



## Consultation Paper

### ON RATIFICATION OF THE 1954 HAGUE CONVENTION ON THE PROTECTION OF CULTURAL PROPERTY IN THE EVENT OF ARMED CONFLICT AND ACCESSION TO ITS TWO PROTOCOLS

APRIL 2007

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ISBN 978-0-478-18455-6

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First published in April 2007 by:

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The contact details of respondents will not be made public. They will, however, be recorded and may be used for future consultation unless requested otherwise.

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## *How to Comment*

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Cabinet has asked the Ministry for Culture and Heritage to examine the case for New Zealand to ratify the 1954 Convention for the Protection of Cultural Property in the Event of Armed Conflict and accede to its two Protocols of 1954 and 1999.

This Consultation Paper outlines the key issues and seeks comments regarding particular questions, contained in a separate Questionnaire to be returned to the Ministry. We welcome all views.

The deadline for responses is 15 June 2007.

All Questionnaires should be sent (hard copy or electronically) to:

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We thank you for your consideration and input.

*We would like to acknowledge the Consultation Paper on the 1954 Hague Convention by the UK's Department for Culture, Media and Sport (September 2005) as a source document.*

## *Introduction*

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The Convention for the Protection of Cultural Property in the Event of Armed Conflict (the Hague Convention) was signed at The Hague on 14 May 1954, in the wake of massive destruction of cultural heritage in the Second World War. The Convention aims to protect cultural property in situations of armed conflict. Cultural property for this purpose is described as movable and immovable property of great importance to the cultural heritage of every people.

The Convention is supplemented by two Protocols – the first adopted at the same time as the Convention in 1954 (the first Protocol), and the second adopted in 1999 (the Second Protocol). The first Protocol covers further provisions relating to the export of cultural property in the event of armed conflict, while the Second Protocol provides more detailed guidelines on the operation of the Convention, as well as supplementing the Convention with a strengthened system of “enhanced” protection. A copy of the Convention, its Regulations and the two Protocols can be downloaded from the website of the United Nations Educational, Scientific and Cultural Organisation (UNESCO) at [www.unesco.org/culture/laws/hague/html\\_eng/page1.shtml](http://www.unesco.org/culture/laws/hague/html_eng/page1.shtml)

New Zealand signed the Convention in 1954 but has not ratified it. New Zealand has not signed either of the two Protocols.

The Hague Convention is one of a number of international instruments which protect cultural property, along with the 1970 UNESCO Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property and the 1995 UNIDROIT Convention on Stolen or Illegally Exported Cultural Objects, among others. As the process of acceding to these other two Conventions has been concluded, the New Zealand government is now examining whether it should ratify The Hague Convention and accede to its two Protocols.

Ratification would send out an important message regarding New Zealand's commitment to the protection of cultural property in the event of armed conflict.

If New Zealand is to ratify the Convention and accede to its Protocols, the following key issues will have to be resolved:

- What cultural property should be placed under general protection
- Whether coverage should be mandatory for all qualifying cultural property
- What safeguarding measures New Zealand needs to take, and
- Whether New Zealand should make use of the system of enhanced protection provided for under the Second Protocol and, if so, what should be placed under this protection.

If New Zealand is to accede to the Second Protocol to the Convention, consideration will need to be given to which cultural property is to be placed under enhanced protection. The Second Protocol to the Convention entails various legal obligations and new legislation may be required. It is possible for ratification of the Convention and accession to the first Protocol to proceed separately from accession to the Second Protocol if necessary.

The Ministry has already held discussions with a number of people from key organisations regarding what should be covered in this Consultation Paper. These included representatives from the New Zealand Defence Force, the National Library, Museums Aotearoa, Te Papa, Te Puni Kōkiri, New Zealand Historic Places Trust, Archives New Zealand and the Department of Conservation. The Ministry is now seeking comments from all interested parties regarding these questions. We welcome your views.

