Chapter 1

The road to the 1999 Second Protocol

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1. Introduction

This contribution will address the question ‘Why a Second Protocol to 1954 Hague Convention?’

But before I begin let me however mention an important recent event. On 13 March 2009, the Director-General of UNESCO received from the United States of America the instrument of ratification of the 1954 Hague Convention for the Protection of Cultural Property in the Event of Armed Conflict (the 1954 Hague Convention for short), entering into force immediately and, with some exceptions related to penal aspects, being self-executing. This is a very important step. During the negotiations at the 1954 Hague Conference, the delegates made several concessions requested by the UK and US delegations, in the hope that they would become Parties to the Convention.¹ The international community had to wait 55 years to see at least one of them become a Party. We are still waiting for the UK to take the same step.

The US representative² was right to indicate that US military personnel were trained in and familiar with the provisions of the 1954 Hague Convention and with numerous customary rules on the protection of cultural property. Nonetheless, we have recently seen a number of violations. This occurred in particular during the Iraqi campaign, as described in several books³ and reported at the seminar on mili-


² Mr. Steve Engelken, Chargé d’Affaires a.i. of the United States of America to UNESCO. See also UNESCO Flash Info No. 040-2009, dated 16 March 2009.

tary operations on 25 March 2009 in The Hague. We have high expectations of US participation as a High Contracting Party to the Convention. With its help we can perhaps breathe new life into the 1954 Hague Convention. We are looking forward to the US considering becoming a Party to the 1999 Second Protocol as well.

2. Towards the 1954 Convention

The 1954 Hague Convention satisfied a desire that many philosophers had expressed over the course of centuries. It was also the result of prolonged efforts, which started with the 1863 Lieber Code, the 1874 Brussels Draft Declaration and the 1899 and 1907 Hague Conventions – not to forget the famous 1935 Roerich Pact, which is still in force. It would also be unjust not to mention the 1938 draft convention prepared by a Committee of Experts of the International Museums Office, chaired by Charles de Visscher and composed of some of the most famous lawyers of the time, which undoubtedly left its mark on the final text of the 1954 Hague Convention.

Also in 1938 and 1939 it had been the Dutch government which was in charge of preparing a Diplomatic Conference on the basis of a draft Convention. The Netherlands sent the draft to sixty-two States, and received responses from forty States. In the meantime, however, the Second World War had begun. The International Museums Office tried to cope with this new situation by suggesting that the States adopt a declaration of principle. A draft Declaration consisting of ten articles was therefore prepared. After making a few changes to the text of the Declaration, the governments of Belgium and the Netherlands had decided to adopt the draft when the military events of May 1940 brought the two countries into the war.

It was only after the Second World War – in the context of post-war enthusiasm for human rights and humanitarian law – that the first universal convention for the protection of cultural property in armed conflict was adopted. The 1954 Hague Convention inspired high hopes in its drafters, who considered it an instrument “of great importance for all peoples of the world”. However, they were also conscious of the concessions that had been made to military exigencies. The Dutch Minister of

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5 At the signing ceremony of the Second Protocol on 16 May 1999, the then Secretary of State Colin Powers mentioned that “it is appropriate to all States to consider thoroughly this Second Protocol and to joint their voices to those of other civilised peoples for the survival of human behaviour, preserving of human lives and the maintenance of a rich heritage to be handed on to future generations.” (Text distributed at the ceremony, p. 6).
8 Preamble to the 1954 Hague Convention.