to commit or being an accessory after the fact to such an offence. This gives effect to Article 15(2) of the Second Protocol. The clause makes it clear that the act of aiding, abetting, etc, can occur extraterritorially.

Clause 10 creates a statutory defence for subordinates who commit an offence under *Part 2* of the Bill while acting under an order of a superior and without knowing that the order was unlawful. This defence is based on one of the general principles of criminal law laid down in Article 33 of the Rome Statute of the International Criminal Court. Under *subclause (2)*, a defendant wishing to rely on this defence has an evidential, rather than a legal, burden.

Clause 11 sets out the circumstances in which commanders or superiors will be criminally liable, in addition to their subordinates, for anything done by their subordinates amounting to an offence under *Part 2* of the Bill. Broadly speaking, commanders will be liable if they knew or ought to have known that the offence was being committed and they failed to take all reasonable measures to stop it or to report it afterwards. Other superiors will be liable if they knew or consciously

disregarded information that clearly indicated that the offence was being committed and they failed to take such measures. This clause mirrors Article 28 of the Rome Statute of the International Criminal Court.

Penalties

Clause 12 prescribes the penalties for the offences created by *Part 2* of the Bill.

Extradition

Clause 13 gives effect to Article 18 of the Second Protocol by providing that offences involving an act listed in *clause 7(2)(a), (b), or (c)* (the most serious offences) are deemed to be included in any pre-existing extradition treaty with another country that is a party to the Second Protocol.

Part 3 **Cultural property removed from occupied territory**

Part 3 of the Bill is intended to give effect to the First Protocol. It also implements Article 21 of the Second Protocol (and other more general obligations in the Convention and the Second Protocol concerning the protection of cultural property in occupied territory).

Interpretation

Clause 14 is the interpretation clause for *Part 3*. It includes a definition of unlawful, which mirrors the definition of illicit in the Second Protocol. Removal of cultural property from an occupied territory is unlawful if it is done under compulsion or otherwise in violation of that territory's laws or of international law (including the Convention and the First and Second Protocols). Another key term is smuggled property. Smuggled property is defined to mean cultural property that has been removed unlawfully from the territory of a First Protocol Party while that territory was occupied by another First Protocol Party. It does not matter when the removal took place provided it took place no earlier than the date when the First Protocol entered into force (7 August 1956). The protections provided by *Part 3* of

the Bill, therefore, do not extend to property taken from occupied territory before that date. However, they do extend to property taken at any time after that date (for example, property that was taken from occupied territory in the 1970s and kept hidden or traded on the black market after that). If such property is imported into New Zealand after the Bill comes into force, the protections of the Bill will be available to it.

Offences

Clause 15 creates new offences of removing cultural property unlawfully from the territory of a party to the First Protocol (other than New Zealand) while the territory is under occupation. The offences apply to New Zealand nationals and those subject to the Armed Forces Discipline Act 1971. The offences are committed only if the person knew or had reason to believe that the property was cultural property (or, as the case may be, enhanced protection property), the territory was occupied, and removal was unlawful.

Clause 16 creates offences for acts ancillary to the offences in *clause 15* (for example, aiding and abetting). As with *clause 9*, the reason is to make it clear that such acts may occur extraterritorially.

Clause 17 creates new offences of dealing in smuggled property or enhanced protection smuggled property. The offences only apply to things done in New Zealand. Dealing includes (among other things) importing, exporting, or transferring ownership of the property. It is not an offence to deal in property that was imported into New Zealand before *Part 3* of the Bill comes into force. In order to commit the offence, a person must know or have reason to believe that the property is smuggled property or, as the case may be, enhanced protection smuggled property. A person does not commit the dealing offence if he or she is acting with lawful authority, for example a Customs officer who takes the property into custody or transfers it to the Ministry.

Penalties

Clause 18 prescribes the penalties for the offences created by *Part 3*.

Search, seizure, and forfeiture

Clause 19 provides that smuggled property in New Zealand is liable to forfeiture. Under the First Protocol, states are required to take into

custody any smuggled property that is imported into their territory and to return it to the occupied state at the end of hostilities. This clause does not apply to property imported into New Zealand before *Part 3* of the Bill comes into force.

Clause 20 applies certain provisions of the Customs and Excise Act 1996 to smuggled property, or property suspected of being smuggled property, whether or not the dealing offence is committed. In particular, the provisions will allow smuggled property to be seized under section 226 of the Customs and Excise Act and will provide a mechanism for interested parties to challenge the lawfulness of the seizure under sections 231 and 233 of that Act. The power of seizure is needed so that New Zealand can comply with its obligation in the First Protocol to take smuggled property into custody. The Customs and Excise Act 1996 also includes a number of ancillary powers to assist with seizure (including powers of entry). Those powers will also be available for seizing smuggled property.

Clause 21 provides for the issue of search warrants to enable members of the police to enter and search places or vehicles or other things in order to look for smuggled property. The police already have similar powers under section 198 of the Summary Proceedings Act 1957. However, the new powers will apply whether or not the police suspect that the dealing offence has been committed.

Clause 22 sets out the information that must be included in an application for a search warrant. It also allows applications to be made orally (for example, by telephone) if necessary.

Clause 23 sets out the information that must be included in a search warrant. The form of a search warrant is to be prescribed by regulations made under *clause 43*.

Clause 24 authorises a person executing a search warrant to do various things under the warrant. In particular, it allows the person to use reasonable force for the purposes of entry and search. The person may also seize any thing authorised to be seized under the warrant and anything else that could have been seized under another search warrant that the person could have obtained under *Part 3* of the Bill.

Clause 25 requires the person executing a search warrant to announce his or her intention to execute the warrant before doing so. This requirement does not apply, however, if the person believes that no one is present in or on the place or vehicle or other thing, or that it

would endanger the safety of anyone or prejudice the search or other investigations.

Clause 26 requires the person executing a search warrant to give a copy of the warrant and evidence of his or her identity to the occupier of the place (or person in charge of the thing). If the occupier is not there, the copy of the warrant together with a notice about the search must be left in a prominent position at or on the place or thing or, if that is not practicable, the documents must be sent to the occupier within 7 days after the search.

Clause 27 requires the person executing a search warrant to notify anyone he or she believes to be the owner of any item seized during the search (or anyone he or she believes to have an interest in the item). The notice must be in the form prescribed by regulations made under *clause 43*.

Clause 28 allows a District Court Judge to postpone or dispense with the requirement to give notice to an occupier who is not present during a search or to the owner of any item seized. The power is exercisable if the Judge thinks there are reasonable grounds to believe that giving notice would endanger anyone's safety or prejudice ongoing investigations or any further search. The first postponement may be for a period of up to 12 months. A further postponement of up to 12 months or a permanent dispensation is also permitted, but this does not apply to notices in respect of any thing seized except in the very limited circumstances set out in *subclause (6)*.

Clause 29 provides that seizure of any item under a search warrant issued under *clause 21* is to be treated as seizure under section 226 of the Customs and Excise Act 1996. The main effect of this is to trigger the rights of appeal under Part 14 of that Act. A notice given under *clause 27* of the Bill will count as a notice of seizure under section 227 of the Customs and Excise Act 1996. However, given the powers in *clause 28* to postpone or dispense with the requirement to give notice, *subclause (3)* creates a power for the court to extend the time limits in Part 14 of the Customs and Excise Act for bringing an appeal under that Part.

Clause 30 makes it clear that the new powers of entry, search, and seizure are without prejudice to any other ones available in law (for example, under section 198 of the Summary Proceedings Act 1957).

Retention of seized property

Clause 31 requires any smuggled property that is seized under the Bill to be transferred to the Ministry and retained there pending the outcome of all relevant court proceedings.

Compensation

Clause 32 protects a person who has acquired smuggled property in good faith for value without knowing it was smuggled property. If the property is forfeited to the Crown, the person can apply to the High Court for an assessment of compensation. The court must then assess whether compensation ought to be paid to the person and, if so, how much. Paragraph 4 of the First Protocol requires occupying states to indemnify anyone who holds in good faith property that is to be returned to an occupied state at the end of hostilities. However, if the state in which the smuggled property is found is not the occupying state, the compensation may in practice be paid by someone else, for example by the state requesting the property's return.

Clause 33 provides for what is to happen if the compensation is not paid. It may not be possible for the court to require another state to pay the compensation. Therefore, the assessment does not oblige a particular person to pay the compensation. Instead, if the compensation is not in fact paid, the innocent purchaser can apply again to the High Court for an order releasing the property from forfeiture.