Following this public consultation process, Cabinet will consider approving ratification and accession, subject to the completion of the Parliamentary Treaty Examination process and the implementation of any necessary legislation.

## *An Overview of the Convention and its two Protocols*

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### **The Convention**

Currently, 116 countries (or “States Parties”) have ratified the Convention. These include Australia, Canada, China, the Russian Federation, France, and most other European Union nations. Japan is actively considering ratification, and the United Kingdom has also taken significant steps towards ratification.

The Convention applies to international armed conflicts (whether or not a formal state of war exists between the parties concerned) and to cases of partial or total occupation. It also applies in general to conflicts not of an international character. Some of its provisions apply in peacetime.

The Convention obliges States Parties to protect all cultural property, in their own and in other countries. To qualify as cultural property, items must be of “great importance to the cultural heritage of every people”. ‘Of every people’ is generally held to mean ‘of each respective people’, which means that each state determines which property is part of its national cultural heritage. It is also up to each state to decide its own criteria for determining what is of ‘great importance’.<sup>1</sup>

Cultural property includes movable and immovable property, such as:

- monuments of architecture, art or history
- archaeological sites
- works of art
- manuscripts, books and other objects of artistic, historical or archaeological interest
- scientific collections and important collections of books or archives.

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<sup>1</sup> O’Keeffe, Roger (1999): ‘The Meaning of “Cultural Property” Under the 1954 Hague Convention’, in *Netherlands International Law Review*, XLVI, pp26-56.

It also includes buildings designed to house cultural property, such as museums, libraries, depositories of archives; as well as temporary refuges intended to shelter movable cultural property in the event of armed conflict, and centres containing large amounts of cultural property.

In peacetime, Parties must prepare for the safeguarding of their cultural property against the foreseeable effects of an armed conflict, by taking such measures as they consider appropriate. Parties are also required to respect cultural property by refraining from using such property or its surroundings for purposes likely to expose it to destruction or damage in the event of armed conflict and to refrain from any act of hostility directed against such property. Imperative military necessity is the only ground upon which this obligation can be waived.

Each State Party also undertakes to prohibit, prevent, and, if necessary, stop any form of theft, pillage or misappropriation of cultural property or any acts of vandalism directed against it. In addition, each State Party undertakes to refrain from requisitioning movable property in other States. Acts of reprisal against cultural property are also prohibited. These obligations are absolute ones and there is no waiver for ‘military necessity’.

A State Party that is an occupying power must, as far as possible, support the national authorities of the occupied country in safeguarding and preserving its cultural property, as well as take any necessary preservation measures, where cultural property is damaged by military operations and the national authorities are unable to take such measures themselves. To help identify cultural property protected by the Convention, it may be marked with a distinctive emblem.

The Convention also provides for a system of ‘special protection’ to be given to a limited number of refuges, intended to shelter movable cultural property in the event of armed conflict, and to centres containing monuments and other immovable cultural property of very great importance. This system involves entering cultural property on a special protection register.

So far, limited use has been made of the regime for special protection, due to some perceived drawbacks. One is that States are required to enter cultural property on a special protection register, but entries can (and have been) challenged by other States. Many States have therefore regarded this requirement

as too political. Another drawback is the potential risk that entry onto the register will alert hostile States to the presence of the protected cultural property. This is particularly likely to be a problem for refuges for movable cultural property, which can become targets for looting when law and order has broken down. In response to this, the Second Protocol introduced the regime of ‘enhanced protection’ to replace the special protection regime.

### **The first Protocol**

There are currently 93 States Parties to the first Protocol. The purpose of the Protocol is to prevent Parties from exporting cultural property from territories occupied during armed conflict, and to provide for the return of cultural property deposited with a third State for safekeeping during a conflict.

The provisions of this Protocol have to some extent been overtaken by the 1970 UNESCO Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property. That Convention requires States Parties to regard as ‘illicit’ the export and transfer of ownership of cultural property under compulsion from a territory under occupation.

