



## INTERNATIONAL CONVENTIONS TO BE ADOPTED BY THE NCOP

The Section 231 (2) of the Constitution states that "An international agreement binds the Republic only after it has been approved by resolution in both the National Assembly and the National Council of Provinces, unless it is an agreement referred to in subsection (3). The purpose of this brief is to provide the Select Committee on Education and Recreation with a brief summary of the three international conventions to be adopted by the committee. These international agreements are as follows:

### 1. UNESCO CONVENTION ON THE PROTECTION OF UNDERWATER CULTURAL HERITAGE

Since the 15th century South African seaways has been a site of numerous shipwrecks. These are part of the country's heritage and provide a particular insight to our past. This convention provides for the protection of Underwater Cultural Heritage. Underwater Cultural Heritage refers to all traces of human existence having a cultural, historical or archaeological character. It includes shipwrecks and fish-traps. The convention promotes underwater conservation as the first option, and encourages the long-term preservation of recovered Underwater Cultural Heritage. The convention prohibits the commercial exploitation of Underwater Cultural Heritage by regulating salvage activities through the permit system. **The National Heritage Resources Act, Act No 25 of 1999**, provides a blanket protect of all wrecks, being any vessel or aircraft, or any part thereof, which was wrecked in South Africa, whether on land, in the internal waters, the territorial waters and is older than 60 years or which the South African Resources Agency (SAHRA) considers to be worthy of conservation. The Department of Arts and Culture has already developed a policy to manage South African Underwater Cultural Heritage while **SAHRA has established a Unit to manage and facilitate Underwater Cultural Heritage**. If properly regulated salvage activities have a potential to create sustainable opportunities for previously disadvantaged communities through skills development, capacity building, creating on-site job opportunities, supporting diving and conservation industries and increasing awareness of the Underwater Cultural Heritage and its tourism potential.

*This convention is therefore relevant and in line with the South African Constitution and other legislations. The committee should seek clarity from the Department on the issue if budget required.*

### 2. UNIDROIT CONVENTION ON STOLEN OR ILLEGALLY EXPORTED CULTURAL OBJECTS

The UNIDROIT Convention focuses on the recovery phase of stolen or illegally exported cultural objects and sets uniform rules and conditions for restitution claims on stolen objects as well as return claims on illegally exported cultural objects. While the 1970 UNESCO Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property requires cultural objects to have been designated by the state requesting return, the UNIDROIT Convention does not require that an object be



inventoried by the state for it to be covered by the Convention. This is critical because it allows for cultural objects from private homes, traditional communities and private collections that are not yet registered or designated by the state to be claimed back. However, this does not mean that the state parties should not take the inventorying of cultural objects seriously, as it is very difficult to claim successfully cultural objects that have not been inventoried. The UNIDROIT Convention operates from the point of view of private law and allows private owners to make use of normal legal channels available in the country where their objects are held, to reclaim their objects. The operation of the UNIDROIT Convention is facilitated by international tools, such as Interpol, that offers a database of stolen cultural objects. South Africa has made some progress on issues relating to the protection of cultural heritage. **Sections 32 and 33 of the National Heritage Resources Act, No 25 of 1999** covers issues of the protection of cultural objects. The legislation covers, among other, issues of control of export and import of cultural objects; the declaring of an object or collection of objects as heritage objects; and the compilation and maintenance of an inventory of the national estate.

***Similar to the previous convention, this convention is relevant and in line with the South African Constitution and other legislations.***

### **3. THE 1999 SECOND PROTOCOL TO THE 1954 HAGUE CONVENTION FOR THE PROTECTION OF CULTURAL PROPERTY IN THE EVENT OF ARMED CONFLICT.**

The Second Protocol complements the **1954 Hague Convention**. It is designed to improve the application and effectiveness of the Convention. It applies to situations of international and non-international armed conflict and aims to improve the protection of cultural property in the event of armed conflict. It establishes and enhances systems for protection of designated cultural property. State Parties are required to put in place practical measures in peacetime to safeguard cultural property. These include the development of inventories; planning for emergency measures for protecting cultural property against fire and structural collapse; planning for the removal of movable property and the provision for adequate in situ protection in the event of an armed conflict; the designation of competent authorities responsible for the safeguarding of cultural property. Advantages for South Africa would include that the country will be party to the sharing of international expertise and best practice on the protection of cultural property. The Protocol establishes an Intergovernmental committee that supervises its implementation. It also establishes an international fund. State Parties can apply for financial or other assistance from this fund for the purposes of putting in place practical measures in peacetime to safeguard cultural property. South Africa already has a policy and legislative framework that addresses issues of stolen or illegally removed cultural property through the **National Heritage Resources Act, No 25 of 1999**. Legislation will have to be amended to address critical issues that are currently not covered, such as the strict regulation of the location of cultural property in relation to military objectives.

**Some Issues with this convention are:**

***A Castle/Fort of Good Hope in Cape Town is a historical Heritage institution at the same time it serves a Military base.***

***How will the Department deal with the Military base which is using the Heritage Site?***



***There is a potential financial implication in implementing this convention particularly when Military base is separated from the historical heritage sites. Who will be responsible to carry the costs?***

***Will the DAC and DEPARTMENT OF DEFENSE be both contributing in the costs relate to relocation of the Military Base?***

In conclusion, it is evident that none of these conventions contradict the constitution or any existing policies of the department. It is noted that there is much to benefit from these international conventions in strengthening the existing polices and approving these convention by the committee is commendable.