Return

Clause 34 makes it clear that cultural property may not be returned to its home state until all relevant proceedings in relation to the property have been finally determined. It also provides that property being returned to its home state does not attract Customs duties or other taxes.

Part 4

Convention emblem

Part 4 is intended to give effect to Article 17 of the Convention.

Clause 35 defines Convention emblem to include the distinctive emblem of the Convention, together with any design so closely resembling that emblem as to be capable of being mistaken for it.

Clause 36 makes it an offence to use the Convention emblem in a manner that indicates or suggests that property, a person, or a place has some kind of status under the Convention, unless that use is authorised. Authorisation may be given by regulations under *clause 43* or by specific authority. Decisions about the giving of authorisations must be made having regard to the principles, objectives and requirements of the Convention. Article 17 of the Convention sets out the circumstances in which it is permissible to use the Convention emblem. Use of the Convention emblem may include, for example, displaying or exhibiting it on property. *Clause 36* also makes it an offence to use the Convention emblem on immovable property with authorisation, but without also attaching a copy of the authorisation. *Clause 37* establishes certain exceptions and defences to the offence under *clause 36(1)*. The exceptions and defences are similar to the ones in section 8 of the Geneva Conventions Act 1958, which protects emblems such as the Red Cross and the Red Crescent. *Clause 38* prescribes the penalties for the offences relating to the Convention emblem.

Part 5

Miscellaneous

Prosecution of offences

Clause 39 provides that proceedings may not be brought for an offence under the Bill unless the Attorney-General consents.

Clause 40 provides that, if a body corporate commits an offence under the Bill, directors and other officers of the body corporate may also be found guilty of the offence if they authorised, permitted, or consented to the act that constituted the offence or knew, or ought to have known, of the offence and failed to take all reasonable steps to stop it.

Clause 41 provides for a certificate by the Minister of Foreign Affairs to be taken as conclusive evidence of certain facts in any proceedings under or by virtue of the Bill. The facts relate to which countries are parties to the First and Second Protocols, whether a situation of hostilities exists and whether a territory is occupied.

Other enactments, etc

Clause 42 makes it clear that the Bill does not affect the application of any other enactment or rule of law regulating acts or omissions in relation to cultural property. Some of the conduct prohibited by the Bill may overlap, to some extent, with conduct prohibited or regulated by other statutes, for example the Protected Objects Act 1975 or the International Crimes and International Criminal Court Act 2000. In addition, it may overlap with more general conduct prohibited by, for example, the Crimes Act 1961. The new offences do not limit the scope or application of those other enactments.

Regulations

Clause 43 allows the Governor-General to make regulations by Order in Council for certain purposes.

Consequential amendments

Clause 44 amends section 101A(2) of the Extradition Act 1999 in consequence of *clause 13*.

Clause 45 amends Schedule 3 of the Flags, Emblems, and Names Protection Act 1981. This ensures that that Act does not apply to the Convention emblem, which is covered instead by *Part 4* of the Bill.

Clause 46 amends the Schedule to the Mutual Assistance in Criminal Matters Act 1992 to insert a reference to the offences created by *clause 7* of the Bill. This implements Article 20 of the Second Protocol so far as it applies to mutual legal assistance between states in criminal matters.

Regulatory impact statement

An extended national interest analysis has been prepared for the Convention and for the First and Second Protocols. They take the place of a regulatory impact statement. They are available on the following Internet site:

- www.mch.govt.nz/projects/heritage/NIAConvention-April08.pdf
 - www.mch.govt.nz/projects/heritage/NIAProtocolsApril08.pdf
-

Hon Judith Tizard

Cultural Property (Protection in Armed Conflict) Bill

Government Bill

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The Parliament of New Zealand enacts as follows:

1 Title

This Act is the Cultural Property (Protection in Armed Conflict) Act **2008**.

2 Commencement

- (1) This Act comes into force on a date to be appointed by the Governor-General by Order in Council.
- (2) One or more Orders in Council may be made appointing different dates for the commencement of different provisions and for different purposes. 5

Part 1**Preliminary provisions****3 Interpretation**

- (1) In this Act, unless the context otherwise requires,— 10
- Convention** means the Convention for the Protection of Cultural Property in the Event of Armed Conflict, done at The Hague on 14 May 1954, a copy of the English text of which is set out in **Schedule 1**
- First Protocol** means the Protocol to the Convention, done at The Hague on 14 May 1954, a copy of the English text of which is set out in **Schedule 2** 15
- First Protocol Party** means a party to the First Protocol and includes a state that accepts and applies the provisions of that Protocol in accordance with its terms (but only to the extent that it accepts and applies them) 20
- grave violation offence** means an offence against **section 7** where the act done is one mentioned in **subsection (2)(a), (b), or (c)** of that section
- Minister** means the Minister of the Crown who, under the authority of any warrant or with the authority of the Prime Minister, is for the time being responsible for the administration of this Act 25
- New Zealand national** means— 30
- (a) a New Zealand citizen; or
- (b) a body corporate established by or under the law of New Zealand
- Second Protocol** means the Second Protocol to the Convention, done at The Hague on 26 March 1999, a copy of the English text of which is set out in **Schedule 3** 35

Second Protocol Party means a party to the Second Protocol and includes a state that accepts and applies the provisions of that Protocol in accordance with its terms (but only to the extent that it accepts and applies them)

serious violation offence means an offence against **section 7**. 5

- (2) Reference in this Act to a territory includes a reference to any part of a territory.
- (3) To avoid doubt, reference in this Act to New Zealand, in relation to the place of any act or omission amounting to the commission of an offence, includes a reference to the waters within the outer limits of the territorial sea of New Zealand (as defined by section 3 of the Territorial Sea, Contiguous Zone, and Exclusive Economic Zone Act 1977). 10

4 Meaning of cultural property and enhanced protection property 15

- (1) In this Act, **cultural property** means, irrespective of origin or ownership,—
 - (a) movable or immovable property of great importance to the cultural heritage of every people: 20
 - (b) buildings whose main and effective purpose is to preserve or exhibit movable property mentioned in **paragraph (a)**;
 - (c) centres containing a large amount of property mentioned in **paragraph (a)** or buildings mentioned in **paragraph (b)**. 25
- (2) Examples of property that may fall within **subsection (1)(a)** include—
 - (a) monuments of architecture, art, or history (whether religious or secular): 30
 - (b) archaeological sites:
 - (c) groups of buildings that, as a whole, are of historical or artistic interest:
 - (d) works of art:
 - (e) manuscripts, books, and other objects of artistic, historical, or archaeological interest: 35
 - (f) scientific collections:

- (g) collections of books or archives or of reproductions of anything mentioned in **paragraphs (a) to (f)**.
- (3) Examples of property that may fall within **subsection (1)(b)** include—
- (a) museums: 5
- (b) large libraries:
- (c) depositories of archives:
- (d) refuges intended to shelter movable property mentioned in **subsection (1)(a)** in the event of armed conflict.
- (4) In this Act, **enhanced protection property** means cultural property that is under enhanced protection in accordance with Chapter 3 of the Second Protocol. 10
- 5 Occupation of territory**
- (1) References in this Act to occupation of a territory (or to occupied territory) must be read in accordance with this section. 15
- (2) In determining whether a 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. 20
- (3) The fact that occupation of a territory meets with no armed resistance does not prevent the territory from being considered occupied.
- 6 Act binds the Crown**
- This Act binds the Crown. 25

Part 2 Serious violations of Second Protocol

Offences

- 7 Serious violation offences**
- (1) A person commits an offence if— 30
- (a) the person intentionally does an act mentioned in **subsection (2)**; and
- (b) the act is done in a relevant situation of hostilities; and

- (c) the property in relation to which the act is done is property protected under the Convention and the Second Protocol; and
- (d) the person knows or has reason to believe that the property is,— 5
- (i) in the case of an act mentioned in **subsection (2)(a) or (b)**, enhanced protection property;
- (ii) in any other case, cultural property.
- (2) The acts are—
- (a) making enhanced protection property the object of attack: 10
- (b) using enhanced protection property, or its immediate surroundings, in support of military action:
- (c) the extensive destruction or the extensive appropriation of cultural property: 15
- (d) making cultural property the object of attack:
- (e) stealing, appropriating, or vandalising cultural property.
- (3) Reference in **subsection (2)(b)** to the use of property or surroundings in support of military action includes use for purposes that are likely to expose the property to destruction or damage in the event of armed conflict. 20
- (4) A person does not commit an offence against **subsection (1)** if the person is acting by imperative military necessity or otherwise in accordance with the Convention and the Second Protocol. 25
- (5) In this section,—
- relevant situation of hostilities** means a situation involving armed conflict (of an international character or otherwise) or the occupation of territory, but only to the extent that the Second Protocol applies to that conflict or occupation 30
- vandalising** includes marking, tagging, and defacing.
- 8 Jurisdiction**
- (1) **Section 7(1)** applies—
- (a) whether the act is done in New Zealand or elsewhere; 35
- and
- (b) whatever the nationality of the person doing the act.
- (2) **Subsection (1)** is subject to **subsections (3) and (4)**.

