Chapter 10
Elaboration and legal implementation of the 1999 Second Protocol: The Dutch finger on the pulse

Nout van Woudenberg*

1. Introduction

During the last decade of the 20th century, it became evident that the UNESCO Convention for the Protection of Cultural Property in the Event of Armed Conflict, with Regulations for the Execution of the Convention and the First Protocol (the 1954 Hague Convention for short), needed to be updated and supplemented. After various meetings and several rounds of negotiations, the Second Protocol to the 1954 Hague Convention was adopted in The Hague in March 1999. This is an account of Dutch involvement in the Second Protocol: not only in the Protocol’s conclusion, but also in efforts to implement its provisions as effectively as possible and to keep it in the centre of international attention.

2. Dutch involvement in developing a Second Protocol to the 1954 Hague Convention

The 1954 Hague Convention, with Regulations for the Execution of the Convention and the First Protocol, was adopted in The Hague on 14 May 1954. It is indisputably the main multilateral instrument for the protection of cultural property during armed conflicts. It creates a legal regime intended to protect cultural property against the effects of an armed conflict that are foreseeable in time of peace and obliges the States Parties to respect and protect cultural property during an armed conflict.

However, barely half a century after the Convention’s adoption, the need for a Second Protocol to update and supplement it became apparent, partly owing to the manner in which armed conflicts are now conducted. Cultural property became the

* Nout van Woudenberg is a legal counsel at the International Law Division of the Dutch Ministry of Foreign Affairs. This article was written in his personal capacity. The opinions in this essay are solely his and do not necessarily represent those of the Ministry.

1 Adopted 14 May 1954, 249 UNTS 240.

2 38 ILM 769; The text can be found at http://portal.unesco.org/en/ev.php-URL_ID=15207&URL_DO=DO_TOPIC&URL_SECTION=201.html.

target of direct attacks, and violations of the 1954 Hague Convention went unpunished in many cases. Moreover, many recent conflicts have not been international, and it was this above all which would have to be addressed in a new instrument to supplement the Convention. As it had a leading part in the conclusion of the 1954 Hague Convention and its First Protocol, the Netherlands wished to play a similar role in relation to the measures to strengthen this Convention.

At the 26th session of the General Conference of UNESCO in November 1991, the indignation among the members about the destruction of cultural heritage during the conflict in the Balkans was so great that it was decided to review the effectiveness of the 1954 Convention and make proposals for improvement. The Dutch government then took the initiative in 1992 of drawing up an Explanatory Note on ways of strengthening the Convention.4 This Dutch proposal resulted in a preliminary discussion at the 140th session of the UNESCO Executive Board in October 1992. In close collaboration with the Director-General of UNESCO, the Netherlands organised meetings of experts in July 1993 and February 1994 to prepare the way for decisions. A similar meeting was held in Paris in late 1994. The aim of these meetings was to formulate specific recommendations for improving the 1954 Hague Convention and enhancing the effectiveness of its implementation. The first question that arose in this connection was whether the aim should be to revise the 1954 Hague Convention or conclude a second protocol. Ultimately it was decided to have a second protocol, because the unanimous decision required to amend the Convention had proved unfeasible.

A broad meeting of experts was held in Vienna in 1998. UNESCO, together with the Netherlands, set out the results of the meeting in a working document containing the draft text of a legal instrument. UNESCO and the Netherlands jointly sent this document to the individual States, the International Committee of the Red Cross and various international organisations for their comments. On the basis of these comments, UNESCO – once again with the help of the Netherlands – prepared a final draft that would serve as a basis for a diplomatic conference to negotiate the text.

Subsequently, the Second Protocol to the 1954 Hague Convention for the Protection of Cultural Property in the Event of Armed Conflict was adopted in The Hague on 26 March 1999 after two weeks of negotiation. This diplomatic conference was attended by 93 States and various international organisations. The chairman of the conference was Adriaan Bos, at that time Legal Adviser of the Dutch Ministry of Foreign Affairs.

This Second Protocol to the 1954 Hague Convention is a major step forward in the protection of cultural property under international humanitarian law. It strengthens and supplements the Convention by introducing more effective international rules.5 In this publication, I will focus on some of the Protocol’s principal and most innovative aspects:

- Non-international armed conflicts: The application of the 1954 Hague Convention in non-international armed conflicts was deficient. As conflicts of

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5 See Article 2 of the Protocol.