

1949

NEW ZEALAND

PROTOCOL

TO AMEND THE CONVENTION FOR THE SUPPRESSION OF THE CIRCULATION OF AND TRAFFIC IN OBSCENE PUBLICATIONS, CONCLUDED AT GENEVA ON 12 SEPTEMBER 1923

New York, 12 November 1947
[in force 28 October 1948]

Presented to Both Houses of the General Assembly by Leave

PROTOCOL TO AMEND THE CONVENTION FOR THE
SUPPRESSION OF THE CIRCULATION OF AND
TRAFFIC IN OBSCENE PUBLICATIONS, CONCLUDED
AT GENEVA ON 12 SEPTEMBER 1923

The Protocol to amend the Convention for the Suppression of the Circulation of and Traffic in Obscene Publications, concluded at Geneva on 12 September 1923, was opened for signature at New York on 12 November 1947 and as it was signed by more than two States on that date, it came into force, in terms of Article V, on 12 November 1947. The Protocol was signed on behalf of New Zealand on 28 October 1948.

The Annex to the Protocol contains the amendments made to the Convention of 12 September 1923. For convenience of reference the text of the Convention of 1923, as amended by the Protocol, has been printed as an Appendix.

The Parties to the present Protocol, considering that under the Convention for the Suppression of the Circulation of and Traffic in Obscene Publications, concluded at Geneva on 12 September 1923, the League of Nations was invested with certain functions and powers for whose continued performance it is necessary to make provisions in consequence of the dissolution of the League of Nations, and considering that it is expedient that these functions and powers should be performed henceforth by the United Nations, hereby agree as follows :

ARTICLE I

The Parties to the present Protocol undertake that as between themselves they will, in accordance with the provisions of the present Protocol, attribute full legal force and effect to, and duly apply the amendments to this instrument which are set forth in the annex to the present Protocol.

ARTICLE II

The Secretary-General shall prepare the text of the Convention of 12 September 1923 for the Suppression of the Circulation of and Traffic in Obscene Publications as revised in accordance with the present Protocol, and shall send copies for their information to the Government of every Member of the United Nations and every non-member State to which this Protocol is open for signature or acceptance. He shall

also invite Parties to the aforesaid Convention to apply the amended text of this instrument as soon as the amendments are in force, even if they have not yet been able to become Parties to the present Protocol.

ARTICLE III

The present Protocol shall be open for signature or acceptance by any of the Parties to the Convention of 12 September 1923 for the Suppression of the Circulation of and Traffic in Obscene Publications, to which the Secretary-General has communicated a copy of this Protocol.

ARTICLE IV

States may become Parties to the present Protocol by—

- (a) Signature without reservation as to approval; or
- (b) Acceptance, which shall be effected by the deposit of a formal instrument with the Secretary-General of the United Nations.

ARTICLE V

1. The present Protocol shall come into force on the date on which two or more States shall have become Parties thereto.

2. The amendments set forth in the annex to the present Protocol shall come into force when a majority of the Parties to the Convention of 12 September 1923 for the Suppression of the Circulation of and Traffic in Obscene Publications have become Parties to the present Protocol, and consequently any State becoming a Party to the Convention after the amendments thereto have come into force shall become a Party to the Convention as so amended.

ARTICLE VI

In accordance with paragraph 1 of Article 102 of the Charter of the United Nations and the regulations pursuant thereto adopted by the General Assembly, the Secretary-General of the United Nations is authorized to effect registration of the present Protocol and the amendments made in the Convention by the present Protocol on the respective dates of their entry into force, and to publish the Protocol and the amended Convention as soon as possible after registration.

ARTICLE VII

The present Protocol, of which the Chinese, English, French, Russian and Spanish texts are equally authentic, shall be deposited in the archives of the United Nations Secretariat.

The Convention to be amended in accordance with the annex being in the English and French languages only, the English and French texts of the annex shall be equally authentic texts, and the Chinese, Russian and Spanish texts will be translations.

A certified copy of the Protocol, including the annex, shall be sent by the Secretary-General to each of the Parties to the Convention of 12 September 1923 for the Suppression of the Circulation of and Traffic in Obscene Publications, and to all States Members of the United Nations.

IN WITNESS WHEREOF the undersigned, being duly authorized thereto by their respective Governments, signed the present Protocol on the dates appearing opposite their respective signatures.

DONE at Lake Success, New York, this twelfth day of November, one thousand nine hundred and forty-seven.

[Here follow the signatures on behalf of those Governments which signed the Protocol.]

ANNEX

TO THE PROTOCOL TO AMEND THE CONVENTION FOR THE SUPPRESSION OF THE CIRCULATION OF AND TRAFFIC IN OBSCENE PUBLICATIONS, CONCLUDED AT GENEVA ON 12 SEPTEMBER 1923

Article 8, the first and second paragraphs, shall read:

The present Convention is subject to ratification. The instruments of ratification shall be deposited with the Secretary-General of the United Nations, who shall notify the receipt of them to the Members of the United Nations and to the non-member States to which the Secretary-General has communicated a copy of the Convention.