- (3) If the act is one mentioned in **section 7(2)(d) or (e)** and it is done outside New Zealand, **section 7(1)** applies only if the person doing it is—
- (a) a New Zealand national; or
 - (b) a person subject to the Armed Forces Discipline Act 1971. 5
- (4) **Section 7(1)** does not in any event apply to acts done outside New Zealand by—
- (a) members of the armed forces of a state that is not a Second Protocol Party; or 10
 - (b) nationals of such a state, unless they are serving in the armed forces of a Second Protocol Party.
- (5) To avoid doubt,—
- (a) sections 8 and 400 of the Crimes Act 1961 (which relate to crimes on ships or aircraft beyond New Zealand) do not apply to proceedings taken by virtue of any jurisdiction conferred by this section; but 15
 - (b) that does not affect the application of those sections in cases where jurisdiction is excluded by this section.
- 9 Acts ancillary to serious violation offences** 20
- (1) A person commits an offence if the person—
- (a) does or omits an act for the purpose of aiding any person to commit a serious violation offence; or
 - (b) abets any person in the commission of a serious violation offence; or 25
 - (c) incites, counsels, or procures any person to commit a serious violation offence.
- (2) A persons commits an offence if the person—
- (a) conspires with another person to commit a serious violation offence; or 30
 - (b) attempts to commit a serious violation offence; or
 - (c) is an accessory after the fact to a serious violation offence.
- (3) **Subsections (1) and (2)** apply—
- (a) whether the conduct mentioned in any of **paragraphs (a) to (c)** of those subsections occurs in New Zealand or elsewhere; and 35

- (b) whether the serious violation offence is or is intended to be committed in New Zealand or elsewhere.
- (4) A person does not commit an offence against **subsection (1) or (2)** unless the person is a person who could be liable for the serious violation offence in question. 5
- 10 Superior orders**
- (1) In any proceedings for an offence against a provision of this Part, it is a defence for the defendant to show that the defendant—
- (a) was under a legal obligation to obey orders of a government or of a superior (whether military or civilian); and 10
- (b) was acting under an order of that government or superior; and
- (c) did not know the order was unlawful.
- (2) For the purposes of **subsection (1)**, the defendant must be taken to have shown those facts if— 15
- (a) sufficient evidence is adduced to raise an issue with respect to them; and
- (b) the contrary is not proved by the prosecution beyond reasonable doubt. 20
- (3) The defendant may not rely on the defence in **subsection (1)** if the order in question was manifestly unlawful.
- (4) It is a question of law—
- (a) whether an obligation is a legal obligation:
- (b) whether an order is manifestly unlawful. 25
- (5) Nothing in this section affects or limits any other defence that may be available to the defendant.
- 11 Offences by commanders and superiors**
- (1) If an offence against a provision of this Part is committed by forces that are under the effective command and control of a military commander, the commander commits the same offence if it is proved that— 30
- (a) the offence committed by the forces was committed as a result of the commander's failure to exercise control properly over the forces; and 35

- (b) the commander either knew or ought to have known that the forces were committing, or were about to commit, the offence; and
- (c) the commander failed to take all necessary and reasonable measures within his or her power to prevent or repress commission of the offence or to submit the matter to the competent authorities for investigation and prosecution. 5
- (2) If an offence against a provision of this Part is committed by subordinates that are under the effective authority and control of a superior, the superior commits the same offence if it is proved that— 10
- (a) the offence committed by the subordinates was committed as a result of the superior’s failure to exercise control properly over the subordinates; and 15
- (b) the superior either knew, or consciously disregarded information that clearly indicated, that the subordinates were committing, or were about to commit, the offence; and
- (c) the offence concerned activities within the effective responsibility and control of the superior; and 20
- (d) the superior failed to take all necessary and reasonable measures within his or her power to prevent or repress commission of the offence or to submit the matter to the competent authorities for investigation and prosecution. 25
- (3) Reference in **subsection (2)** to subordinates that are under the effective authority and control of a superior does not include forces that are under the effective command and control of a military commander.
- (4) In this section, **military commander** includes a person effectively acting as a military commander. 30
- (5) Nothing in this section affects any criminal liability that arises apart from this section.

Penalties

- 12 Penalties for Part 2 offences** 35
- (1) A person who commits an offence mentioned in **subsection (2)** is liable on conviction on indictment,—

- (a) in the case of an individual, to imprisonment for a term not exceeding 14 years:
- (b) in the case of a body corporate, to a fine not exceeding \$500,000.
- (2) The offences are— 5
 - (a) a grave violation offence:
 - (b) an offence against **section 9(1)** where the offence aided, abetted, incited, counselled, or procured is a grave violation offence.
- (3) A person who commits an offence mentioned in **subsection (4)** is liable on conviction on indictment,— 10
 - (a) in the case of an individual, to imprisonment for a term not exceeding 7 years:
 - (b) in the case of a body corporate, to a fine not exceeding \$200,000. 15
- (4) The offences are—
 - (a) a serious violation offence other than a grave violation offence:
 - (b) an offence against **section 9(1)** where the offence aided, abetted, incited, counselled, or procured is a serious violation offence other than a grave violation offence: 20
 - (c) an offence against **section 9(2)(a)**.
- (5) A person who commits an offence against **section 9(2)(b) or (c)** is liable on conviction on indictment,— 25
 - (a) in the case of an individual, to imprisonment for a term not exceeding half the maximum term to which the individual would have been liable if he or she had committed the serious violation offence in question:
 - (b) in the case of a body corporate, to a fine not exceeding half the maximum fine to which the body would have been liable if it had committed the serious violation offence in question. 30

Extradition

- 13 Extradition** 35
- (1) For the purposes of the Extradition Act 1999 and any Order in Council in force under section 15 or 104 of that Act, each

- grave violation offence is deemed to be an offence described in any extradition treaty that—
- (a) was concluded before commencement of this Part; and
 - (b) is in force between New Zealand and another country that is a party to the Second Protocol. 5
- (2) **Subsection (1)** does not apply if the grave violation offence—
- (a) is already an offence described in the extradition treaty; or
 - (b) is committed by a person mentioned in **section 8(4)(a) or (b)**. 10
- (3) If a grave violation offence is deemed under **subsection (1)** to be an offence described in an extradition treaty, no person may be surrendered for that offence in accordance with the provisions of the Extradition Act 1999 if the alleged act or omission occurred before commencement of this Part. 15
- (4) In this section, **country** includes any territory for whose international relations the government of the country is responsible and to which the extradition treaty and the Second Protocol extend. 20

Part 3

Cultural property removed from occupied territory

Interpretation

- 14 Interpretation of Part 3** 25
- In this Part, unless the context otherwise requires,—
- home state**, in relation to smuggled property, means the First Protocol Party from whose territory the property has been removed
- remove** means export or otherwise remove 30
- search warrant** has the meaning given by **section 21(3)**
- seized**, in relation to smuggled property or property suspected of being smuggled property, means seized in exercise of powers arising by virtue of this Part (including powers arising under any other enactment by virtue of the creation of an offence under this Part) 35

smuggled property—

- (a) means cultural property that has been removed from the territory of a First Protocol Party in the following circumstances:
 - (i) the territory was occupied by another First Protocol Party at the time of removal; and 5
 - (ii) the removal was unlawful; and
 - (iii) the removal occurred at any time (whether before, on, or after commencement of this Part) but no earlier than 7 August 1956; but 10
- (b) does not include cultural property that has been removed from the territory of New Zealand

unlawful, in relation to an occupied territory, means under compulsion or otherwise in violation of the applicable rules of the domestic law of that territory or of international law. 15

Offences

15 Removal of cultural property from occupied territory

- (1) A person commits an offence if—
 - (a) the person intentionally removes cultural property from an occupied territory of a First Protocol Party other than New Zealand; and 20
 - (b) the removal is unlawful; and
 - (c) the property is enhanced protection property; and
 - (d) at the time of the removal, the person knows or has reason to believe that— 25
 - (i) the property is enhanced protection property; and
 - (ii) the territory is an occupied territory of a First Protocol Party; and
 - (iii) the removal is unlawful.
- (2) A person commits an offence if— 30
 - (a) the person intentionally removes cultural property from an occupied territory of a First Protocol Party other than New Zealand; and
 - (b) the removal is unlawful; and
 - (c) at the time of the removal, the person knows or has reason to believe that— 35
 - (i) the property is cultural property; and

