

Hundred and fifty-fifth Session

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**REPORT BY THE DIRECTOR-GENERAL ON THE RESULTS OF
THE MEETING OF GOVERNMENTAL EXPERTS ON THE REVISION
OF THE HAGUE CONVENTION FOR THE PROTECTION OF CULTURAL
PROPERTY IN THE EVENT OF ARMED CONFLICT 1954**

(Vienna, 11-13 May 1998)

SUMMARY

The Director-General submits this report to the Executive Board in accordance with the wish expressed by the third meeting of the High Contracting Parties to the Hague Convention for the Protection of Cultural Property in the Event of Armed Conflict 1954 (Paris, 13 November 1997).

Decision required: paragraph 8.

1. The third meeting of the High Contracting Parties to the Hague Convention for the Protection of Cultural Property in the Event of Armed Conflict 1954 ('the Convention') held in Paris on 13 November 1997 discussed the ongoing revision of the Convention and the activities undertaken by the Secretariat to this end. In particular, it reviewed the results of the meeting of governmental experts on the revision of the Convention which took place in Paris from 24 to 27 March 1997 and the follow-up of that expert meeting.
2. The participants in the November 1997 meeting felt that another preparatory meeting of governmental experts was needed to consider the draft provisions for the revision of the Convention elaborated at the March 1997 meeting. On that occasion representatives of Austria and the Islamic Republic of Iran offered to host such a meeting in the first half of 1998.

3. The November 1997 meeting resulted in the adoption of the resolution which, among other things, 'invited the Chairperson of the present meeting of High Contracting Parties to ensure the convening of a preparatory meeting in 1998 and to report on its work to the Director-General'. It also 'requested the Director-General to transmit the report of the preparatory meeting to the Executive Board of UNESCO, to the High Contracting Parties to the Hague Convention, to the Member States of UNESCO, to States with an Observer status, to all other interested States and to international organizations concerned with a view to the convening of a Diplomatic Conference of all these States, possibly in the first half of 1999'.

4. Upon the invitation of the Austrian authorities, such a meeting took place in Vienna from 11 to 13 May 1998. All UNESCO Member States as well as Member States of the United Nations were invited to take part in the meeting. Of the total number of the High Contracting Parties to the Convention, 57 were represented. In addition, representatives of 24 States not party to the Convention participated in the meeting as observers. Finally, observers from the International Committee of the Red Cross (ICRC), the International Council on Archives (ICA) and the International Federation of Library Associations and Institutions (IFLA) were present.

5. The main purpose of this meeting was to make further progress on five principal issues thoroughly discussed at various stages of the revision of the Convention: (a) the form of the new instrument; (b) special protection; (c) military necessity; (d) jurisdiction and responsibility; and (e) institutional matters. To focus the discussion, the participants took as a basis for further deliberations the UNESCO documents 'Draft provisions for the revision of the 1954 Hague Convention and commentary from the UNESCO Secretariat' (Ref. CLT-97/CONF.208/2 of October 1997) and 'Summary of comments received from States Parties to the Hague Convention, the International Committee of the Red Cross and the International Council on Archives' of March 1998.

6. The results of the three-day discussions in detail are contained in the final report of this meeting. A copy of this report is annexed to the present document.

7. The meeting resulted in an agreement that a comprehensive working document written in treaty language, taking into account the deliberations of this meeting as well as the results of previous meetings on this matter, should be elaborated by the Secretariat and made available before the Diplomatic Conference. At the closure of the meeting, the representative of the Netherlands confirmed the intention of her government to convene a Diplomatic Conference at The Hague from 14 to 26 March 1999 with a view to adopting a new instrument complementing the provisions of the Convention.

Draft decision

8. In light of the above, the Executive Board may wish to adopt the following draft decision:

The Executive Board,

1. Recalling the resolution of the meeting of the High Contracting Parties to the Hague Convention for the Protection of Cultural Property in the Event of Armed Conflict 1954 ('the Convention') held in Paris on 13 November 1997 on the occasion of the 29th session of the General Conference,

2. Taking note that this meeting decided, among other things, to proceed to the organization of a meeting of governmental experts which would further consider the draft provision for the revision of this Convention,
3. Thanking the Austrian authorities for convening such a meeting in Vienna from 11 to 13 May 1998 and noting with satisfaction that the Vienna meeting was attended by the representatives of 57 High Contracting Parties to the Convention,
4. Thanking the Netherlands authorities for their proposal to convene a Diplomatic Conference at The Hague from 14 to 26 March 1999 with a view to adopting a new instrument complementing the provisions of the Convention,
5. Further notes that the Vienna meeting showed the determination of States Parties to adopt legal provisions complementing the Convention, thus improving the protection of the cultural heritage during hostilities;
6. Having examined document 155 EX/51,
7. Reiterates the need to adopt a new instrument reinforcing the protection of cultural heritage during hostilities;
8. Requests the Director-General to keep the Executive Board informed of the results of the forthcoming Diplomatic Conference.