The Secretary-General of the United Nations shall immediately communicate a certified copy of each of the instruments deposited with reference to this Convention to the Government of the French Republic.

Article 9 shall read:

Members of the United Nations may accede to the present Convention. The same applies to non-member States to which the Economic and Social Council of the United Nations may decide officially to communicate the present Convention.

Accession shall be effected by an instrument communicated to the Secretary-General of the United Nations to be deposited in the archives of the Secretariat. The Secretary-General shall at once notify such deposit to Members of the United Nations and to the non-member States to which the Secretary-General has communicated a copy of the Convention.

In Article 10 Member of the United Nations shall be substituted for Member of the League.

Article 12. In the first paragraph, the Secretary-General of the United Nations shall be substituted for the Secretary-General of the League of Nations, and Members of the United Nations shall be substituted for Members of the League of Nations.

Article 12, the second paragraph, shall read :

The Secretary-General of the United Nations shall notify the receipt of any such denunciation to all Members of the United Nations and to the non-member States to which the Secretary-General has communicated a copy of the Convention.

Article 13 shall be deleted.

Article 14 shall read :

A special record shall be kept by the Secretary-General of the United Nations, showing which of the Parties have signed, ratified, acceded to or denounced the present Convention. This record shall be open at all times to any of the Members of the United Nations or any non-member State to which the Secretary-General has communicated a copy of the Convention.

It shall be published as often as possible.

In Article 15 the International Court of Justice shall be substituted for the Permanent Court of International Justice, and the Statute of the International Court of Justice shall be substituted for the Protocol of Signature of the Permanent Court of International Justice.

In Article 16 the Economic and Social Council of the United Nations shall be substituted for the Council of the League of Nations.

APPENDIX

CONVENTION FOR THE SUPPRESSION OF THE CIRCULATION OF AND TRAFFIC IN OBSCENE PUBLICATIONS OF 12 SEPTEMBER 1923, AS AMENDED BY THE PROTOCOL OF 12 NOVEMBER 1947

ARTICLE 1

The High Contracting Parties agree to take all measures to discover, prosecute and punish any person engaged in committing any of the following offences, and accordingly agree that

It shall be a punishable offence :

(1) For purposes of or by way of trade or for distribution or public exhibition to make or produce or have in possession obscene writings, drawings, prints, paintings, printed matter, pictures, posters, emblems, photographs, cinematograph films or any other obscene objects ;

(2) For the purposes above mentioned, to import, convey or export or cause to be imported, conveyed or exported any of the said obscene matters or things, or in any manner whatsoever to put them into circulation ;

(3) To carry on or take part in a business, whether public or private, concerned with any of the said obscene matters or things, or to deal in the said matters or things in any manner whatsoever, or to distribute them or to exhibit them publicly or to make a business of lending them ;

(4) To advertise or make known by any means whatsoever, in view of assisting in the said punishable circulation or traffic, that a person is engaged in any of the above punishable acts, or to advertise or to make known how or from whom the said obscene matters or things can be procured either directly or indirectly.

ARTICLE 2

Persons who have committed an offence falling under Article 1 shall be amenable to the Courts of the Contracting Party in whose territories the offence, or any of the constitutive elements of the offence, was committed. They shall also be amenable, when the laws of the country shall permit it, to the Courts of the Contracting Party whose nationals they are, if they are found in its territories, even if the constitutive elements of the offence were committed outside such territories.

Each Contracting Party shall, however, have the right to apply the maxim *non bis in idem* in accordance with the rules laid down in its legislation.

ARTICLE 3

The transmission of rogatory commissions relating to offences falling under the present Convention shall be effected either :

(1) By direct communication between the judicial authorities ; or

(2) Through the diplomatic or the consular representative of the country making the request in the country to which the request is made ; this representative shall send the rogatory commission direct to the competent judicial authority or to the authority appointed by the Government of the country to which the request is made, and shall receive direct from such authority the papers showing the execution of the rogatory commission.

In each of the above cases a copy of the rogatory commission shall always be sent to the supreme authority of the country to which application is made.

(3) Or through diplomatic channels.

Each Contracting Party shall notify to each of the other Contracting Parties the method or methods of transmission mentioned above which it will recognize for rogatory commissions of such Party.

Any difficulties which may arise in connection with transmission by methods (1) and (2) of the present Article shall be settled through diplomatic channels.

Unless otherwise agreed, the rogatory commission shall be drawn up in the language of the authority to which request is made, or in a language agreed upon by the two countries concerned, or shall be accompanied by a translation in one of these two languages certified by a diplomatic or consular agent of the country making the request or certified on his oath by a translator of the country to which request is made.

Execution of rogatory commissions shall not be subject to payment of taxes or expenses of any nature whatsoever.