- (ii) the territory is an occupied territory of a First Protocol Party; and
- (iii) the removal is unlawful.
- (3) **Subsections (1) and (2)** apply to a person only if the person is— 5
- (a) a New Zealand national; or
- (b) a person subject to the Armed Forces Discipline Act 1971.
- 16 Acts ancillary to removal offences** 10
- (1) A person commits an offence if the person— 10
- (a) does or omits an act for the purpose of aiding any person to commit a removal offence; or
- (b) abets any person in the commission of a removal offence; or
- (c) incites, counsels, or procures any person to commit a removal offence. 15
- (2) A person commits an offence if the person—
- (a) conspires with another person to commit a removal offence; or
- (b) attempts to commit a removal offence; or 20
- (c) is an accessory after the fact to a removal offence.
- (3) **Subsections (1) and (2)** apply whether the conduct mentioned in any of **paragraphs (a) to (c)** of those subsections occurs in New Zealand or elsewhere.
- (4) A person does not commit an offence against **subsection (1) or (2)** unless the person is a person who could be liable for the removal offence in question. 25
- (5) In this section, **removal offence** means an offence against **section 15(1) or (2)**.
- 17 Dealing in smuggled property** 30
- (1) A person commits an offence if, without lawful authority,—
- (a) the person deals in enhanced protection smuggled property; and
- (b) at the time of dealing the person knows or has reason to believe that the property is enhanced protection smuggled property. 35

- (2) A person commits an offence if, without lawful authority,—
- (a) the person deals in smuggled property; and
 - (b) at the time of dealing the person knows or has reason to believe that the property is smuggled property.
- (3) For the purposes of this section, a person **deals** in property if 5
the person—
- (a) imports the property, or arranges for the property to be imported, into New Zealand; or
 - (b) exports the property, or arranges for the property to be exported, from New Zealand; or 10
 - (c) does any of the following, or arranges for any of the following to be done, in New Zealand:
 - (i) obtains or acquires ownership, possession, or custody of the property;
 - (ii) transfers or disposes of ownership, possession, or 15
custody of the property.
- (4) **Subsections (1) and (2)** do not apply to property imported into New Zealand before commencement of this Part.
- (5) Nothing in this Act affects the application of Part 4 of the Crimes Act 1961 (which relates to parties to the commission 20
of offences) to an offence against this section.
- (6) In this section,—
- enhanced protection smuggled property** means smuggled property that, at the time of its removal from its home state, was enhanced protection property 25
- export** includes removal by any means
- import** includes entry by any means.

Penalties

- 18 Penalties for Part 3 offences**
- (1) A person who commits an enhanced protection offence is li- 30
able on conviction on indictment,—
- (a) in the case of an individual, to imprisonment for a term not exceeding 5 years or to a fine not exceeding \$100,000, or to both;
 - (b) in the case of a body corporate, to a fine not exceeding 35
\$200,000.
- (2) An **enhanced protection offence** is—

- (a) an offence against **section 15(1) or 17(1)**; or
- (b) an offence against **section 16(1)** where the offence aided, abetted, incited, counselled, or procured is an offence against **section 15(1)**; or
- (c) an offence against **section 16(2)(a)** where the offence that the person conspired to commit is an offence against **section 15(1)**. 5
- (3) A person who commits a non-enhanced protection offence is liable on conviction on indictment,—
- (a) in the case of an individual, to imprisonment for a term not exceeding 3 years or to a fine not exceeding \$50,000, or to both: 10
- (b) in the case of a body corporate, to a fine not exceeding \$100,000.
- (4) A **non-enhanced protection offence** is— 15
- (a) an offence against **section 15(2) or 17(2)**; or
- (b) an offence against **section 16(1)** where the offence aided, abetted, incited, counselled, or procured is an offence against **section 15(2)**; or
- (c) an offence against **section 16(2)(a)** where the offence that the person conspired to commit is an offence against **section 15(2)**. 20
- (5) A person who commits an offence against **section 16(2)(b) or (c)** is liable on conviction on indictment to not more than half the maximum punishment to which the person would have been liable if the person had committed the removal offence in question. 25

Search, seizure, and forfeiture

- 19 Liability to forfeiture** 30
- (1) Smuggled property that is in New Zealand is liable to be forfeited to the Crown (whether or not an offence against any provision of this Part has been or is suspected of having been committed).
- (2) The forfeiture takes effect when the property is seized.
- (3) However, property is not liable to be seized or forfeited under this Part if it is imported into New Zealand before the commencement of this Part. 35

20 Application of Customs and Excise Act 1996

- (1) The provisions of the Customs and Excise Act 1996 apply to smuggled property, or property suspected of being smuggled property, as they apply to goods forfeited, or goods suspected of being forfeited, under that Act. 5
- (2) However, the following provisions of that Act do not apply to such property:
- (a) section 229 (which relates to delivery of goods seized on deposit of value):
 - (b) section 235 (which relates to waiver of forfeiture): 10
 - (c) section 236(2) to (4) (which relate to orders for the restoration of goods forfeited):
 - (d) section 237 (which relates to the disposal of forfeited goods).
- (3) **Subsection (2)** has effect whether or not the property is unlawfully imported, or unlawfully exported, within the meaning of the Customs and Excise Act 1996. 15
- (4) The provisions applied by **subsection (1)** have effect subject to the following modifications:
- (a) section 226 has effect as if— 20
 - (i) subsection (3) read “Property liable to seizure by virtue of **Part 3** of the Cultural Property (Protection in Armed Conflict) Act **2008** may be seized at any time after it becomes so liable.”; and
 - (ii) subsection (4) were omitted: 25
 - (b) section 227(1) has effect as if for “prescribed form” there were substituted “the form prescribed by regulations made under the Cultural Property (Protection in Armed Conflict) Act **2008**”:
 - (c) section 231(1)(a) has effect as if for “this Act” there were substituted “**Part 3** of the Cultural Property (Protection in Armed Conflict) Act **2008**”: 30
 - (d) section 236(1) has effect as if for the words from the beginning to “that offence” there were substituted “The conviction of any person for an offence against **section 17** of the Cultural Property (Protection in Armed Conflict) Act **2008**”. 35
- (5) The provisions of the Customs and Excise Act 1996 relating to the issue and execution of warrants (including emergency

warrants) apply to property that is liable to seizure by virtue of **subsection (1)** as they apply to things that are liable to seizure under that Act.

21 Police powers of entry and search

- (1) The power in **subsection (2)** is exercisable if a District Court Judge, Justice of the Peace, Community Magistrate, or Registrar or Deputy Registrar of a District Court (an **issuing officer**) is satisfied that there are reasonable grounds for believing that there is in or on a place or thing—
 - (a) smuggled property; or
 - (b) property suspected of being smuggled property.
- (2) The issuing officer may issue a warrant to enter and search the place or thing for the purposes of searching for and seizing the property in question.
- (3) Any such warrant is referred to in this Part as a **search warrant**.
- (4) The power to issue a search warrant is exercisable on application made by a member of the police on oath.
- (5) A search warrant may be subject to such conditions specified in the warrant as the issuing officer considers reasonable.
- (6) A search warrant must be directed either to a member of the police by name or to all members of the police generally but, in either case, it may be executed by any member of the police.
- (7) The period specified by the issuing officer as the period for which a search warrant is to be in force may not exceed—
 - (a) 14 days from the date of issue; or
 - (b) such longer period (not exceeding 30 days from the date of issue) as the issuing officer considers necessary for execution of the warrant.
- (8) A search warrant may only be executed on 1 occasion during the period in which it is in force unless the issuing officer authorises it to be executed on more than 1 occasion.
- (9) The issuing officer may only give that authorisation if he or she is satisfied that it is required for the purposes for which the warrant is being issued.
- (10) A search warrant is to be treated as having been executed when the person executing it—

- (a) has seized all the items specified in the warrant; or
- (b) leaves the place or thing being searched and does not return within 4 hours.

