



United Nations
Educational, Scientific and
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Organisation
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Организация
Объединенных Наций по
вопросам образования,
науки и культуры

منظمة الأمم المتحدة
للتربية والعلم والثقافة

联合国教育、
科学及文化组织

CLT-07/CONF/210/1
ثقافة-2007/مؤتمر/1/210
باريس، كانون الثاني/يناير 2007
الأصل: انجليزي/فرنسي

الدورة الثانية للاجتماع الأول للجنة حماية الممتلكات الثقافية في حال قيام نزاع مسلح

(باريس، 11 حزيران/يونيو 2007، من الساعة 9.30 صباحا حتى الساعة 6.0 مساء)
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COMENTARIOS PRELIMINARES
DE LA REPÚBLICA ARGENTINA
SOBRE EL DOCUMENTO

"DRAFT GUIDELINES FOR THE IMPLEMENTATION OF THE 1999 SECOND PROTOCOL TO
THE HAGUE CONVENTION OF 1954 FOR THE PROTECTION OF CULTURAL PROPERTY IN
THE EVENT OF ARMED CONFLICT"

1. De manera general, la Argentina está preparada para considerar al proyecto de Directrices incluido en el documento como una base de discusión en la labor que el Comité para la Protección de la Propiedad Cultural en caso de Conflicto Armado debería llevar a cabo a partir de su próxima reunión: el examen y elevación a la Reunión de Estados Partes de las Directrices, para su eventual adopción.

2. No obstante ello, la Argentina desearía adelantar los siguientes elementos que, a su juicio, resulta necesario contemplar con relación al proyecto:

a) A lo largo del proyecto, debería simplificarse la terminología empleada en el mismo y hacerse más operativo su texto. Debería aprovecharse, en este sentido, la experiencia adquirida en el proceso de formulación de Directrices Operativas similares que comenzaron a elaborarse en 1976 en el seno del Comité del Patrimonio Mundial: la naturaleza abstracta y declarativa de las mismas fue uno de los factores que obligó a su reformulación integral en 2003. En el presente caso, la necesidad de claridad y simplicidad se hace tanto más importante por los siguientes factores: (1) la fuerte tarea de sensibilización que tiene que desarrollarse en torno al Protocolo de 1999, recientemente entrado en vigor; y (2) los destinatarios principales de las Directrices -responsables de efectivos militares que tienen que tomar decisiones rápidas y muchas veces sensibles (confrontación del valor vida vs. el valor protección de un bien cultural) en el contexto cambiante y generalmente imprevisible de un conflicto armado;

b) En la misma línea, y aprovechando también la experiencia de la Convención sobre el Patrimonio Mundial, debería evitarse reiterar o directamente transcribir en el texto de las Directrices disposiciones del Protocolo de 1999 (cfr., a título de ejemplo, el punto 1.1., página 4). Ello no sólo genera confusión sino que suscita una peligrosa tendencia a sustituir un instrumento normativo jurídicamente vinculante -el Protocolo de 1999- por un texto orientador, no vinculante -las Directrices-, que sólo debería cumplir la función de desarrollar los aspectos reglamentados en el Protocolo a los fines de facilitar su puesta en práctica;

c) Se consideran innecesarias y confusas las restricciones que se adelantan en la "Introduction" (página 3) respecto de lo que cubren y no cubren las Directrices. Es evidente -y, por tanto, ocioso señalarlo expresamente- que las Directrices no pueden sustituir las responsabilidades que los Estados Partes del Protocolo de 1999 asumen en virtud del mismo;

d). Por los motivos señalados en el párrafo 2 b), *supra*, correspondería suprimir el punto 1.1. (página 4) del proyecto;

e) También por los motivos señalados en el párrafo 2 b), *supra*, cabría preguntarse sobre la necesidad de conservar -al menos en su forma explicativa e interpretativa de los contenidos del Protocolo de 1999- el punto 2 (páginas 4 a 8) del proyecto;

f) Se considera no pertinente la inclusión del punto 3 (páginas 8 y 9), en el que se citan, sin un objetivo discernible, normas del derecho internacional general que son de conocimiento de los Estados;

g) El punto 4.1.1. (página 10), en su formulación actual, es lo que se recomienda su supresión;

h) En el punto 4.1.2, no se comparte la conclusión –al menos en su forma actual, no matizada– de que la Convención de 1954 y el Protocolo de 1999 representan "conjuntos autónomos de normas" (página 10). En rigor, el Protocolo de 1999 fue concebido para actualizar y precisar el régimen de protección de la Convención de 1954, esperándose que en el mediano a largo plazo la segunda sea derogada tácitamente por el primero;

i) En el punto 4.2 (páginas 12 y 13), se considera que la vinculación entre el Protocolo de 1999 y la Convención de 1972 debería ser presentada bajo una luz más optimista. Específicamente, nada dificultaría que los Estados Partes de ambas convenciones confirmen en una "declaración común", "protocolo de vinculación" o instrumento similar la noción de que el "patrimonio cultural de la más grande importancia para la humanidad" –objeto de protección reforzada bajo el Protocolo de 1999– equivale al Patrimonio Mundial Cultural reglamentado en la Convención de 1972. Ello redundaría en beneficio de la protección de los sitios del Patrimonio Mundial, tanto en tiempos de paz como en situación de conflicto armado. Cabe preguntarse, por otra parte, por qué no se menciona en este punto a la Declaración sobre la Destrucción Intencional de Bienes Culturales (2003) -de indudable relevancia para los objetivos del Protocolo de 1999.