### **The Second Protocol**

The Second Protocol, adopted on 26 March 1999, currently has 44 States Parties. It provides clarification of the measures that need to be taken in peacetime to safeguard cultural property (if appropriate), such as the preparation of inventories, planning of emergency measures against fire or structural collapse, preparation for removal of movable cultural property, and the designation of competent authorities responsible for safeguarding cultural property. It also specifies the circumstances in which the obligation to protect cultural property can be waived on grounds of imperative military necessity.

The Second Protocol creates a new, further category of protection, called ‘enhanced protection’, for certain cultural property which is “of the greatest

importance for humanity” and which must not be used for military purposes or to shield military sites.

Parties to a conflict must refrain from making such property the object of an attack or using such property or its immediate surroundings in support of military action. Immunity from attack may be lost if the property becomes, by its use, a military objective. Even then, the property may only be attacked in limited circumstances.

Parties to the Second Protocol must also criminalise serious violations and make such offences punishable by appropriate penalties. Promotion of the Convention with the public and target groups is also required.

## *The Question of Ratification and Accession*

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### **Question 1 – Do you agree that New Zealand should ratify the Convention and accede to its Protocols?**

The Government believes that there is a case for New Zealand to become a Party to the Convention. The Ministry is interested to know whether there are any strong objections.

There are four key reasons to consider ratification:

1. It would be a further expression of New Zealand's commitment to the various international measures which exist to protect and enhance cultural activity.
2. Ratification would advance New Zealand's full participation in the package of UNESCO cultural property Conventions, and ensure full benefit is obtained for the protection of New Zealand's cultural property.
3. It would reinforce the current operational practice of New Zealand's armed forces when involved in conflicts overseas, and make New Zealand's commitment to those norms of conduct more visible.
4. It would provide protection for important New Zealand cultural property in the event of an armed conflict on New Zealand territory.

It should be noted that we would seek to implement the Convention in such a way as to eliminate or minimise extra costs and extra bureaucracy for owners of cultural property and to reduce the chances of increased looting and theft. These aspects are further explored later in this consultation paper.

There are some key issues to be resolved before New Zealand can ratify the Convention but the Ministry believes that, if a robust process for resolving the issues is followed, these will not be insurmountable. We are seeking your help in achieving this.

## *The Definition of Cultural Heritage*

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### **Question 2 – What cultural property is of great importance to New Zealand’s cultural heritage, and should therefore be protected in the event of armed conflict?**

What cultural property is covered by the definition is the most important issue to resolve. The definition of cultural property in Article 1 of the Hague Convention can be summarised as follows:

- (a) movable or immovable property of great importance to the cultural heritage of every people. (The following is not an exclusive list but, as examples, the Convention mentions several forms of such property, including: monuments of architecture, art or history; archaeological sites; buildings of historical or artistic interest; works of art; manuscripts, books and other objects of artistic, historical or archaeological interest; scientific collections and important collections of books or archives)
- (b) buildings whose main and effective purpose is to preserve or exhibit the movable cultural property, such as museums, large libraries and depositories of archives, and refuges intended to shelter, in the event of armed conflict, the movable cultural property
- (c) centres containing a large amount of cultural property, to be known as “centres containing monuments”.

This definition raises the question of how we in New Zealand should apply the phrase, “movable or immovable property of great importance to the cultural heritage of every people”. This is an important question because its answer determines what New Zealand cultural property may be offered the general protection afforded by the Convention in armed conflict.

There are likely to be a number of considerations regarding this, including an appropriate level of recognition for Māori cultural property and what is practically “movable”. It is likely that cultural property such as marae and wahi tapu will be

considered eligible for general protection under the Convention. This is an issue which needs to be carefully considered, tested and worked through during the consultation process. An indicative list of cultural property appears below. Apart from wahi tapu and wahi tapu areas registered by the Historic Places Trust, Te Puni Kōkiri has advised that it is not appropriate to present an indicative list of other Māori cultural property for inclusion on the list in this consultation paper, pending the result of discussion with Māori organisations.