22 Application for search warrant

- (1) An application for a search warrant must contain, in reasonable detail, the following particulars: 5
 - (a) the name of the applicant:
 - (b) the grounds on which the application is made:
 - (c) the address or other description of the place or thing proposed to be searched: 10
 - (d) a description of the smuggled property or property suspected of being smuggled property believed to be in or on the place or thing:
 - (e) the period for which the warrant is sought:
 - (f) if the applicant wants the warrant to be capable of being executed on more than 1 occasion, the grounds on which execution on more than 1 occasion is believed to be necessary. 15
- (2) The issuing officer may require the applicant to supply further information concerning the grounds on which the warrant is sought. 20
- (3) The applicant must disclose in the application—
 - (a) details of any other applications for a search warrant that the applicant knows to have been made within the previous 3 months in respect of the place or thing proposed to be searched; and 25
 - (b) the result of that application or those applications.
- (4) The applicant must, before making the application, make reasonable inquiries for the purpose of complying with **subsection (3)**. 30
- (5) Except where **subsection (6)** applies—
 - (a) the application must be in writing; and
 - (b) the application may be transmitted to the issuing officer electronically; and
 - (c) the applicant must appear in person before the issuing officer. 35

- (6) The issuing officer may allow the application to be made orally (for example, by telephone call) and excuse the applicant from making a personal appearance if the issuing officer is satisfied that—
- (a) the delay that would be caused by requiring the applicant to appear in person would compromise the effectiveness of the search; and 5
 - (b) the information required by **subsections (1) to (3)** has been supplied to the issuing officer; and
 - (c) the question of whether the warrant should be issued can properly be determined without the applicant's appearance in person. 10
- (7) If an application is allowed to be made orally, the issuing officer must record the grounds for the application as soon as practicable. 15

23 Form and content of search warrant

- (1) A search warrant must be in the form prescribed by regulations made under **section 43**.
- (2) A search warrant must contain, in reasonable detail, the following particulars: 20
 - (a) the name of the issuing officer and the date of issue:
 - (b) the provision authorising the issue of the warrant:
 - (c) that the person executing the warrant may use any assistance that is reasonable in the circumstances:
 - (d) that the person executing the warrant may use any force that is reasonable in the circumstances to enter or break open, or access any area within, the place or thing being searched: 25
 - (e) the address or description of the place or thing that may be searched: 30
 - (f) a description of the item or items that may be sought in or on the place or thing:
 - (g) the period during which the warrant may be executed:
 - (h) any conditions to which the warrant is subject:
 - (i) if the warrant may be executed on more than 1 occasion, the number of times that it may be executed. 35

24 Powers exercisable under search warrant

- (1) A search warrant authorises anyone who may execute it—
- (a) to enter and search the place or thing at any time that is reasonable in the circumstances:
 - (b) to request any person to assist with the entry and search (including, without limitation, a member of a hapū or iwi if the place is of cultural or spiritual significance to that hapū or iwi): 5
 - (c) to use any force that is reasonable for the purposes of the entry and search: 10
 - (d) to seize any item authorised to be seized:
 - (e) to do any of the following for the purposes of carrying out the entry and search:
 - (i) bring any equipment into or onto the place or thing: 15
 - (ii) use that equipment in or on the place or thing or use any other equipment found there:
 - (iii) extract such electricity from the place or thing as it is reasonable to extract in order to operate the equipment: 20
 - (f) to copy any document, or part of a document, that may be lawfully seized:
 - (g) to take photographs or sound or video recordings of the place or thing, and of any item found there, if he or she has reasonable grounds to believe that the photographs or sound or video recordings may be relevant in any proceedings related to the entry and search. 25
- (2) The person executing a search warrant may seize any other items found in the course of carrying out the search (in addition to the items described in the warrant) if the person has reasonable grounds to believe that he or she could have seized the items under any other search warrant that could have been obtained by him or her under this Part. 30
- (3) The person executing a search warrant may, in the manner and for the duration that is reasonable for the purposes of carrying out the search,— 35
- (a) secure the place or thing, any area within it, or any items found within it:

- (b) exclude any person from the place or thing, or any area within it, or give any other reasonable direction to such a person, if the person executing the warrant has reasonable grounds to believe that the person will obstruct or hinder execution of the warrant. 5
- (4) Section 198B of the Summary Proceedings Act 1957 (which relates to persons with knowledge of computers or computer networks) applies to the execution of a warrant issued under this Part as it applies to the execution of a warrant issued under section 198 of that Act. 10
- (5) This section has effect subject to any conditions specified in the search warrant.
- 25 Duty to announce entry and search**
- (1) The person executing a search warrant must, before initial entry into or onto the place or thing— 15
- (a) announce his or her intention to enter and search the place or thing under a statutory power; and
- (b) identify himself or herself.
- (2) However, he or she is not required to comply with **subsection (1)** if he or she believes on reasonable grounds that— 20
- (a) no person is lawfully present in or on the place or thing; or
- (b) compliance with that subsection would—
- (i) endanger the safety of any person; or
- (ii) prejudice the successful execution of the warrant; 25
- or
- (iii) prejudice ongoing investigations under this Act.
- (3) The power to use reasonable force to effect entry into or onto the place or thing is exercisable only if— 30
- (a) **subsection (2)** applies; or
- (b) following a request, the person present refuses entry or does not allow entry within a reasonable time.
- 26 Duty to give documents to occupier**
- (1) If the occupier of the place or thing is present when a search warrant is being executed, the person executing it must, before or on initial entry,— 35

- (a) give the occupier a copy of the warrant; and
 - (b) produce to the occupier evidence of his or her identity (which may include details of a unique identifier instead of a name).
- (2) If the occupier of the place or thing is not present when a search warrant is being executed, the person executing it must,—
- (a) on completion of the search, leave a copy of the warrant and the notice mentioned in **subsection (3)** in a prominent position at the place or on the thing; or
 - (b) if that is not reasonably practicable, provide a copy of the warrant and the notice to the occupier no later than 7 days after execution of the warrant.
- (3) The notice is a written notice containing the following particulars:
- (a) the date and time of the commencement and completion of the search:
 - (b) the name or unique identifier of the person executing the warrant:
 - (c) the address of the office to which inquiries may be made:
 - (d) if nothing was seized, the fact that nothing was seized:
 - (e) if anything was seized, the fact that seizure occurred.
- (4) For the purposes of this section, the following persons may not be treated as the occupier—
- (a) a person who appears to be under 14 years of age:
 - (b) a person whom the person executing the warrant has reasonable grounds to believe is not the occupier.
- (5) Reference in this section and in **section 27** to an occupier is to be read, in relation to a thing, as a reference to the person in charge of that thing.

27 Inventory of items seized

- (1) If anything is seized in the execution of a search warrant, the person executing the warrant must provide a notice—
- (a) to each person whom the person executing the warrant knows or has reason to believe is the owner of, or has an interest in, the thing seized; or
 - (b) if any such person is overseas, to his or her agent in New Zealand.

- (2) The notice may be provided at the time of or as soon as reasonably practicable after the seizure, but no later than 7 days after the seizure.
- (3) The notice must be in the form prescribed by regulations made under **section 43**. 5
- (4) The notice must be accompanied by a copy of the search warrant.
- (5) The person executing a search warrant must make reasonable inquiries for the purposes of complying with **subsection (1)**.
- 28 Deferral of or dispensation from notice obligations** 10
- (1) A District Court Judge may postpone the obligation to comply with a relevant notice requirement for a specified period not exceeding 12 months.
- (2) The District Court Judge may only do so if he or she is satisfied that there are reasonable grounds for believing that compliance with the obligation would— 15
- (a) endanger the safety of any person; or
- (b) prejudice ongoing investigations under this Act or the execution of the search warrant on subsequent occasions. 20
- (3) The power in **subsection (1)** is exercisable on application by the person executing the warrant, and any such application may be made—
- (a) at the time of the initial application for the warrant; or
- (b) at any time before expiry of the period of 7 days after the warrant is finally executed. 25
- (4) A person who obtains an order under **subsection (1)** may apply to a District Court Judge before expiry of that order—
- (a) for one further postponement of the obligation to comply with the relevant notice requirement; or 30
- (b) for a permanent dispensation from that obligation.
- (5) On an application under **subsection (4)**, the District Court Judge may order a further postponement for a specified period not exceeding 12 months, or a permanent dispensation, if he or she is satisfied that there are reasonable grounds for believing that compliance with the obligation would— 35
- (a) endanger the safety of any person; or

- (b) prejudice ongoing investigations under this Act or the execution of the warrant on subsequent occasions.
 - (6) However, a District Court Judge may not order a further postponement of, or permanent dispensation from, an obligation in respect of something that has been seized, unless the thing seized is—
 - (a) a copy or clone of any information taken or made; or
 - (b) something the possession of which by the person from whom it was seized is prohibited under New Zealand law.
 - (7) A **relevant notice requirement** is a requirement to provide a notice (and a copy of the warrant) under—
 - (a) **section 26(2)**; or
 - (b) **section 27**.
- 29 Seizure to be treated as seizure under Customs and Excise Act**
- (1) Any item seized in the execution of a search warrant is to be treated for the purposes of Part 14 of the Customs and Excise Act 1996 as having been seized under section 226 of that Act (as applied by this Act).
 - (2) A notice provided under **section 27** is to be treated for those purposes as having been given under section 227 of that Act.
 - (3) If the requirement to provide that notice is postponed or dispensed with under this Part—
 - (a) section 233 of the Customs and Excise Act 1996 (which relates to applications for an order disallowing seizure where notice is not received) must be read as including a power for the relevant court to allow an application to be made under that section more than 6 months after the date on which the item was seized; and
 - (b) any such power is exercisable having regard to (among other things) the time when the applicant became aware of the seizure.