**MEETING OF GOVERNMENTAL EXPERTS ON THE REVISION OF
THE HAGUE CONVENTION FOR THE PROTECTION OF CULTURAL
PROPERTY IN THE EVENT OF ARMED CONFLICT OF 1954**

Vienna (Austria), 11-13 May 1998

FINAL REPORT

1. Following the resolution adopted by the third meeting of States Parties to the Hague Convention for the Protection of Cultural Property in the Event of Armed Conflict 1954 (Paris, 13 November 1997) which welcomed 'the offer of the authorities of Austria and that of the Islamic Republic of Iran to consider the possibility of convening in the first half of 1998 a preparatory meeting of governmental experts to further prepare a draft of a new instrument for the protection of cultural property in the event of armed conflict', the authorities of Austria convened a meeting of governmental experts in Vienna from 11 to 13 May 1998.
2. All UNESCO Member States as well as Member States of the United Nations were invited to take part in the meeting. Of the total number of 90 States party to the Convention, 57 were represented. In addition, representatives of 24 States non-party to the Convention participated in the meeting as observers. Finally, observers from ICRC, ICA and IFLA were present.
3. On behalf of the Austrian authorities, the meeting was opened by Ms Monika Kalista, Director-General for Cultural Politics of the Federal Ministry for Foreign Affairs of Austria. She emphasized the importance of the revision of the Convention and the need for a more comprehensive protection of cultural heritage during hostilities. On behalf of UNESCO, the meeting was opened by Mr Hernan M. Crespo-Toral, Principal Director, Sector for Culture, who was representing the Director-General of UNESCO. In his presentation he summarized the main results of the review process and underlined the need for the elaboration of a new legal instrument which would supplement the Hague Convention.
4. In accordance with the provisional agenda, the meeting elected by consensus its Chairperson Mr Franz Cede, Ambassador and Head of the International Law Division of the Austrian Federal Ministry for Foreign Affairs. The meeting then adopted its agenda and its Rules of Procedure which were slightly modified. Brazil, Egypt, Poland and Senegal were elected Vice-Chairpersons. Mr Hossein Ghazizadeh of the Islamic Republic of Iran was elected Rapporteur.
5. After a short procedural debate the Chairperson introduced the subject and summarized the main reasons which had led to the convening of this meeting, in particular, the need to make further progress on five principal issues: the form of the new instrument, special protection, military necessity, jurisdiction and responsibility and institutional matters.
6. Opening the discussion on ways to proceed with the drafting of the new legal propositions, the Chairperson proposed to take as a basis for further discussion the UNESCO documents 'Draft provisions for the revision of the 1954 Hague Convention and commentary from the UNESCO Secretariat' (Ref. CLT-97/CONF.208/2 of October 1997) and 'Summary of comments received from States Parties to the Hague Convention, the International Committee of the Red Cross and the International Council on Archives' of March 1998.

7. The main points of the discussion were presented to the meeting by the Chairperson. They may be summarized as follows:

(i) Agenda item 7a: Form of the new instrument

8. The expert meeting considered three options regarding the form of the new instrument. First, a new convention superseding the 1954 Hague Convention; second, an optional protocol supplementing the provisions of the Hague Convention; and finally, an instrument revising the Hague Convention in accordance with its Article 39.

9. It was agreed that the relationship between the new instrument and the Hague Convention requires careful consideration, and that a flexible solution should be sought. Some delegations interpreted Article 39 of the Hague Convention as providing the only possibility for supplementing the Convention. They felt that applying Article 39 would be desirable in order to guarantee a uniform protection regime. Most delegations, however, held the view that it is not obligatory to follow the procedure outlined in Article 39, but that the general rules of international treaty law, including Article 41 of the Vienna Convention on the Law of Treaties, should be applied. The latter approach would enable States to agree on an improved protection regime between themselves without the formal acceptance of all States Parties to the Hague Convention.

10. Most delegations expressed the view that the Hague Convention 1954 should be retained as the basis for the protection of cultural property in the event of armed conflict. They shared the assessment that the Hague Convention enjoys a high reputation and wide acceptance in the international community and that States willing to accede to the Hague Convention should not be precluded from doing so. The majority of delegations felt that an optional protocol would be the best choice for the format of the new instrument.