j) Los puntos 5 (página 13 a 27) y 8 (páginas 33 a 36) continúan siendo objeto de consultas entre las autoridades argentinas competentes, por lo que nuestro país reserva su posición sobre su contenido, limitándose en esta instancia a expresar que: (1) ambos puntos abordan el tipo de cuestiones en los que deberían concentrarse las futuras Directrices Operativas del Protocolo de 1999; y (2) por su estrecha vinculación, los mismos deberían situarse uno seguido inmediatamente después del otro -y no como actualmente, separados por las disposiciones institucionales / financieras;

k) Desde un punto de vista lógico, el punto 6 (asistencia internacional; páginas 27 a 29) debería incluirse después del punto 7 (las fuentes financieras de la puesta en práctica del Protocolo de 1999). Entre otros aspectos, ello permitiría percibir con más claridad que un Fondo Voluntario como el correctamente contemplado en el punto 7 resulta sin embargo insuficiente para sostener la operatoria del ambicioso sistema de asistencia financiera previsto en el punto 6 –estructurado siguiendo el modelo de la Convención de 1972, que cuenta con un Fondo Obligatorio. Resultaría necesario, en consecuencia, prever disposiciones que complementen al Fondo Voluntario con un esquema de asociaciones con organizaciones no gubernamentales y privadas capaces de aportar fondos extrapresupuestarios;

l) Cabe lamentar la falta de tratamiento en el proyecto de aspectos del Protocolo de 1999 que, sin embargo, son de especial interés para nuestro país y para los demás países de nuestra región, conforme surge de la Declaración de Buenos Aires adoptada en marzo de 2005. Ellos incluyen las medidas que pueden adoptarse en tiempos de paz, la posibilidad de utilizar las disposiciones del Protocolo para la prevención de catástrofes naturales, la disseminación del Protocolo y la sensibilización sobre sus objetivos, y la posibilidad de que el esquema de protección

del Protocolo de 1999 pueda formar parte del mandato de las operaciones de paz bajo los auspicios de las Naciones Unidas; y

m) Finalmente, convendría ya en esta instancia proveer una traducción al español del proyecto de Directrices. Ello, teniendo especialmente en cuenta la alta proporción de países hispanoparlantes que son Estados Partes del Protocolo de 1999.

Austrian Comments
on the
Draft Guidelines for the Implementation of the 1999 Second Protocol to the Hague
Convention of 1954 for the Protection of Cultural Property in the Event of Armed
Conflict

Austria welcomes the draft guidelines and estimates highly the efforts done by the Secretariat. The draft is a good basis for further deliberations of the Committee. We thank the Secretariat for the work being done. However, we would like to make the following comments:

1. General remarks concerning purpose and scope of the guidelines

In our understanding, the guidelines should be a helpful instrument for the implementation of the 2nd Protocol by States Parties to the Protocol. It might become the core of a “hand book” for civil and military units concerned. The focus of the guidelines should thus lie on practical aspects of the implementation of the 2nd Protocol and contain guidance for States Parties on how to fulfil their obligations. The guidelines should not be a mere restatement of the law, the excerpt of a textbook on public international law or a legal commentary to the 2nd Protocol. Legal reasoning should be confined to cases where an (authoritative) interpretation of a specific provision is necessary to ensure its proper implementation, such as the conditions for cultural property under enhanced protection, or where gaps in the 2nd Protocol need to be filled, such as the question how to mark cultural property under enhanced protection.

Although we understand the guidelines – even when endorsed by the Meeting of States Parties - open for any further amendments that will be seen as appropriate by future experiences in the implementation of the 2nd Protocol, we should strive for an initial version of the guidelines that is as comprehensive and at the same time specific as possible.

2. Specific comments on the draft

Ad Part 1. Introduction

In contrast to what is suggested in Part 1 of the draft, Austria is of the opinion that the scope of the guidelines should not exclude, but quite to the contrary focus on those provisions of the 2nd Protocol which need to be implemented by States Parties domestically. It does not seem useful to sit and wait how States Parties implement the Protocol and then consider reports on what has been done (or not). The result would be divergent State

practice which in respect to certain provisions of the Protocol would undermine its effectiveness. Thus, the guidelines should basically provide guidance for States Parties how to implement the provisions listed in paragraph 8.3. of the present draft.

Ad Part 2. Scope of Application

Part 2 of the draft gives a long introduction to general principles of international law. This part should be shortened and focus instead on the situations in which the 2nd Protocol applies, by providing more information on the terms “armed conflict”, “occupation” or “time of peace”. Guidance should also be given on the application of the 2nd Protocol in types of situations which evolved after 1954, e.g. in mixed conflicts, in multinational peace support operations or in the fight against terrorists.

Ad Part 3. Standards for Implementation

This part seems redundant, as it only restates some general principles on the law of treaties, and should therefore be deleted.

Ad Part 4. Coexistence of Protection Regimes: Analysis and Interrelations

Austria shares the view, that the Convention and the 2nd Protocol are autonomous sets of rules. However, as those coexisting regimes share the same philosophy, it does not seem to be appropriate to draw a strong distinction between them. The rules on the use of the emblem, as provided by Art 17 of the Convention should be applied to the 2nd Protocol correspondingly. Therefore, different emblems should only be foreseen for “Special Protection” (Convention) and “Enhanced Protection” (Protocol) on the one side (shield repeated three times), and “General Protection” as provided by the Convention and the Protocol on the other side (shield only one time).