30 Relationship with other powers

The powers in this Part to issue and execute a search warrant are in addition to any other powers of entry, search, or seizure that may exist apart from this Part.

Retention of seized property 5**31 Retention by Ministry**

- (1) If smuggled property or property suspected of being smuggled property is seized, the property must be—
- (a) transferred to the Ministry; and
 - (b) held by the Ministry, in accordance with any directions of the chief executive of the Ministry, until all criminal and civil proceedings under or by virtue of this Act in relation to the property have been finally determined. 10
- (2) **Subsection (1)** has effect despite any provision to the contrary in any other enactment (including section 199 of the Summary Proceedings Act 1957). 15
- (3) In this section, **Ministry** means the department of State that, with the authority of the Prime Minister, is for the time being responsible for the administration of this Act.

Compensation 20**32 Application for compensation**

- (1) If smuggled property is forfeited, a good faith purchaser of the property may apply to the High Court for an assessment of compensation.
- (2) The application must be made— 25
- (a) within the period of 3 months beginning with the date on which notice of seizure is given (or treated as having been given) to the good faith purchaser under section 227 of the Customs and Excise Act 1996; or
 - (b) if the good faith purchaser does not receive notice under that section, within the period of 6 months beginning with the date of seizure; or 30
 - (c) within such further time as the High Court may allow.
- (3) Notice of the application must be served on the Minister in accordance with the High Court Rules. 35

- (4) The good faith purchaser must apply to the High Court in accordance with those Rules for directions as to service on anyone else.
- (5) On hearing the application under **subsection (1)**, the court must assess whether an amount should be paid to the good faith purchaser by way of compensation and, if so, what that amount should be. 5
- (6) In this section, **good faith purchaser**, in relation to smuggled property, means a person who possesses the property and who acquired possession— 10
- (a) in good faith for value; and
 - (b) after the property became smuggled property; and
 - (c) without knowledge that the property was smuggled property.
- 33 Application in event of non-payment** 15
- (1) An assessment under **section 32** does not oblige anyone to pay the compensation.
- (2) However, if the compensation is not paid to the good faith purchaser within a period of 6 months beginning with the date of the assessment, the good faith purchaser may apply to the High Court for a further order releasing the property from forfeiture (and from further liability to forfeiture) and ordering the return of the property to the good faith purchaser. 20
- (3) In deciding whether to make an order under **subsection (2)**, the court must have regard to (among other things)— 25
- (a) the likelihood that the compensation will be paid in the near future; and
 - (b) any indication by the home state that it does not wish to seek the return of the property.
- (4) An order under **subsection (2)** may include such ancillary directions as the court thinks fit. 30

Return

- 34 Return of cultural property**
- (1) To avoid doubt, smuggled property that is seized may not be returned to its home state by the Minister until all relevant 35

proceedings in relation to it under or by virtue of this Act have been finally determined.

- (2) No customs duties or taxes are payable in respect of smuggled property that is returned to its home state by the Minister.

Part 4 5 Convention emblem

35 Meaning of Convention emblem

In this Part, **Convention emblem** means the distinctive emblem of the Convention (on its own or forming part of a larger design) and includes any design so closely resembling that emblem as to be capable of being mistaken for it. 10

36 Unauthorised use of emblem

- (1) A person commits an offence if—
- (a) the person uses the Convention emblem in a manner that indicates or suggests— 15
 - (i) that property is cultural property protected by the Convention; or
 - (ii) that a person is acting in an official capacity in execution of the Convention; or
 - (iii) that a place or vehicle or other thing has a particular status under the Convention; and 20
 - (b) use of the Convention emblem in that manner by the person is not authorised.
- (2) It is immaterial whether the person intended use of the emblem to indicate or suggest any of the things mentioned in **subsection (1)(a)**. 25
- (3) A person commits an offence if—
- (a) the person places the Convention emblem on immovable cultural property; and
 - (b) the person is authorised to use the Convention emblem in that manner; but 30
 - (c) the person does not at the same time display a copy of that authorisation on the property.
- (4) For the purposes of this section, use is authorised if it is authorised— 35
- (a) by regulations made under **section 43**; or

- (b) by specific authority given by the Minister or a person acting on behalf of the Minister.
- (5) In determining whether use should or should not be authorised (whether by regulations or specific authority), regard must be had to the principles, objectives, and requirements of the Convention. 5
- (6) Use may be authorised by reference to the type of persons who may use the emblem, the type of property or place in respect of which it may be used, the type of use that may be made of it, the circumstances in which it may be used, whether the use involves the distinctive emblem itself or a design resembling it, or by any other means. 10
- (7) A specific authority given under **subsection (4)(b)**—
 - (a) may relate to a particular person or a particular class of persons: 15
 - (b) may be given subject to conditions:
 - (c) may be withdrawn by the Minister or a person acting on behalf of the Minister.
- (8) In the case of use authorised by regulations made under **section 43**, display of a notice referencing the regulations in question is sufficient for the purposes of **subsection (3)(c)**. 20
- (9) In this section, **use** includes display, exhibit, or otherwise use.

37 Exceptions and defences

- (1) **Section 36(1)** does not apply to use of the Convention emblem if— 25
 - (a) the use occurs by reason only of using a registered trade mark; and
 - (b) the use is in relation to goods or services in respect of which the trade mark is registered; and
 - (c) the trade mark was registered in relation to those goods or services before the commencement of this Part. 30
- (2) In any proceedings for an offence against **section 36(1)**, it is a defence that the defendant used the Convention emblem for a purpose for which the defendant lawfully used it before the commencement of this Part. 35
- (3) In any proceedings for an offence against **section 36(1)**, it is a defence that—

- (a) use of the Convention emblem was on goods; and
 - (b) the Convention emblem had been applied to the goods by some other person before the defendant acquired them; and
 - (c) that other person had— 5
 - (i) manufactured or dealt with the goods in the course of trade; and
 - (ii) lawfully used the Convention emblem on similar goods before the commencement of this Part.
- (4) **Registered trade mark** has the meaning given by section 5(1) of the Trade Marks Act 2002. 10

38 Penalties for Part 4 offences

A person who commits an offence against **section 36(1) or (3)** is liable on summary conviction,—

- (a) in the case of an individual, to a fine not exceeding \$5,000; 15
- (b) in the case of a body corporate, to a fine not exceeding \$50,000.

Part 5 Miscellaneous 20

Prosecution of offences

39 Attorney-General's consent required for prosecutions

- (1) Proceedings for an offence against any provision of this Act may not be instituted in any court except with the consent of the Attorney-General. 25
- (2) A person alleged to have committed an offence may be arrested or a warrant for his or her arrest may be issued and executed, and he or she may be remanded in custody or on bail, even though the consent of the Attorney-General has not yet been obtained under **subsection (1)**, but no further proceedings may be taken until the consent has been obtained. 30

40 Liability of directors and officers of bodies corporate

If a body corporate commits an offence against any provision of this Act, every director and every person concerned in the

management of the body corporate commits the same offence if it is proved—

- (a) that the act that constituted the offence took place with his or her authority, permission, or consent; or
- (b) that he or she knew, or could reasonably be expected to have known, that the offence was to be or was being committed and failed to take all reasonable steps to prevent or stop it. 5

41 Evidence

- (1) In any proceedings under or by virtue of this Act, a certificate by the Minister of Foreign Affairs in respect of a relevant fact is to be taken to be conclusive evidence of that fact. 10
- (2) A **relevant fact** is—
 - (a) that a country is or is not, or was or was not at any material time, a First Protocol Party or a Second Protocol Party: 15
 - (b) that a situation is or is not, or was or was not at any material time, a relevant situation of hostilities:
 - (c) that a territory is or is not, or was or was not at any material time, occupied territory of a First Protocol Party or a territory occupied by a First Protocol Party. 20

Other enactments, etc

42 Relationship with other enactments, etc

Nothing in this Act affects or limits the scope or application of any other enactment, or rule of law, regulating acts or omissions in relation to cultural property. 25

Regulations

43 Regulations

The Governor-General may from time to time, by Order in Council, make regulations— 30

- (a) prescribing the form mentioned in **section 20(4)(b)**;
- (b) prescribing the form of a search warrant for the purposes of **section 23**;
- (c) prescribing the form of a notice for the purposes of **section 27**: 35

- (d) illustrating the form of the distinctive emblem of the Convention (as described in the Convention):
- (e) authorising use of the Convention emblem for the purposes of **section 36**:
- (f) providing for such other matters as are contemplated by or necessary for giving full effect to this Act or for its due administration. 5

Consequential amendments

44 Amendment to Extradition Act 1999

- (1) This section amends the Extradition Act 1999. 10
- (2) Section 101A(2) is amended by adding the following paragraph:
 - “(j) **section 13** of the Cultural Property (Protection in Armed Conflict) Act **2008**.”