(ii) Agenda item 7b: Special protection

11. There was general consensus that the special protection regime as provided for in Chapter II of the Hague Convention is not satisfactory and deserves some improvement. Some delegations expressed the view that the special protection regime is too narrow in its scope and that a number of practical and political obstacles impaired its effectiveness. It was proposed to establish an enhanced regime of special protection providing more flexibility regarding the eligibility of cultural property to become specially protected. It was recalled that this issue is closely related to agenda item 7e (institutional matters). A number of delegations pointed out that an efficient special protection regime inevitably demands a solid institutional basis.

12. A majority of delegations expressed the view that any special protection regime on an intergovernmental level has to be complemented by appropriate national legislation. It was even proposed that national legislation on this matter be a further prerequisite for entering a site in the list of specially protected property under the new regime. In this context it was pointed out that the new instrument should include the obligation to provide assistance for States that do not yet have national legislation in place.

13. One delegation pointed out that a special protection regime should not lead to a downgrading of the 'normal' protection regime. Therefore there should be a thorough consideration of the impact of the special protection regime on cultural property not falling under this special regime.

(iii) Agenda item 7c: Military necessity

14. The notion of military necessity and its inclusion in the instrument was broadly discussed both in plenary and in an informal working group. Some delegates expressed their hesitation as to the inclusion of such a concept in the instrument, in particular for cultural property under special protection. They referred to the idea that a small number of cultural properties, due to their exceptional value, should remain untouched in any circumstances. However, a majority of participants was in favour of retaining the concept in the new instrument. But this concept should appear in the text rather as a barrier against destruction than the opposite. In other words, military necessity should in no way be seen as military convenience. Reference was also made to the precedent of the 1977 Protocol I to the Geneva Conventions, which benefits from an almost universal acceptance and could provide elements for the drafting of the new instrument. Special attention was given to written proposals submitted by several delegations as to the meaning of the concept and concern was expressed that this notion should appear as explicitly as possible in a future draft so that it is manageable in conflict situations.

15. A working group examined a number of elements which could limit the application of the concept and it was agreed that such limiting elements should clearly appear in the text in order to facilitate its application. These elements should refer to both general principles (such as its limitation in time) and to more procedural limitations (such as compulsory warnings or the level of command). It was agreed that this list of explanatory elements should be further elaborated before the Diplomatic Conference and several delegations offered their services to this end.

(iv) Agenda item 7d: Jurisdiction and responsibility

16. The expert meeting had a comprehensive exchange of views on this matter. The majority of delegations expressed the view that the duplication of similar efforts on the international level should be avoided (for instance the work of ILC on a draft concerning State responsibility and the Diplomatic Conference on the statute of an International Criminal Court).

17. In view of the fact that the responsibility of States can already be found in international customary law and is currently being codified under the auspices of ILC, several delegations preferred not to mention State responsibility explicitly in the new instrument. However, other delegations were of the opinion that the concept of State responsibility is - despite its existence in international customary law - already embodied in a number of international legal instruments. Therefore, the concept of State responsibility should be explicitly stated in the instrument.

18. Delegates spoke in favour of provisions on individual criminal responsibility. The formulation, however, still needs elaboration and improvement. There was general consensus that the principle of 'either punish or extradite' should also be retained, taking account of formulations in existing international treaties.

(v) Agenda item 7e: Institutional matters

19. The participants considered the two options contained in the revised Lauswolt document as well as a fact sheet prepared by UNESCO on the practical, staffing and financial implications. All the speakers emphasized the necessity of elaborating an efficient

institutional framework. Although several delegates spoke in favour of Option II (election of a non-permanent bureau of States Parties), most delegates were in favour of the creation of an intergovernmental committee inspired by the proposal contained in Option I of the revised Lauswolt document. A number of important concerns were expressed regarding the composition, the function and the financial implications of such a committee. It was considered that it should not have more than 12 members and that it should be based on an equitable geographical distribution. Reference was also made to the useful precedent of Article 90 (International Fact-Finding Commission) of Protocol I to the Geneva Conventions. The professional expertise of specialized international non-governmental organizations was recognized and it was unanimously felt important that their role be clearly mentioned in the text of Option I. Two particular concerns were expressed: first that the functions of the committee should be further elaborated and second that careful attention be given to financial implications in order to allow the committee to perform its functions.

(vi) Agenda item 8: Any other business

20. Under this agenda item, the question of the follow-up to the Vienna expert meeting was discussed. There was general agreement that a comprehensive working document written in treaty language, taking into account the deliberations of the present meeting as well as the results of previous meetings on this matter, should be elaborated by the UNESCO Secretariat and made available in good time before the Diplomatic Conference.

21. It was felt that in order to carry out this task contributions by interested delegations would greatly facilitate the work of the Secretariat.

22. At the conclusion of the meeting, the representative of the Netherlands confirmed the intention of her government to convene a Diplomatic Conference at The Hague from 14 to 26 March 1999.