Concerning the relationship between the Convention and the 2nd Protocol on the one hand, and the World Heritage Convention on the other, Austria shares the view that cultural sites protected under the World Heritage List are not automatically granted special or enhanced protection under the Convention or the Protocol. Despite that fact, States Parties member also to the World Heritage Convention should be invited to request enhanced protection for cultural property as defined in Art 1 of the Convention that belongs to a World Heritage Site. To assist States in administering these different regimes, however, more information, e.g., concerning the criteria for cultural objects to be eligible under one or the other regime as well as the (legal and practical) consequences of such election, should be provided.

Ad Part 5. The List of Cultural Property under Enhanced Protection

Instead of repeating the text of the 2nd Protocol it would be necessary to specify, by explaining and illustrating by examples, the conditions to request enhanced protection. The proposal to introduce a minimum distance, or even a “Buffer Zone”, around cultural property under enhanced protection, needs careful consideration in order not to deviate from the text of the 2nd Protocol in a way that hampers its effective implementation. It has to be noted that Article 10 sub-para. c) does not use the term “potential military objective” but speaks of “military sites” instead. Furthermore, this provision speaks of “shielding” military sites and not of keeping a certain distance from them. This makes a big difference, not only in legal but also in practical terms, which would have to be adequately reflected in the guidelines as well. Generally, Austria does not sympathize with fixed distances as they tend to blur the full meaning of the underlying legal obligation and will in practice often turn out to be either impracticable, or inadequate under the given circumstances to guarantee the required protection.

In 5.2.3 reference should be made, that for cultural properties inscribed on the World Heritage List no further evidence is to be provided that the property is of “greatest importance for humanity” (Art 10 lit a of the Protocol), unless the Committee asks for such evidence.

In 5.2.4 the required national legal and administrative protection measures (i) and the other measures (iii – v) should be part of the management plan or management system. The wording should be improved and shortened. As information about the ownership does not seem to be of great interest and the ownership of private properties regularly changes, we do not see the need for this information.

With regard to the use of a distinctive emblem for cultural property see the comments to part 4 above. If a new emblem is considered desirable for cultural property under enhanced protection, it should be a distinctive sign and not simply be a multiple of the existing emblem.

Ad Part 7. The Fund

This part, in particular the draft Financial Regulations of the Fund, should be transformed into a separate document. The present guidelines, which are to be developed by the Committee and endorsed by the Meeting of the Parties, are clearly distinct from the guidelines for the Fund, which are to be provided by the Meeting of the Parties – cf. Articles 23 sub-para. 3 b) and c) and 27 sub-para. 1 a). This distinction requires the preparation of two separate documents which will be separately dealt with by different fora under different rules of procedure.

Projet de principes directeurs pour l'application du Deuxième Protocole relatif à la Convention de La Haye – Commentaires de la Belgique

Page 3, point 9 : standards de mise en œuvre. Ce point est largement redondant avec le précédent. Le texte gagnerait donc à être revu.

Page 7, last paragraph of 2.4.

The English version of the text (.....exceptional situations where the Protecting Powers are called upon....) is probably more correct than the French version (...les cas où les Puissances protectrices jugent utiles..) Both versions should be aligned.

Page 12, point 4.2 : Convention de 1954, deuxième protocole et Convention du Patrimoine mondial. Une inscription automatique au régime de protection spéciale n'est en effet pas possible vu les conditions pour bénéficier de cette protection. La réponse doit être plus nuancée en ce qui concerne la protection renforcée instaurée par le second protocole. En effet, les conditions 1 et 2 pour bénéficier de la protection renforcée sont démontrées dans le dossier de candidature à la liste du patrimoine mondial. Il reste donc la troisième condition à satisfaire : la demande de l'Etat et son engagement à ne pas utiliser le site à des fins militaires. Il ne peut donc y avoir de mesure automatique entre les deux Conventions mais on pourrait cependant réfléchir à une simplification de la procédure voire à la possibilité d'une demande conjointe. Cela ne signifie évidemment pas que seuls les biens inscrits sur la liste du patrimoine mondial bénéficieraient de cette protection renforcée mais bien de simplifier le travail des Etats et gagner en efficacité.

Page 12, point 4.2. Coexistence between the convention, the Protocol and the 1972 convention

The current draft is too much focussed on explaining the differences between the World Heritage Convention of 1972 and the 1999 Protocol. However, both conventions have the same goal namely the protection of important cultural heritage. Before pointing out the differences between both conventions, we suggest to insert a paragraph regarding the common goal of both instruments.

The last paragraph of this Point should inform about the possibility of obtaining the 'enhanced protection' as foreseen in the Protocol for the monuments and sites on the World Heritage List and about a 'fast track' to obtain the 'enhanced protection' (for instance by accepting that the monuments and sites on the World Heritage List by definition meet the criteria a and b, required for an enhanced protection, thus only requesting the member state to proof that also condition c - no military use now or in the future - is met). The 'enhanced protection' cannot be granted automatically to these monuments and sites but we should make it as 'automatically' as possible. The wording used in this draft doesn't reflect this need.

Page 15, point 5.1.3 : zone tampon. La question de la zone tampon doit sans doute être posée mais avec prudence afin de ne pas perdre de vue l'objectif premier : l'efficacité. Une distance arbitraire n'a pas de sens : 500 mètres n'ont pas la même réalité en milieu urbain et en milieu ouvert.