45 Amendment to Flags, Emblems, and Names Protection Act 1981 15

- (1) This section amends the Flags, Emblems, and Names Protection Act 1981.
- (2) Schedule 3 is amended by adding the following item:

The Cultural Property (Protection in Armed Conflict) Act 2008 : section 36 .	The distinctive emblem of the Convention for the Protection of Cultural Property in the Event of Armed Conflict.
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46 Amendment to Mutual Assistance in Criminal Matters Act 1992 20

- (1) This section amends the Mutual Assistance in Criminal Matters Act 1992.
- (2) The Schedule is amended by adding the following item:

31 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 26 March 1999.	An offence against the following section of the Cultural Property (Protection in Armed Conflict) Act 2008 : <i>section subject matter</i> 7 Serious violations of the Second Protocol.
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Schedule 1

s 3(1)

**Convention for the Protection of Cultural
Property in the Event of Armed Conflict**

The High Contracting Parties,	5
Recognizing that cultural property has suffered grave damage during recent armed conflicts and that, by reason of the developments in the technique of warfare, it is in increasing danger of destruction;	
Being convinced that damage to cultural property belonging to any people whatsoever means damage to the cultural heritage of all mankind, since each people makes its contribution to the culture of the world;	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;	15
Guided by the principles concerning the protection of cultural property during armed conflict, as established in the Conventions of The Hague of 1899 and of 1907 and in the Washington Pact of 15 April, 1935;	
Being of the opinion that such protection cannot be effective unless both national and international measures have been taken to organize it in time of peace;	20
Being determined to take all possible steps to protect cultural property;	
Have agreed upon the following provisions:	25

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:

- | | | |
|-----|--|----|
| (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 | 30 |
| | | 35 |

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

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.

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.
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.

4. They shall refrain from any act directed by way of reprisals against cultural property. 5
5. No High Contracting Party may evade the obligations incumbent upon it under the present Article, in respect of another High Contracting Party, by reason of the fact that the latter has not applied the measures of safeguard referred to in Article 3.

Article 5. Occupation 10

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. 15
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. 20
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. 25

Article 6. Distinctive marking of cultural property

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 30

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. 35

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. 5

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 centres containing monuments and other immovable cultural property of very great importance, provided that they: 10
- (a) are situated at an adequate distance from any large industrial centre or from any important military objective constituting a vulnerable point, such as, for example, an aerodrome, broadcasting station, establishment engaged upon work of national defence, a port or railway station of relative importance or a main line of communication; 15
- (b) are not used for military purposes. 20
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 centre 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 centre. 25 30
4. The guarding of cultural property mentioned in paragraph 1 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. 35
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 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 there- 5
from. 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 10
with the provisions of the present Convention and under the conditions provided for in the Regulations for the execution of the Convention.

Article 9. Immunity of cultural property under special protection 15

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 sur- 20
roundings for military purposes.

Article 10. Identification and control

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 Regu- 25
lations for the execution of the Convention.

Article 11. Withdrawal of immunity

1. If one of the High Contracting Parties commits, in respect of any item of cultural property under special protection, a viola- 30
tion 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.

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. 5
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. 10

Chapter III. Transport of cultural property

Article 12. Transport under special protection 15

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. 20
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. 25
3. The High Contracting Parties shall refrain from any act of hostility directed against transport under special protection.

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 30 35

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.

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. 5

Article 14. Immunity from seizure, capture and prize

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. 15
2. Nothing in the present Article shall limit the right of visit and search. 10

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. 20
25

Chapter V. The distinctive emblem

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). 30

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

1. The distinctive emblem repeated three times may be used only as a means of identification of: 5
- (a) immovable cultural property under special protection;
 - (b) the transport of cultural property under the conditions provided for in Articles 12 and 13;
 - (c) improvised refuges, under the conditions provided for in the Regulations for the execution of the Convention. 10
2. The distinctive emblem may be used alone only as a means of identification of:
- (a) cultural property not under special protection;
 - (b) the persons responsible for the duties of control in accordance with the Regulations for the execution of the Convention; 15
 - (c) the personnel engaged in the protection of cultural property;
 - (d) the identity cards mentioned in the Regulations for the execution of the Convention. 20
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. 25
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. 30

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 be- 35

- tween two or more of the High Contracting Parties, even if the state of war is not recognized by one or more of them.
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. 5
 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. 10

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. 15
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. 20
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 25

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 30

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.

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. 5
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. 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. 10
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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 connection 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. 25
30
2. The Organization is authorized to make, on its own initiative, proposals on this matter to the High Contracting Parties.

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. 35

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 fulfilment 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. 5

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. 10

Final provisions

Article 29. Languages

1. The present Convention is drawn up in English, French, Russian and Spanish, the four texts being equally authoritative. 15
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 20

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.

Article 31. Ratification 25

1. The present Convention shall be subject to ratification by signatory States in accordance with their respective constitutional procedures.
2. The instruments of ratification shall be deposited with the Director-General of the United Nations Educational, Scientific and Cultural Organization. 30

Article 32. Accession

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. 5

Article 33. Entry into force

1. The present Convention shall enter into force three months after five instruments of ratification have been deposited. 10
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. 15 20

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. 25
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. 30

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 35

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

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 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 present Convention and the Regulations for its execution provide for the use of this distinctive emblem. 5 10 15
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 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. 20 25

Article 37. Denunciation

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. 30
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.
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 35

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.

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 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. 5
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Article 39. Revision of the Convention and of the Regulations for its execution

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:
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(a) desires that a Conference be convened to consider the proposed amendment; 20
(b) favours the acceptance of the proposed amendment without a Conference; or
(c) favours the rejection of the proposed amendment without a Conference. 25
2. The Director-General shall transmit the replies, received under paragraph 1 of the present Article, to all High Contracting Parties.
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. 30
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- ties on the expiry of ninety days from the date of such notification.
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. 5
 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. 10
 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. 15
 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. 20

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. 25

In faith whereof the undersigned, duly authorized, have signed the present Convention. 30

Done at The Hague, this fourteenth day of May, 1954, in a single copy which shall be deposited in the archives of the United Nations Educational, Scientific and Cultural Organization, and certified true copies of which shall be delivered to all the States referred to in Articles 30 and 32 as well as to the United Nations. 35

**Regulations for the Execution of the
Convention for the Protection of Cultural
Property in the Event of Armed Conflict**

Chapter I. Control

Article 1. International list of persons

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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

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

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- (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.

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Article 4. Appointment of Commissioner-General

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. 5

Article 5. Functions of delegates

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. 10
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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 connection with the application of the Convention, in conjunction with the representative of the Party to which he is accredited and with the delegates concerned. 20
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. 25
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. 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. 30
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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.

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. 5 10
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. 15

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. 20

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. 25 30

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. 5

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. 10
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. 15 20
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. 25 30

Article 12. International Register of Cultural Property under Special Protection

1. An "International Register of Cultural Property under Special Protection" shall be prepared. 35

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 sub-divided into three paragraphs, headed: Refuges, Centres containing Monuments, Other Immovable Cultural Property. The Director-General shall determine what details each section shall contain.

Article 13. Requests for registration

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, centres 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.
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

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.
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.

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. 5
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. 10
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. 15
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. 20
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. 25
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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 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.

Article 15. Registration

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.
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.
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. En-

tries shall become effective thirty days after despatch of such copies.