There are already a number of systems for identifying and designating the different parts of our movable and immovable cultural heritage. These systems are likely to provide a useful starting point for thinking about how to apply the definition.

The number of sites nominated for protection will, however, have to be limited. The New Zealand Defence Force notes that, in the event of an armed conflict on New Zealand soil, too many constraints on its activities may result in lives lost, and it is anxious to keep to a minimum the number of sites listed that have tactical significance.<sup>2</sup> Also, listing an excessive number of sites is likely to make the protection unworkable in practice. An enemy confronted with a multitude of protected sites (particularly in an urban setting) would be unable to direct its operations via the least important obstacles and may have to resort to claiming military necessity to achieve its goals. Putting forward too many sites could, therefore, have the opposite effect to that desired in that it could actually jeopardise the level of protection provided.

This is reflected in the practice of those States Parties that have ratified the Convention and notified UNESCO of the details of their implementation. These States have drawn up relatively restrictive lists of cultural property that merits protection under the Convention.<sup>3</sup>

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<sup>2</sup> Also, many historic sites are historic because of their previous strategic significance, and in the event of an armed conflict, are likely to be of strategic significance once more.

<sup>3</sup> See the UNESCO 1995 report on “Information on the Implementation of the Convention for the Protection of Cultural Property in the Event of Armed Conflict at <http://www.unesco.org/culture/chlp>

A pragmatic solution to achieving the balance required is to restrict the application of the Convention only to that cultural property which we can demonstrate objectively is of “great importance”. We are seeking feedback on the categories of cultural property and individual items of cultural property that should be eligible for general protection. Again, existing designation systems may provide an initial starting point. Those systems were designed with other purposes in mind, however, and this must be borne in mind when considering the property to be protected under this Convention.

By way of example, the United Kingdom defined its immovable cultural heritage as: all listed buildings of Grade I status (amounting to 7000 list entries in England and a further 3650 in Scotland); in England, all historic parks and gardens of Grade I status (126); all UK world heritage sites (excluding natural ones). It defined its movable cultural heritage as: the collections of the Museums and Galleries that are directly sponsored or funded by Government (30); the museums, galleries and universities in England with designated collections and in Scotland with important collections (22 collections at universities; 50 collections at other museums/galleries); the National Record Offices and the five legal deposit libraries in the UK.

We are interested in views on which New Zealand cultural properties should be included for general protection. Examples could include:

- Archive of Māori and Pacific Music (University of Auckland)
- Archives New Zealand’s four regional offices (Auckland, Wellington, Christchurch, Dunedin)
- Auckland Art Gallery
- Auckland City Libraries’ Heritage Collections
- Auckland War Memorial Museum, including its Library
- Births, Deaths and Marriages Registry
- Canterbury Museum, including its Library
- Christchurch Art Gallery
- Dunedin Public Art Gallery
- Hocken Collections (University of Otago)
- Land Information New Zealand Registry
- Māori Land Court records
- MacMillan Brown Library (University of Canterbury)

- McNab New Zealand/Reed Collections (Dunedin Public Library)
- Museum of New Zealand Te Papa Tongarewa, and its storage facility
- Museum of Transport and Technology, Auckland
- National Library, including the Alexander Turnbull Library
- National Maritime Museum
- New Zealand Film Archive
- Otago Museum
- Parliamentary Library
- Sound Archives/Ngā Taonga Kōrero
- The TVNZ Archive
- University of Auckland Special Collections (eg. Western Pacific High Commission Archives, Pacific territories official publications; literary papers of Iris Wilkinson/Rex Fairburn).
- University of Otago Special Collections (eighteenth century rare books, John Locke books, John Evelyn diaries, incunabula collection)
- All other properties listed in the New Zealand Historic Places Trust Register of Category One historic places
- Properties subject to a Heritage Order under the Resource Management Act 1991
- New Zealand Historic Places Trust registered Wahi Tapu and Wahi Tapu areas
- Cultural Properties on New Zealand's tentative World Heritage List
- Approved repositories holding public archives not already listed above including: Te Awamutu Museum; Hawke's Bay Art Gallery and Museum; Whanganui Regional Museum; Marlborough Provincial Archives and Museum; New Plymouth Public Library/Puke Ariki