Page 17, point 5.2.1.: Identification du bien culturel. On ne peut que constater la similitude avec le dossier d'inscription sur la liste du patrimoine mondial. Nous suggérons de modifier le point VII) joindre une carte au format A4. Cette référence à un format déterminé n'est pas utile. Il faut privilégier la pertinence et la lisibilité du document. Il serait beaucoup plus utile d'encourager l'usage de SIG.

Page 18, points 5.2.2, 5.2.3. and 5.2.4.

No fast track or simplified procedure for obtaining 'enhanced protection' for the monuments and sites enlisted as 'World Heritage' is proposed? This is a lacuna in the draft.

Page 21, point 5.3 : Demandes, invitations à présenter une demande, représentations. Pourquoi ne pas procéder comme pour les demandes d'assistance internationale et prévoir une procédure normale et une procédure d'urgence ? On pourrait alors donner des délais d'introduction des demandes, de consultations des Organisations gouvernementales et non gouvernementales et une décision en séance ordinaire. La procédure d'urgence pourrait déboucher sur une réunion extraordinaire voire sur une consultation électronique des membres du Comité et l'octroi d'une protection renforcée provisoire. Il nous semble important de structurer dès le départ les travaux du Comité.

Page 23, point 5.6.1 : Notification et immunité. Au second paragraphe, supprimer "deux" Etats parties. Les conflits contemporains démontrent à suffisance qu'il peut y avoir plus de deux parties dans un conflit. Se pose également la question des interventions des forces d'interposition qui devraient également être tenue au respect de cette Convention et de ses protocoles.

Page 23, point 5.6.2. : Usage d'un signe distinctif. En résumé :

- protection générale Convention de La Haye : 1 sigle
- protection générale deuxième protocole : 2 sigles
- protection spéciale : 3 sigles
- protection renforcée : 4 sigles.

Sur le plan intellectuel et juridique, on comprend facilement la logique. Au niveau de l'efficacité et de la protection du patrimoine, cela devient compliqué et inutile. Le but du signe distinctif est d'informer. L'information essentielle est : le bien est protégé ou le

bien est très protégé. En effet, si les conditions d'octroi sont différentes, les effets sont similaires pour les deux protections générales et pour les protections renforcée ou spéciale.

Dans ce domaine, il y aurait lieu d'être cohérent à l'égard de positions antérieures. En effet, le CIDH dans son rapport estimait que trop de biens situés en milieu urbain portaient le sigle du "bouclier bleu" et que cela risquait de porter atteinte à l'efficacité en temps de conflit. Qu'en sera-t-il pour le soldat qui devra faire la distinction entre 4 types de signalisation (voire 5 si le même bien bénéficie à la fois de la protection spéciale et de la protection renforcée : 7 sigles).

Page 33, point 8.3 : périodicité et domaine des rapports. Ici aussi, il convient de rationaliser et de viser l'efficacité. Dans la mesure où un Etat ne peut être partie au deuxième protocole s'il n'est pas Haute partie à la Convention de La Haye et considérant que les fréquences des rapports sont les mêmes : 4 ans, pourquoi des lors exiger deux rapports ?

COMMENTS BY CANADA ON THE DRAFT GUIDELINES FOR
IMPLEMENTATION OF THE 1999 SECOND PROTOCOL TO THE 1954 HAGUE
*CONVENTION FOR THE PROTECTION OF CULTURAL PROPERTY IN THE EVENT
OF ARMED CONFLICT*

Canada is grateful to the UNESCO Secretariat for its efforts to initiate the development of a set of guidelines for implementation of the Second Protocol to the Hague Convention. Canada was a participant in the drafting of the Second Protocol, and is a State Party to the 1954 Hague Convention and both the First and Second Protocols. Canada therefore recognises both the importance of this endeavour and the challenges it involves, particularly in the absence of a similar set of guidelines for implementation of the Convention itself. The draft document prepared by the Secretariat provides a useful focus for States to consider how such a document should be developed, and what it should contain.

After careful examination of the present draft, however, and after reviewing the existing guidelines document for implementation of the 1972 World Heritage Convention, Canada considers that it may have been premature for the Secretariat to proceed with development of a draft in advance of the first meeting of the Intergovernmental Committee for Protection of Cultural Property in the Event of Armed Conflict. The first meeting of the Committee would ideally have been an opportunity for its members to consider the direction that a set of guidelines should take, and the most desirable process for its elaboration. The Committee would then have been able to provide direction to the Secretariat for its elaboration of a draft text.

As currently drafted, the text prepared by the Secretariat unfortunately contains a number of significant weaknesses and inconsistencies. Parts of the document are drafted in a manner appropriate for such guidelines. In other parts, it resembles an overly complex scholarly legal treatise. In some cases, it more resembles a discussion document posing policy-related questions for the Committee's consideration.

Canada sees two options: attempt to transform the present draft through detailed editorial comment; or step back and seek the Committee's direction as the basis for a completely new draft. Canada recommends that the current draft be retained by the Secretariat for its use as background information only, and that the Secretariat return to the Committee at its second meeting in the fall of 2007 to seek guidance. The Committee's consideration of this matter could be facilitated by two new documents.