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:
 - (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;
 - (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.
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

Article 17. Procedure to obtain immunity

1. The request mentioned in paragraph 1 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.
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.

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.

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:

- (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;
- (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;
- (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;
- (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.

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 Art-

icle 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.

Chapter IV. The distinctive emblem 5

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. 10
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: 15
 - (a) at regular intervals sufficient to indicate clearly the perimeter of a centre containing monuments under special protection; 20
 - (b) at the entrance to other immovable cultural property under special protection.

Article 21. Identification of persons

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. 25
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. 30
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 35

are using. Identity cards shall be made out, if possible, at least in duplicate, one copy being kept by the issuing Power.

4. The said persons may not, without legitimate reason, be deprived of their identity card or of the right to wear the armlet.
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Schedule 2**s3(1)****Protocol to the Convention for the
Protection of Cultural Property in the
Event of Armed Conflict 1954**

5

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. 10
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. 15
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. 20
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. 25

II

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. 30 35

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.
(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.
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.
(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.
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.
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.
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.
- (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.
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.
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.
- (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.
- (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.

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.

In faith whereof the undersigned, duly authorized, have signed the present Protocol.

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Done at The Hague, this fourteenth day of May, 1954, in English, French, Russian and Spanish, the four texts being equally authoritative, in a single copy which shall be deposited in the archives of the United Nations Educational, Scientific and Cultural Organization, and certified true copies of which shall be delivered to all the States referred to in paragraphs 6 and 8 as well as to the United Nations.

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Schedule 3 **s 3(1)**
**Second Protocol to the Hague Convention
of 1954 for the Protection of Cultural
Property in the Event of Armed Conflict** 5
1999

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; 15

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 therefore;

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: 25

Chapter 1 Introduction

Article 1 Definitions

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; 30
- (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;
- (d) “High Contracting Party” means a State Party to the Convention; 35

- (e) “enhanced protection” means the system of enhanced protection established by Articles 10 and 11;
- (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; 5
- (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. 10
- (h) “List” means the International List of Cultural Property under Enhanced Protection established in accordance with Article 27, sub-paragraph 1(b);
- (i) “Director-General” means the Director-General of UNESCO;
- (j) “UNESCO” means the United Nations Educational, Scientific and Cultural Organization; 15
- (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;

Article 2 Relation to the Convention 20

This Protocol supplements the Convention in relations between the Parties.

Article 3 Scope of application

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. 25
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. 30

Article 4 Relationship between Chapter 3 and other provisions of the Convention and this Protocol

The application of the provisions of Chapter 3 of this Protocol is without prejudice to:

- (a) the application of the provisions of Chapter I of the Convention and of Chapter 2 of this Protocol; 5
- (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. 10

Chapter 2 General provisions regarding protection

Article 5 Safeguarding of cultural property

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. 15 20

Article 6 Respect for cultural property

With the goal of ensuring respect for cultural property in accordance with Article 4 of the Convention: 25

- (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: 30
 - (i) that cultural property has, by its function, been made into a military objective; and
 - (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; 35

- (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; 5
- (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; 10
- (d) in case of an attack based on a decision taken in accordance with sub-paragraph (a), an effective advance warning shall be given whenever circumstances permit.

Article 7 Precautions in attack 15

Without prejudice to other precautions required by international humanitarian law in the conduct of military operations, each Party to the conflict shall:

- (a) do everything feasible to verify that the objectives to be attacked are not cultural property protected under Article 4 of the Convention; 20
- (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; 25
- (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 30
- (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. 35

Article 8 Precautions against the effects of hostilities

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

- (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. 5

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: 10
 - (a) any illicit export, other removal or transfer of ownership of cultural property;
 - (b) any archaeological excavation, save where this is strictly required to safeguard, record or preserve cultural property; 15
 - (c) any alteration to, or change of use of, cultural property which is intended to conceal or destroy cultural, historical or scientific evidence.
- 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. 20

Chapter 3 Enhanced protection

Article 10 Enhanced protection 25

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; 30
- (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. 35

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. 5
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. 15
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. 20
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 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. 25
6. In deciding upon a request, the Committee should ask the advice of governmental and non-governmental organisations, as well as of individual experts. 30
7. A decision to grant or deny enhanced protection may only be made on the basis of the criteria mentioned in Article 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.

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. 5
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10. Enhanced protection shall be granted to cultural property by the Committee from the moment of its entry in the List. 20
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.

Article 12 Immunity of cultural property under enhanced protection 25

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. 30

Article 13 Loss of enhanced protection

1. Cultural property under enhanced protection shall only lose such protection:
 - (a) if such protection is suspended or cancelled in accordance with Article 14; or 35
 - (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:
- (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: 10
 - (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 15
 - (iii) reasonable time is given to the opposing forces to redress the situation.

Article 14 Suspension and cancellation of enhanced protection

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. 20
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. 25
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. 30
4. Before taking such a decision, the Committee shall afford an opportunity to the Parties to make their views known. 35

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: 5
 - (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; 10
 - (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. 15
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 20 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

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: 25
 - (a) when such an offence is committed in the territory of that State;
 - (b) when the alleged offender is a national of that State; 30
 - (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.
2. With respect to the exercise of jurisdiction and without prejudice to Article 28 of the Convention: 35
 - (a) this Protocol does not preclude the incurring of individual criminal responsibility or the exercise of juris-

diction 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.

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.
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 favourable to such person than those provided by international law.

Article 18 Extradition

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.

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). 5
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. 10
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. 15

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. 20
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. 25

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 30 35

- that it concerns a political offence or an offence connected with a political offence or an offence inspired by political motives.
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. 5 10

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: 15

- (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. 20

Chapter 5 The protection of cultural property in armed conflicts not of an international character

Article 22 Armed conflicts not of an international character 25

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.
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. 30
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. 35

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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.
 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. 5
 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. 10
 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. 15
2. The Meeting of the Parties shall adopt its Rules of Procedure.
3. The Meeting of the Parties shall have the following functions: 20
 - (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; 25
 - (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. 30
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. 5
2. The Committee shall meet once a year in ordinary session and in extra-ordinary sessions whenever it deems necessary.
3. In determining membership of the Committee, Parties shall seek to ensure an equitable representation of the different regions and cultures of the world. 10
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. 15

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.
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. 25

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. 30
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.

Article 27 Functions

1. The Committee shall have the following functions: 35

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- (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; 5
 - (c) to monitor and supervise the implementation of this Protocol and promote the identification of cultural property under enhanced protection;
 - (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; 10
 - (e) to receive and consider requests for international assistance under Article 32; 15
 - (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. 20
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. 25 30

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. 35

**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 5
 - (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). 10
2. The Fund shall constitute a trust fund, in conformity with the provisions of the financial regulations of UNESCO. 15
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. 20
4. The resources of the Fund shall consist of:
 - (a) voluntary contributions made by the Parties;
 - (b) contributions, gifts or bequests made by: 25
 - (i) other States;
 - (ii) UNESCO or other organizations of the United Nations system;
 - (iii) other intergovernmental or non-governmental organizations; 30
 - (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
 - (e) all other resources authorized by the guidelines applicable to the Fund. 35

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; 15
 - (b) develop and implement, in co-operation with UNESCO and relevant governmental and non-governmental organizations, peacetime training and educational programmes;
 - (c) communicate to one another, through the Director-General, information on the laws, administrative provisions and measures taken under sub-paragraphs (a) and (b); 20
 - (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. 25

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. 30

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 im- 35

plementation of the laws, administrative provisions and measures referred to in Article 10.

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. 5
3. The Committee shall adopt rules for the submission of requests for international assistance and shall define the forms the international assistance may take.
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. 10

Article 33 Assistance of UNESCO

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 Protocol. UNESCO shall accord such assistance within the limits fixed by its programme and by its resources. 15 20
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. 25

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. 30

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.

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.

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.
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.

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.

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

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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

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.

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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. 15
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. 30

Article 44 Entry into force in situations of armed conflict

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. 5
In such cases the Director-General shall transmit the communications referred to in Article 46 by the speediest method.

Article 45 Denunciation

1. Each Party may denounce this Protocol.
2. The denunciation shall be notified by an instrument in writing, 10
deposited with the Director-General.
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 15
of hostilities, or until the operations of repatriating cultural property are completed, whichever is the later.

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. 20

Article 47 Registration with the United Nations

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. 25

In faith whereof the undersigned, duly authorized, have signed the present Protocol.

Done at The Hague, this twenty-sixth day of March 1999, in a single copy which shall be deposited in the archives of the UNESCO, and certified true copies of which shall be delivered to all the High Contracting Parties.