There will also be a need to explore what cultural property qualifies in areas such as historic heritage managed by the Department of Conservation, records held by scientific institutions, and other individual objects of significance (which may be held privately). Distinctions may also need to be drawn, for the purposes of preparing safeguarding measures, whether the property to be protected is movable or immovable. For example, a particular institution may have an important collection which is movable, and it is that collection which is to be protected, rather than the institution as a whole.

## *Mandatory or Voluntary?*

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### **Question 3 – Do you agree that the decision on whether any particular cultural property should be protected by the Convention should be left to the property owner?**

The next question is whether the Government should require all qualifying cultural property from Question 2 to be protected or whether this should be a voluntary decision that is left to the owner or guardian of each cultural property.

In order to ensure that the Convention provides the maximum protection possible for New Zealand's cultural property, it is important to ensure that its coverage is as comprehensive as possible across the list of cultural property qualifying for protection. One way to do that would be to require all relevant cultural property to be protected by the Convention. The Government does not, however, have any existing powers to require owners to agree to this, and legislation is likely to be required.

For an owner of cultural property, being protected is likely to mean having to take appropriate safeguarding measures in peacetime to protect the property (such as the planning of emergency measures against fire or structural collapse, planning for the removal of movable cultural property or provision for adequate in situ protection of such property). It is ultimately up to each State to determine what sort of measures are appropriate. There may well be resistance if compulsion resulted in any extra costs for owners. Whether there are any extra costs is likely to depend in large part on what safeguarding measures are to be required of owners of cultural property.

Much cultural property should already have emergency protection systems in place. For example, local and central government already prepare inventories of heritage. In relation to emergency measures for protection against fire or structural collapse, these are covered both by civil defence planning and by legislation. The National Civil Defence Emergency Management Plan 2006 includes provision for "asset

protection, including buildings and historic heritage assets (including structures, areas, landscapes, archaeological sites, and wahi tapu)”, and mentions that the Historic Places Trust and other agencies will be available to provide assistance and advice in the case of an emergency. The Building Act has provisions relating to dangerous, earthquake risk, and insanitary buildings. Furthermore, museums, libraries, archives and other collecting organisations will also have emergency and disaster plans in place in relation to movable cultural property.

Another issue is that some owners may be fearful that being identified as a protected property could itself make that property the target of attack.

In favour of a mandatory system is the argument that protection under the Convention should not depend on the whim of individual owners. Also, a voluntary system would potentially lead to inconsistent coverage. It may also be considered that the Government has a responsibility to protect cultural property for future generations. Government is also the only body in a position to ensure that protection is applied across the whole country.

One solution to the issue of costs could be to set the required safeguarding measures at a level which ensures that little or no costs are likely to be imposed on owners.

Another is to not require any safeguarding measures to be taken until it becomes apparent that there is a threat to New Zealand, and the nature of that threat is apparent. It may not be possible to assess the best type of safeguarding measures to take, until such a threat is present. On the other hand, this may not be realistic in light of the pattern of many conflicts: there may not be enough time to take the actions required to comply with the Convention’s obligations.

## *Peacetime Guardians*

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### **Question 4 – Do you agree that the most appropriate body to undertake the peacetime safeguarding measures is the existing owner(s), guardian(s) or trustee(s) of a cultural property?**

Article 3 of the Convention commits States Parties to prepare in times of peace for the safeguarding of their own cultural property against the foreseeable effects of an armed conflict, by taking such measures as they consider appropriate.