Canada recommends that the first such document be a detailed outline of what the guidelines could contain. This would allow the Committee to consider the overall direction the document should take, and the subjects that should be addressed therein. The Committee would then be in a position to direct how the guidelines should be developed. Options open to the Committee include the development of a number of consecutive drafts by the Secretariat for consideration, or possibly the creation of a drafting sub-committee of the Committee, aided by the Secretariat.

The second document that Canada recommends be brought to the Committee by the Secretariat would be a discussion document posing a number of policy-related questions for debate by Committee members, leading to a decision on whether such issues should be addressed in the guidelines. Some possible questions are included in the present draft, such as the possible use of “buffer zones” around designated protected sites, while others are not included in the present draft, such as the question of criteria to be used by the Committee in determining which sites proposed for designation meet the definition of “greatest importance for humanity”.

On a related point, it is Canada’s view that one such issue contained in the present draft – possible use of the Hague emblem to mark protected properties – is not within the power of the Committee to decide, because the Second Protocol makes no mention of the emblem in its provisions. For that reason, before it can be considered for use in relation to the Second Protocol, it would appear necessary to raise the question, and seek the consent of, the States Parties to the Convention.

Canada notes the effort taken in development of the present draft, and attempts made in certain places in it to connect relevant guidelines with those in place for the 1972 Convention. Canada recommends that these efforts be expanded.

The existing guidelines for the 1972 Convention are very detailed and have been developed over a number of years. They therefore provide an extremely useful tool for development of guidelines for the Second Protocol. They also offer the possibility to consider ways in which efficiencies may be realized for both Member States and the Secretariat from a process standpoint, particularly in the scope, nature and format of information to be prepared by States for designation of sites under both Conventions, where appropriate. Canada supports the recent reorganization of the Cultural Sector of UNESCO that has resulted in responsibility for the 1972 Convention and Hague instruments falling under the same part of the organization, and we feel that this provides an excellent opportunity to explore positive synergies between those two regimes.

Canada appreciates the opportunity to comment on the draft document, and looks forward to future progress in this initiative.

COMMENTAIRES DU CANADA SUR LA VERSION PRÉLIMINAIRE DES PRINCIPES DIRECTEURS POUR L'APPLICATION DU SECOND PROTOCOLE DE 1999 DE LA *CONVENTION POUR LA PROTECTION DES BIENS CULTURELS EN CAS DE CONFLIT ARMÉ* 1954 DE LA HAYE

Le Canada est reconnaissant envers le Secrétariat de l'UNESCO pour ses efforts destinés à entreprendre le développement d'un ensemble de principes directeurs pour l'application du Second Protocole de la Convention de La Haye. Le Canada a pris part à la rédaction du Second Protocole et est État-partie de la Convention 1954 de La Haye ainsi que de ses Premier et Second Protocoles. Par conséquent, le Canada reconnaît à la fois l'importance de cette entreprise et les défis que celle-ci présente, particulièrement en l'absence d'un pareil ensemble de principes directeurs pour l'application de la Convention elle-même. Le document préliminaire préparé par le Secrétariat offre un point de vue utile, par lequel les États peuvent considérer de quelle façon un tel document doit être développé et ce qu'il doit contenir.

Après examen minutieux de la présente version préliminaire et après examen des documents de principes directeurs pour l'application de la Convention 1972 sur la conservation du patrimoine mondial, le Canada considère qu'il était peut-être prématuré pour le Secrétariat de procéder au développement d'une version préliminaire avant la tenue de la première rencontre du Comité intergouvernemental sur la protection des biens culturels en cas de conflit armé. La première rencontre de ce Comité aurait idéalement été une occasion pour ses membres de décider de l'orientation à donner à un tel ensemble de principes directeurs, ainsi que du processus le plus souhaitable pour son élaboration. Le Comité aurait alors pu indiquer au Secrétariat l'orientation à suivre lors de l'élaboration de la version préliminaire.

Tel que rédigé à l'heure actuelle, le texte préparé par le Secrétariat contient malheureusement un nombre des faiblesses significatives et des incohérences. Certaines parties du document sont rédigées de façon adéquate pour de tels principes directeurs. D'autres parties rappellent plutôt un quelconque traité académique et complexe sur le droit. Dans certains cas, le texte s'apparente à un document de discussion posant des questions reliées aux politiques afin que le Comité les prenne en considération.

Le Canada considère qu'il y a deux options : tenter de transformer la version préliminaire actuelle par des commentaires éditoriaux détaillés; ou prendre du recul et attendre de la part du Comité l'orientation à suivre afin de rédiger une version préliminaire entièrement nouvelle. Le Canada recommande que la version préliminaire présente soit conservée par le Secrétariat à titre de document exclusivement contextuel et que le Secrétariat retourne devant le Comité au moment de la deuxième rencontre, soit à l'automne 2007, à des fins d'orientation. L'étude de ce sujet par le Comité pourrait être facilitée par deux nouveaux documents.

Le Canada recommande que le premier de ces deux documents devrait être une liste détaillée du contenu que les principes directeurs pourraient comporter. Ceci permettra au

Comité d'envisager la direction générale à donner au document ainsi que les sujets dont il devrait y être question. Le Comité serait alors en position de décider de la façon dont les principes directeurs devraient être développés. Les choix qui s'offrent au Comité comprennent le développement d'une série de versions préliminaires consécutives soumises au Secrétariat pour considération, ou possiblement la mise sur pied d'un sous-comité de rédaction au sein du Comité, qui recevrait l'assistance du Secrétariat.

