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UNITED NATIONS EDUCATIONAL, SCIENTIFIC AND CULTURAL ORGANIZATION

ORGANISATION DES NATIONS UNIES POUR L'ÉDUCATION, LA SCIENCE ET LA CULTURE

Speech by:
Allocution de:

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à l'occasion de l'ouverture de la Conférence diplomatique sur le projet de deuxième Protocole additionnel à la Convention pour la protection des biens culturels en cas de conflit armé (La Haye, 1954)

The Hague, March 1999
La Haye, mars 1999
The Second Protocol is not meant to amend the Convention. It is an effort to supplement it, by providing new rules for certain matters which need improvement and updating in the light of recent developments.

The Convention's existing regime divides cultural property into two separate categories, granting each a different level of protection. All cultural property enjoys "general protection" in the event of armed conflict. This protection comprises the safeguarding of and respect for such property. If certain conditions are met, cultural property is entitled to special protection under the Convention. This protection regards centres containing monuments, other immovable cultural property of "very great importance" and a limited number of locations sheltering movable cultural property provided that they are located at an adequate distance from larger industrial centres and are not being used for military purposes. To date, only four states have decided to place their cultural property under the special protection provided for in the Convention. Since July 1978 no other cultural property has been entered in the International Register of Cultural Property under Special Protection.

This is one of the most important reasons for reconsidering the conditions for obtaining special protection. The question is: do the conditions governing special protection, present an obstacle to making use of this special protection?

Another important objective of this meeting is to provide an appropriate mechanism for enforcement in the event of violations of the provisions of the Protocol. Important developments have been place, particular with respect to the enforcement rules. I should mention the adoption in Rome, last summer, of the Statute of the International Criminal Court. This is an appropriate time to assess these developments and to decide how they should be reflected in the text of this supplementary protocol.

In conclusion I would like to recall the two International Peace Conferences held in The Hague in 1899 and 1907. These two conferences played a pioneering role in the development of the protection of cultural property in times of war. In Conventions IV and IX we find the first internationally agreed articles dealing with the protection of cultural property. In May of this year we shall be celebrating the hundredth anniversary of the First Peace Conference, held in The Hague in 1899. I am confident that the results of your work will constitute a meaningful contribution to this celebration.

Let me begin by saying what a pleasure it is to welcome you to The Hague, on the occasion of this meeting, which brings so many distinguished representatives of states to discuss ways of improving the 1954 Hague Convention for the Protection of Cultural Property in the event of Armed Conflict.

The aim of this conference, the adoption of a Second Protocol to the Hague Convention, justifies a short excursion into the history of the protection of cultural property in armed conflict.

The first intergovernmental conference took place in 1954 in the Hague. Its purpose was - as pointed out, Mr Director-General, by your predecessor at the time - to establish the principle that property of cultural value is entitled to the same respect that civilized peoples accord to civilians, prisoners of war, medical personnel and hospitals.

In that year, 1954, the destruction caused by the Second World War was still fresh in the memory of the participants. In 1949 the international community adopted the four Geneva Conventions, providing new rules for the protection of the human victims of armed conflicts. These conventions served as models for numerous articles of the 1954 Convention.

The 1954 Convention dealt with the protection of many works of art. The conference believed it to be crystal clear - and I quote the preamble to the Convention - 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." This Convention articulated for the first time the existence and importance of the notion of common heritage. The Convention was also the first to be devoted exclusively to the protection of cultural property. It set the trend in many other respects. While the older instruments in this area are applicable only to international armed conflicts, the Hague Convention contains provisions for both international and internal armed conflicts.

Many of you will know of the heated debate at the Conference in 1954 about whether to include the military necessity clause. Some of the commentaries on the text refer to inclusion of this clause as one of the Convention's principal weaknesses. Whether this assessment is right or wrong is a question which merits further attention even today. Military necessity should never become a convenience that makes it possible to escape individual responsibility, or to violate international humanitarian rules. It is my sincere hope that you will be able to find a satisfactory answer to the question of how to translate this notion into contemporary rules. To that end a combined effort by experts in the military and cultural field is essential.

As of March 1999 95 States have ratified or acceded to the Convention. Its provisions reflect international customary rules. Other states are currently reconsidering ratification. We welcome this development and it is still important to appeal to states to become parties to the Convention.

It should be emphasized that the Convention will continue to exist independently of the Protocol.
"L'humanité n'avait connu que des mondes de l'art exclusifs comme le sont les religions ; le nôtre est un Olympe où tous les dieux, toutes les civilisations s'adressent à tous les hommes (...). Chaque civilisation connaissait ses hauts lieux ; l'humanité est en train de découvrir les siens. Non pas (...) en tant que jalons d'une histoire. De même que, pour Cézanne, Poussin ne succède pas au Tintoret, Chartres ne succède pas à Angkor, au Borobudur, aux temples aztèques, ni ses "Rois" aux "Kannon" de Nara, aux "Serpents-à-plumes", aux "Cavaliers" de Phidias. Tous s'unissent, pour la première fois, dans le monde où les fétiches mourants trouvent une vie qu'ils ne connurent jamais - dans le monde, pour la première fois victorieux du temps, des images que la création humaine a opposées au temps."