Nothing in this Article shall be construed as an undertaking on the part of the Contracting Parties to adopt in their Courts of Law any form or methods of proof contrary to their laws.

ARTICLE 4

Those of the Contracting Parties whose legislation is not at present adequate to give effect to the present Convention undertake to take, or to propose to their respective legislatures, the measures necessary for this purpose.

ARTICLE 5

The Contracting Parties whose legislation is not at present sufficient for the purpose agree to make provision for the searching of any premises where there is reason to believe that the obscene matters or things mentioned in Article 1 or any thereof are being made or deposited for any of the purposes specified in the said Article, or in violation of its provisions, and for their seizure, detention and destruction.

ARTICLE 6

The Contracting Parties agree that, in case of any violation of the provisions of Article 1 on the territory of one of the Contracting Parties where it appears that the matter or thing in respect of which the violation of such Article has occurred was produced in or imported from the territory of any other of the Contracting Parties, the authority designated in pursuance of the Agreement of May 4th, 1910, of such Contracting Party shall immediately render to the corresponding authority of the other Contracting Party, from whose country such matter or thing is believed to have come or in which it is believed to have been produced, full information so as to enable such authority to adopt such measures as shall appear to be suitable.

ARTICLE 7

The present Convention, of which the French and English texts are authoritative, shall bear this day's date, and shall be open for signature until March 31st, 1924, by any State represented at the Conference, by any Member of the League of Nations, and by any State to which the Council of the League of Nations shall have communicated a copy of the Convention for this purpose.

ARTICLE 8

The present Convention is subject to ratification. The instruments of ratification shall be deposited with the Secretary-General of the *United Nations*; who shall notify the receipt of them to the Members of the *United Nations* and to the *non-member States to which the Secretary-General has communicated a copy of the Convention*.

The Secretary-General of the *United Nations* shall immediately communicate a certified copy of each of the instruments deposited with reference to this Convention to the Government of the French Republic.

In compliance with the provisions of Article 18 of the Covenant of the League of Nations, the Secretary-General will register the present Convention upon the day of its coming into force.

ARTICLE 9

Members of the United Nations may accede to the present Convention. The same applies to non-member States to which the Economic and Social Council of the United Nations may decide officially to communicate the present Convention.

Accession shall be effected by an instrument communicated to the Secretary-General of the United Nations to be deposited in the archives of the Secretariat. The Secretary-General shall at once notify such deposit to Members of the United Nations and to the non-member States to which the Secretary-General has communicated a copy of the Convention.

ARTICLE 10

Ratification of or *accession* to the present Convention shall *ipso facto*, and without special notification, involve concomitant and full acceptance of the Agreement of May 4th, 1910, which shall come into force on the same date as the Convention itself in the whole of the territory of the ratifying or *acceding* Member of the *United Nations* or State.

Article 4 of the above-mentioned Agreement of May 4th, 1910, shall not, however, be invalidated by the preceding provision, but shall remain applicable should any State prefer to *accede* to that Agreement only.

ARTICLE 11

The present Convention shall come into force on the thirtieth day after the deposit of two ratifications with the Secretary-General of the League of Nations.

ARTICLE 12

The present Convention may be denounced by an instrument in writing addressed to the Secretary-General of the *United Nations*. The denunciation shall become effective one year after the date of the receipt of the instrument of denunciation by the Secretary-General, and shall operate only in respect of the Member of the *United Nations* or State which makes it.

The Secretary-General of the *United Nations* shall notify the receipt of any such denunciation to all Members of the *United Nations* and to the *non-member States to which the Secretary-General has communicated a copy of the Convention*.

Denunciation of the present Convention shall not, *ipso facto*, involve the concomitant denunciation of the Agreement of May 4, 1910, unless this is expressly stated in the instrument of notification.

ARTICLE 13

[Deleted]

ARTICLE 14

A special record shall be kept by the Secretary-General of the *United Nations*, showing which of the Parties have signed, ratified, *acceded* to or denounced the present Convention. This record shall be open at all times to any of the Members of the *United Nations* or any *non-member State to which the Secretary-General has communicated a copy of the Convention*.

It shall be published as often as possible.

ARTICLE 15

Disputes between the Parties relating to the interpretation or application of this Convention shall, if they cannot be settled by direct negotiation, be referred for decision to the *International Court of Justice*. In case either or both of the Parties to such a dispute should not be Parties to the *Statute of the International Court of Justice*, the dispute shall be referred, at the choice of the Parties, either to the *International Court of Justice* or to arbitration.

ARTICLE 16

Upon a request for a revision of the present Convention by five of the signatory or *acceding* Parties to the Convention, the *Economic and Social Council of the United Nations* shall call a conference for that purpose. In any event, the Council will consider the desirability of calling a conference at the end of each period of five years.

Approximate Cost of Paper.—Preparation, not given; printing (548 copies), £13 10s.