Le deuxième document que le Canada recommande au Secrétariat de soumettre au Comité serait un document de discussion posant un certain nombre de questions relatives aux politiques dont les membres du Comité devraient débattre afin de décider si de telles questions devraient être traitées au sein des principes directeurs. On retrouve ici quelques exemples de questions possibles, tels l'utilisation possible de « zones tampon » autour des sites protégés désignés, ainsi que d'autres qui sont absentes de la version préliminaire actuelle, comme la question des critères que le Comité devrait utiliser pour déterminer quels sites proposés comme sites désignés respectent la définition de « la plus grande importance pour l'humanité ».

Au sujet d'un des points soulevés, le Canada est d'avis qu'une pareille question mentionnée dans la version préliminaire actuelle, soit l'utilisation possible de l'emblème de La Haye afin d'identifier les biens protégés, ne relève pas du Comité, parce que le Second Protocole ne fait aucunement mention de l'emblème dans ses dispositions. Pour cette raison, avant d'envisager de l'utiliser en relation avec le Deuxième Protocole, il semble nécessaire de soulever la question auprès des États-parties de la Convention et de rechercher leur accord.

Le Canada reconnaît les efforts investis dans la préparation de cette version préliminaire ainsi que les tentatives qui y sont faites à quelques endroits pour relier les principes directeurs pertinents à celles qui sont en vigueur pour la Convention 1972. Le Canada recommande d'accroître ces efforts.

Les principes directeurs en place pour la Convention de 1972 sont très détaillés et ont été développés au fil de plusieurs années. Par conséquent, ils offrent un outil très utile pour développer les principes directeurs destinés au Second Protocole. Elles offrent aussi la possibilité d'envisager des moyens de rendre le processus plus efficace pour les États-parties et le Secrétariat, surtout en termes de portée, de nature et de format de l'information que les États doivent préparer en vue de la désignation de sites en vertu des deux Conventions, le cas échéant. Le Canada appuie la réorganisation récente du secteur culturel de l'UNESCO, qui a fait en sorte que la responsabilité des instruments de la Convention 1972 et de celle de La Haye soit regroupée au même endroit dans l'organisme. Nous croyons que cela représente une belle occasion d'explorer les synergies positives entre ces deux régimes.

Le Canada est reconnaissant d'avoir eu cette occasion de commenter le document préliminaire et attend les prochains développements au sujet de cette initiative.



United Nations
Educational, Scientific and
Cultural Organization

Organisation
des Nations Unies
pour l'éducation,
la science et la culture

Organización
de las Naciones Unidas
para la Educación,
la Ciencia y la Cultura

Организация
Объединенных Наций по
вопросам образования,
науки и культуры

منظمة الأمم المتحدة
للتربية والعلم والثقافة

联合国教育、
科学及文化组织

CLT-07/CONF/210/1

巴黎，2007年1月

原件：英文/法文

联合国教育、科学及文化组织

《关于在武装冲突的情况下保护文化财产的公约》

委员会第一次会议的第二届会议

(巴黎，2007年6月11日，上午9:30 – 下午6:00时)

第 XI 号厅

临时议程

1. 会议开幕
2. 通过议程
3. 秘书处介绍执行《第二议定书》的最新情况
4. 审议关于执行《第二议定书》的《指导原则草案》
5. 通过建议
6. 其他问题 (尤其是关于委员会工作语言的问题)
7. 会议闭幕

UNESCO – Convention de la Haye (1954) sur la protection des biens culturels en cas de Conflit armé – 2^e Protocole

Commentaires complémentaires de la Belgique

P. 17 point 5.2.1 *Identification du bien culturel*

La Liste du Patrimoine mondial ne concerne que les monuments, les ensembles architecturaux, les sites, les paysages culturels ou des mixtes et le patrimoine mobilier n'est pas inclus dans la Liste.

Cependant, la présentation des informations à fournir pour que celui-ci puisse bénéficier de la protection renforcée est similaire alors qu'un bien mobilier peut difficilement être défini par sa position.

P. 23, point 5.6.2 *Usage du signe distinctif*

Le signe distinctif n'est pas d'application en ce qui concerne le patrimoine mobilier. Seuls les refuges sont concernés.



INTERNATIONAL COUNCIL OF MUSEUMS
CONSEIL INTERNATIONAL DES MUSEES

MEMORANDUM

Date : February 16, 2007

To : Dr. Jan Hladik, Programme Specialist
International Standards Section
Division of Cultural Heritage, UNESCO

From: John S. Zvereff, Secretary General, ICOM

Re.: Comments on the Hague Convention 2nd Protocol Committee Guidelines

In relation to the draft Guidelines for the Hague Convention 2nd Protocol Committee we would like to offer the following comments:

1. We are concerned that it seems to be assumed that "Cultural Property" for the purposes of the Second Protocol, and especially the new "Enhanced Protection" status, will apply only to cultural monuments and sites, whereas the 1954 Convention, the Second Protocol, and the Enhanced Protection status, all cover equally museums, important collections, archive repositories and important libraries. We believe that this should be reflected in the proposed Guidelines.

2. Para. 4.2.: Coexistence between the 1954 Convention and the 1972 World Heritage Convention

We suggest that in the second paragraph of this section the Guidelines state that in relation to cultural property the World Heritage Convention applies only to monuments, sites and cultural landscapes, whereas the 1954 Convention and the 2nd Protocol apply equally to museums, collections, archive repositories and important libraries - all of which can be nominated for Enhanced Protection.