Ce qu'écrivait André Malraux en 1957 dans l'introduction à "La Métamorphose des dieux" était, comme souvent, prémonitoire. Il annonçait ici le concept de "patrimoine de l'humanité", qui a pris depuis l'extension et la concrétisation que l'on sait.

Cet hymne à la création humaine que constitue la majeure partie de l'œuvre de Malraux, il me paraissait d'autant plus souhaitable d'en citer un extrait au seuil de cette Conférence que la notion de "biens culturels" ne manifeste pas toujours nettement celle de créativité. Or c'est bien de cela qu'il s'agit, de cette caractéristique distinctive de l'espèce humaine, de ce potentiel extraordinaire, toujours recommencé, en chaque individu, et qui permet, aussi, la compréhension, la communication et, dans le meilleur des cas, la communion.

Affranchi du temps, oui, par la force de création qui l'a porté à naître, le patrimoine culturel est aussi inscrit dans le temps et, à ce titre aussi, constitutif de notre identité. Trace visible des civilisations qui se sont succédé sur Terre, témoignage - avant l'écriture, sur un mode différent de l'écriture - de la diversité de l'humanité dans ses croyances, ses rites, ses coutumes, son art, ses techniques, le patrimoine culturel est notre mémoire. À ce titre, il est irremplaçable, forgeant notre vie à travers les paysages, les histoires et les légendes. Parce qu'il est message, signe et symbole, il est notre âme.

Minster,
Secretary of State,
Your Excellencies,
Ladies and Gentlemen,

It is a great honour and a particular pleasure for me to address this gathering. For you have come together in The Hague to accomplish one of the most important tasks that diplomats, lawyers and cultural experts can engage in: the improvement of humanitarian law.

It is a great challenge indeed, to produce the best possible protocol within a limited time-scale. But I doubt that you could find a more inspiring place for this task than The Hague. Not only is it the place where, the Convention for the Protection of Cultural Property in the Event of Armed Conflict itself was signed in 1954: it is the site of the first Peace Conference of 1899, the one hundredth anniversary of which will be celebrated here in May.
The Hague is associated with the very foundations of International Law through Hugo Grotius; with the International Court of Justice and its predecessor, the Permanent Court of International Justice; with the Hague Academy of International Law; and with the many great initiatives of humanitarian law. I know that this tradition of idealism, together with the determination to turn into reality some of the most essential aspirations of humanity, will guide and inspire your undertaking.

It was Czar Alexander II of Russia who promoted the idea that we do not need to wait for a war in order to have a conference on peace. This was welcomed by Queen Wilhelmina of the Netherlands and in 1954, that idea was reiterated: we need not wait for a war before we take measures to ensure the survival, in such an event, of the cultural heritage.

Our mission and primary goal at all times must be to build peace and prevent war. But when conflict does break out, our first duty is to save human lives and then, to save that which gives meaning to human life. Today, this ethical duty is more pressing than ever. We have seen in recent years, particularly in areas where the assault on the heritage has been brutal, that this assault is part of the attack on the people themselves. And we have also witnessed the trauma of people dispossessed by the intentional destruction of their heritage. That trauma remains even when the conflict has ceased, because of the much greater difficulty of people's rehabilitation when everything dear and known to them has been swept away. It is far, far harder to rebuild lives when people no longer recognise the community in which they live.

Respect for other's cultural heritage is respect for our joint humanity. It is the thread of our common being - an achievement of peace-time - a reminder that conflict, however terrible, is transient and will end with a return to peace and the chance to build a lasting culture of peace. For all these reasons, UNESCO has worked and continues to work closely with the International Committee of the Red Cross.

The Hague Convention and Geneva Conventions of 1949 and their 1977 Protocols share the same aims: to lessen human suffering and to create a minimum level of civilised behaviour even during armed conflict.

When the most basic prohibitions against torture or attacks on women and children, the wounded and prisoners of war are flouted, other aspects of civilisation such as the cultural heritage are often abused also. Whenever heritage is destroyed, the international community as a whole is concerned by the loss. In the famous words of the Hague Convention itself:

"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."

In the forty-five years existence of the Hague Convention, innumerable efforts have been made to assist threatened cultures to protect their heritage. I want to pay tribute here to the little known but crucial work done by cultural experts all over the world. Among them, museum curators, librarians, archivists, architects and archaeologists. Through the several non-governmental organizations of professionals which are, I am happy to see, represented here today, they have gone
selflessly into dangerous situations, giving freely of their expertise where urgent measures are necessary to secure the survival of cultural property for the future.