The Second Protocol (Article 5) expands on this somewhat unclear obligation with some examples of the kind of measures that should be taken in peacetime. These 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
- The designation of competent authorities responsible for the safeguarding of cultural property.

Once it is decided which properties will receive general protection under the Convention, we will then be in a position to decide which are the most appropriate competent authorities for safeguarding those cultural properties in the event of armed conflict.

The Ministry takes the view that the most appropriate body to implement safeguarding measures in peacetime is most likely to be the body that has direct responsibility for the cultural property or objects in question. The alternative is that the Government takes overall responsibility for ensuring that there are contingency plans in place to cover the situations that are likely to be encountered in a time of armed conflict. In many cases, however, current owners, guardians or

trustees will already have in place contingency plans to cover disaster or civil emergencies, and it may not be appropriate for Government to supplant those arrangements. It should be noted that such measures are also the types of measures which are likely to meet the requirements for safeguarding cultural property under Article 3 of the Convention.

Government would be likely to provide guidance to cultural property owners on possible safeguarding measures, were New Zealand to become party to the Convention and Protocols.

We are interested in your views on this question.

## *The Special Emblem*

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### **Question 5 – Do you agree that it should be optional for owners of cultural property to affix the special emblem?**

Article 6 of the Convention provides that cultural property “may bear a distinctive emblem so as to facilitate its recognition”. Article 16, Emblem of the Convention, specifies the type of distinctive emblem to be used (see picture below). The next question is whether New Zealand should make the distinctive marking of cultural property mandatory or voluntary.



When considering this issue it is important to bear in mind that, upon ratification of the Convention and if New Zealand accedes to its Second Protocol, New Zealand will be required to submit a list to UNESCO of all the cultural property that has been agreed should be protected by the provisions of enhanced protection under the Second Protocol. It is also likely (though not required) that New Zealand will submit a list of the property subject to general protection under the Convention. In the event of armed conflict, this list will be made available to other States Parties, so they will be aware of which property is protected.

This means that affixing an emblem is not a prerequisite to ensuring that a building is protected (that is provided by the inclusion of a property on the

notification list).<sup>4</sup> The fixing of an emblem is designed as a visual aid to any forces engaged in an armed conflict. A highly visible emblem is likely to provide a significant element of protection, particularly in fast-moving military operations where unmarked property may not be recognized as protected. The commanders of those troops are, however, still under an obligation to know what cultural property is protected and to ensure that it is not attacked (unless imperative military necessity applies) even when a distinctive emblem is not affixed.

Some of the issues to consider include:

- whether the placing of a permanent emblem would detract from the aesthetic appeal of the cultural property
- whether the actual risk of an armed conflict in New Zealand would justify the cost of producing and storing an emblem for use only in that event
- what size the emblem should be, and
- where and how the emblem should be fixed.

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<sup>4</sup> Note that while this discussion is focused on buildings, it is theoretically possible to mark other individual items of cultural property.

## *Special Protection or Enhanced Protection*

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**Question 6 – Do you agree that New Zealand should make use of the provisions for *enhanced* protection contained in the Second Protocol, rather than nominating any of its cultural property for special protection?**

Under the 1954 Convention, all cultural property must be afforded “general protection” at a minimum. It also provides a system of “special protection” to:

1. a limited number of refuges intended to shelter movable cultural property in the event of armed conflict
2. centres containing monuments, and
3. other immovable cultural property of very great importance, provided that they are situated at an adequate distance from large industrial centres or important military objectives, and are not used for military purposes.

Contracting parties undertake, in the event of armed conflict, to give immunity to cultural property under special protection by refraining from any act of hostility directed against such property and from any use of such property or its surroundings, for military purposes, with limited exceptions. Parties must also notify UNESCO of the property that it wishes to extend special protection to by making an entry in the “International Register of Cultural Property under Special Protection”.