To avoid misunderstandings and doubts, this section should also note that even the most important World Heritage Site might have to be refused Enhanced Protection under the 2nd Protocol if it is too close to a potential legitimate military objective in the event of armed conflict.

3. Para. 5.1.3: Minimum Distance or Buffer Zone?

A minimum separation of 500 metres was first proposed in the (unratified) 1923 Air Warfare draft treaty, and was repeated in the League of Nations (International Museums Office) Draft Convention of 1939, and UNESCO's own Museums and Monuments Series publications of the 1950s - 1960s. The Guidelines might want to adopt this rule with a reference to the above international agreements.

4. Para. 5.2.1. Identification of the Property

Sub-para. (iv): Geographical coordinates:

We suggest that the following sentence "Where there is an established national military or civil grid system, the national grid coordinates should also be stated" be added.

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Sub-para. (v) Textual description of the boundaries... & (v) Map etc.:

In the case of large protected sites and zones which may extend over many hectares, a textual description and small scale map of the boundaries may be insufficient.

Geographical coordinates as in (iv) above should be added to identify key boundary points which would enable the military to determine the limits of the area of Enhanced Protection.

5. Para. 5.2.7. Format of Request and Documentation (and footnote 39):

It is evident here that possible nominations of museums, collections, libraries or archives has not been taken into account in the present draft Guidelines. Separate provisions are needed for the supporting evidence for the other three other categories of eligible cultural property, such as summaries of collections, abstracts of catalogues etc.

We suggest, therefore, that the following sentence be added: "In the case of a museum, library, archive repository or similar institution being nominated wholly or partly because of its collection of outstanding movable cultural property, the description must include a summary of this movable cultural property and a statement of its significance".

6. Para. 5.3. & 5.4. Requests etc.

The paragraph should clarify that in each case the Committee shall also inform on the same basis all intergovernmental and non-governmental organisations recognised by the Committee in accordance with Article 27 (3) of the Second Protocol.

7. Finally, we feel that a much-needed text is missing on the control or regulation of the use of the Blue Shield symbol, with references to Articles 6, 10, 11, 12, 13, 16, 17, 20, 21 & 36 of the original 1954 Hague Convention, as well as to other international conventions (Article 38 of Geneva Convention Protocol I of 1977, and Article 12 of Additional Protocol II of 1977, and the Geneva Conventions) that forbid the improper use of any "official emblem" in times of hostilities and in peacetime.

We hope that these observations can be incorporated in the final Guidelines, and please do not hesitate to contact us if you need clarifications..

**PERMANENT DELEGATION
OF THE REPUBLIC OF CYPRUS
TO UNESCO**



**86, AVENUE FOCH
75116 PARIS**

The Republic of Cyprus requests the inclusion of a clause in the said Guidelines concerning paragraph 2 (Scope of Application) and its related paragraphs 2.2, 2.3, 2.4, clarifying that the time element referred to in the said paragraph, must operate retroactively to all parties in cases of continuous violation/occupation which occurred prior to the entry into force of the said Protocol.

**ORGANIZACIÓN DE LAS NACIONES UNIDAS
PARA LA EDUCACIÓN, LA CIENCIA Y LA CULTURA**

**SEGUNDA SESIÓN DE LA PRIMERA REUNIÓN
DEL COMITÉ PARA LA PROTECCIÓN DE LOS BIENES CULTURALES
EN CASO DE CONFLICTO ARMADO**

(París, 11 de junio de 2007, 9.30-18.00 horas)

SALA XI

ORDEN DEL DÍA PROVISIONAL

1. Apertura de la reunión
2. Aprobación del orden del día
3. Información actualizada de la Secretaría sobre el estado y la aplicación del Segundo Protocolo
4. Examen del proyecto de Directrices para la aplicación del Segundo Protocolo
5. Aprobación de recomendaciones
6. Otros asuntos (en particular, la utilización de lenguas de trabajo en las reuniones del Comité)
7. Clausura de la reunión

Draft Guidelines for the Implementation of the 1999 Second Protocol to the Hague Convention of 1954 for the Protection of Cultural Property in the Event of Armed Conflict

Comments - Finland

The Second Protocol to the Hague Convention requires guidelines for implementation because in part it operates at a fairly general level. The draft Guidelines clarify the provisions of the Protocol and also contain fundamental principles in line with the Vienna Convention on the Law of Treaties (1980). When adopted, the Guidelines will promote efficient implementation of the contractual obligations.

Although the Guidelines have been expertly drafted, we think they might benefit from development in some points.

The draft examines quite comprehensively the nature of the relationship between the Convention and the Second Protocol, but this remains partly theoretical and lacks concrete instructions guiding the action of the Contracting Parties. The Guidelines should be formulated clearly as a document guiding the practices of the parties.

Section 4 analyses how the protection concepts of the 1954 Convention, the Second Protocol and the 1972 World Heritage Convention relate to each other, and section 5 deals with the conditions for enhanced protection and procedures for granting this status. These sections are crucial in specifying the conditions of selection of sites, in clarifying the details of the protection process, and in issuing general recommendations for application of the criteria.

In particular, the implementation guidelines should outline the practical application of the different degrees of protection. This also concerns possible listing of the World Heritage sites under enhanced protection. The Committee should seek to specify how special protection relates to enhanced protection. The point of departure could be that the countries which are parties both to the 1954 Convention and to the Second Protocol would only present sites for enhanced protection. The inclusion of the World Heritage sites in enhanced protection would also be justified, but this should not be an automatic procedure, and the sites should naturally fulfil all the criteria for enhanced protection.