An ICOMOS expert was present in Dubrovnik in the most dangerous period there. Another was in Cyprus at the cessation of the fighting. A museums expert went to assess damage to Croatian museums as soon as it was feasible. In Cambodia, a constant stream of professional expertise helped ensure the survival of its great legacy. An expert from ICOM was quick to make the journey to Kuwait to see what could be done to put the museums in order there. Librarians in many countries mobilised to send support to their colleagues in Sarajevo, when its famous Library was destroyed. Archivists too have been active in evaluating needs of regional archives in Bosnia, while archaeologists have been in the forefront of efforts to limit illicit export from the troubled country of Afghanistan.

All these professionals are equally quick to take preventive action on behalf of UNESCO, assisting the local authorities to protect the heritage as much as possible where conflict seems imminent. I take this opportunity to thank the many who volunteer for this important and often dangerous task. They are performing one of the highest duties of humanity - saving the best of the past for future generations and ensuring that the message of peace is passed on.

I am glad to see, in the draft text before you, a recognition of that role through the International Committee of the Blue Shield.

Ladies and Gentlemen,

We would like the removal of armed conflicts from human relations. UNESCO will not relax its efforts in this regard. As I always say: UNESCO has only one mission - peace.

But at the same time, we would be neglecting a vital task if we did not do everything to ensure that the heritage survives the conflicts that may occur in spite of the best efforts of the international community. UNESCO gives its steadfast support to this Convention and its Second Protocol because each measure that preserves cultural heritage also preserves human dignity and diversity.

We are aware that much of the fighting which one sees today is not between States but within them. In the text you have before you, as in the text of the Hague Convention itself, the rules to protect the cultural heritage apply not only in international conflicts, but also in non-international conflicts.

I know that States are anxious that there should be no interference with their sovereignty. But I plead with them to give UNESCO the means of helping any State where conflict within its territory and between its own citizens puts heritage at risk. Such situations need the help that cultural professionals, world-wide, can give their beleaguered counterparts. This is not an intrusion into sovereignty. It is part of the wider humanitarian task of preventing unnecessary suffering and of preserving cultural diversity.

When the process of reviewing the Hague Convention began in 1993, States were very aware that serious attacks on cultural property had just occurred on a wide scale. Far from being outdated or unnecessary, the Convention appeared more
essential than ever. The review highlighted a number of points needing improvement.

Firstly, it was clear that most States had not put enough effort into implementing the Convention. Very few had set up a National Advisory Committee to deal with the Convention, as recommended by Resolution No. II at the Diplomatic Conference in 1954. Many had not translated it into local languages to assist in country-wide educational efforts. Although some reported that they had taken measures to ensure the education of their military forces in the obligations of the Convention and Protocol, it was clear from events that these measures, if indeed taken, were insufficient to ensure compliance.

One result was the effort to define much more precisely the circumstances covered by the general phrase "military necessity" used in the Convention. It is essential that military lawyers have a text which is easy to understand and easy to teach, for they have a great responsibility in the administration of this Convention once conflict breaks out. Even when fighting on their own territory, in defence of their own heritage, no army can afford to ignore the provisions of the Convention.

Military law and practice is not, however, the only specialized area of law concerned. The rapid development of cultural heritage law has given the review process other sources to draw on. A new series of rules will facilitate the nomination of especially important cultural property to an International List of Cultural Property under Enhanced Special Protection. This List will declare for all to see so that none may plead ignorance, the great works of civilisation which have been agreed to need an additional level of protection to that generally applicable under the Convention, which is itself considerable.

Ladies and Gentlemen,

In seeking better support for the Convention, the instinct of many experts was to recommend an Intergovernmental Committee. Many such committees play an important role in furthering UNESCO's work. But this is a time when all international organizations are streamlining their administration. We therefore thought it appropriate to propose an alternative, lighter structure such as a Bureau, which could perform most of the same functions with less expense and fewer staff resources. But the decision as in all the issues rests with you. If you determine at this meeting that the instrument on which you are deciding must have an intergovernmental committee to support it, then I will, of course, try to see that adequate resources are established for it.

In this capital city, witness to so many developments of international humanitarian law; in this country whose devotion to the rule of law is exceptional, whose strong support at all stages in the negotiation of this text has been exemplary, I call on you all to adopt the Second Protocol to the Hague Convention for the Protection of Cultural Property in the Event of Armed Conflict. Such decisions are rarely easy, but they are landmarks in civilisation and in the development of a culture of peace.

I am convinced that you will seize this opportunity to assert, once again, the international community's determination to protect the cultural heritage for future generations. I would like to end by quoting the words of the President of the
Diplomatic Conference which adopted the Hague Convention in 1954, Dr Carl Schurmann, who said:

The only really effective protection for man and for his works is peace. Although the conference has dealt with an aspect of war, the hope uppermost in the hearts of all the delegates has been one for Peace.