Since its introduction, this regime for special protection has not been widely taken up. Of the 116 States Parties that have ratified the Convention, only a handful has made use of its provisions for special protection. The main reasons for this are thought to be two-fold.<sup>5</sup>

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<sup>5</sup> Consultation Paper on the 1954 Convention by the UK’s Department for Culture, Media and Sport (Sept 2005), p22.

Firstly, the regime has been seen as having an element that is too political. States Parties are required to register cultural property for special protection on an international register. However, entry on the register can be challenged by the objection of just one other State Party. Indeed, this has actually happened in a number of cases and has led to cultural property being removed from the register.

The second reason that special protection has not been widely used is that States Parties have expressed concern that the process simply acts to advertise the presence of the refuge. Making its location publicly known increases the chances that looting might take place in the event of armed conflict (particularly if law and order has broken down). States Parties have, therefore, tended to prefer to establish refuges but not give them special protection, so that their location can be kept secret.

Due to these problems, the Second Protocol introduced the regime of enhanced protection with an improved set of conditions for nominating and respecting cultural property (these are explained in Question 7, on the following page).

Since most States Parties have not made use of the regime of special protection, New Zealand may wish to consider bypassing these provisions and instead take advantage of the regime for enhanced protection provided for under the Second Protocol. While only 44 State Parties have acceded to the Second Protocol, many are giving active consideration to acceding to it now and the number agreeing to abide by its provisions is likely to rise significantly in the next few years.

## *What Cultural Property Deserves Enhanced Protection?*

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### **Question 7 – If New Zealand accedes to the Second Protocol, what property should be placed under enhanced protection?**

The Second Protocol allows cultural property to be placed under enhanced protection provided that it meets three conditions:

1. It is cultural heritage of the greatest importance for humanity
2. It is protected by adequate domestic legal and administrative measures recognising its exceptional cultural and historic value and ensuring the highest level of protection, and
3. 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.

It is important to note that this is a tighter definition than that which defines cultural property for general protection (see Question 2). In that definition, property must be of “great importance” to each people, whereas for enhanced protection it must be of the “greatest importance to humanity” as a whole.

To achieve this status, a State Party must request that the designated cultural property is included in the List of Cultural Property under Enhanced Protection (Article 11). Then the Parties to a conflict must ensure the immunity of the property in question by refraining from making it the object of attack and from any use of the property or its immediate surroundings in support of military action.

This raises the question of how we should determine which parts of New Zealand’s cultural property are of “the greatest importance for humanity”. Property placed under the enhanced protection provisions needs to first meet the test of being of international importance.

For instance, the UK is considering listing its cultural World Heritage Sites, the collections of their museums and galleries that are given a particular status (Non-Departmental Public Bodies, and Assembly Sponsored Public Bodies), the National Archive Bodies and their five legal deposit libraries.

World Heritage Sites are designated as “places on earth that are of outstanding universal value to humanity”. To be inscribed on the World Heritage List, sites must also have authenticity and/or integrity and have in place adequate legal protection and appropriate management systems. New Zealand has compiled a tentative list of sites which may be eligible for World Heritage status, including cultural sites.

As well as World Heritage sites, New Zealand could consider including other cultural property already listed internationally; for example, UNESCO’s Memory of the World register includes The Treaty of Waitangi and the 1893 Women’s Suffrage Petition.

New Zealand will have to devise its own list of cultural property of the greatest importance to humanity to be given enhanced protection. We would be grateful for all suggestions about what cultural property should be included in the list of property to be placed under enhanced protection. It should be emphasised that this list needs to be small and exclusive, meeting the restrictive conditions above. Once the list is constructed, it will have to be worked through with the New Zealand Defence Force, in order to assess whether the third criterion can be met.