Since the definition of "cultural heritage of the greatest importance for humanity" is exceedingly open to interpretation, it is essential to examine this point exhaustively in the Guidelines. The ground work done for the World Heritage Convention helps with regard to immovable cultural property but gives no support to the definition of movable property. Since the determination of the criteria demands extensive consensus, it might be useful to convene a separate expert meeting to discuss the matter. In this respect the international expert organisations, such as ICOMOS, ICOM, IFLA, ICA and ICBS, are of the utmost importance. The international Committee of the Red Cross might also have valuable information.

The observation about a buffer zone in the draft Guidelines is good but, instead of a fixed minimum distance, the buffer should be considered case by case according to the nature and location of the site or object and expected military threats to it. The possibility to set a buffer zone should exist but its breadth should be ultimately decided by the Committee after hearing the necessary experts. The model for the delimitation of the sites could be the Operational Guidelines for the World Heritage Convention (II.F, 99 – 102).

The request for enhanced protection has been modelled after the one used in the World Heritage system and is suitable as such for the implementation of the Hague Convention.

The Operational Guidelines for the World Heritage Convention give a detailed timetable for the submission and handling of applications. It could be worthwhile to consider setting a corresponding annual timetable for the Second Protocol Committee. This would also help in establishing the timetable and the rules of procedure for the Committee.

Since the Committee would hardly have competence to assess the quality of all the suggested protection sites, it would be justifiable to require that the applicant submit a statement from an international expert organisation. The Committee could identify the appropriate organisation(s).

The recommendation concerning the emblem for protected sites in Section 5.6.2. is not very explicit. Sites under general protection use the emblem once, without repetition. The Committee should discuss the possibility of indicating both general and enhanced protection by the emblem three times repeated. As regards these two forms of protection, an identical emblem would not necessarily be a problem since the number of protected sites in both categories is limited and the sites are not used for military purposes.

Nearly half of the draft Guidelines deal with "enhanced protection" referred to in Article 10 of the Protocol. Property not under enhanced protection has been given less attention. We think that the Guidelines could also include a general recommendation calling upon the Contracting Parties to take necessary preparatory steps to protect all cultural property, including property not covered by enhanced protection, in the event of armed conflict.

The point of departure in the protocol is that it is in the interest of each country to safeguard cultural property located on its territory and to identify cultural property worth protecting. However, the premise for protection can be biased and selective unintentionally or intentionally, for instance giving less attention to the protection of cultural property relating to the identity of minority cultures. The Guidelines should seek to instruct how the selection of the sites should be made with sufficiently broad-based expertise and after comprehensive survey of potential sites.

With a view to enhancing the visibility of the Hague Convention and making it widely known, it is important to disseminate widely the list of sites under enhanced protection. In view of this, the Guidelines could include a recommendation that the list be kept up-to-date in real time by means of modern information technology.

The Guidelines quite justifiably draw attention to the fact that the obligations relating to reporting under the Hague Convention of 1954 and its Second Protocol overlap, suggesting the possibility that both reports be submitted at the same time. The suggestion is very reasonable. The Second Protocol Committee could, within its competence, also consider other ways to streamline the reporting .

Comments of the Greek Ministry of Culture regarding the Draft Guidelines for the Implementation of the 1999 Second Protocol to the Hague Convention of 1954 for the Protection of Cultural Property in the Event of Armed Conflict

The Greek delegation has the following comments regarding UNESCO's Draft Guidelines for the Implementation of the 2nd Protocol to the Hague Convention:

1. Further clarifications must be given as to the exact role and responsibilities of the International Committee of the Blue Shield (ICBS), as well as of the other Advisory Bodies referred to in the Internal Regulations of the Committee to the 2nd Protocol (section III.6.1), namely, the International Committee of the Red Cross (ICRC), the International Council on Archives (ICA), the International Federation of Library Associations and Institutions (IFLA), the International Council on Monuments and Sites (ICOMOS), the International Council of Museums (ICOM) and the International Centre for the Study of the Preservation and Restoration of Cultural Property (ICCROM).
2. Further clarifications are also required in section 5.3 of the Draft Guidelines, more specifically we consider that the phrase "other non-governmental organizations with relevant expertise" is too general and requires further clarifications.
3. We consider that in section 5.3 the phrase "In deciding upon a request, the Committee is not obliged to, *but should nevertheless ask*, the advice of governmental and non-governmental organizations [...]" is problematic and should be replaced by "In deciding upon a request, the Committee is not obliged to, *but may, if necessary, ask* the advice of governmental and non-governmental organizations [...]" (italics added).
4. As regards sections 5.7 and 5.8 of the Guidelines on the subject of the sanctions to be imposed on States-Parties for non-compliance with their obligations under the 2nd Protocol, we propose that a phrase should be inserted that will read as follows: "Cultural monuments shall not be used for military purposes. In case they are used for military purposes against this prohibition, they will be temporarily removed from the list of monuments under Enhanced Protection."

International Council on Archives

Guidelines and Criteria

The 2nd Protocol covers “movable or immovable property of great importance to the cultural heritage of every people” (c.f. article 10). Article 1.b seems to suggest that ‘movable’ property would be housed in buildings that would be meant to preserve, exhibit or shelter those objects. This is not necessarily the case; in time of war, movable property may be moved to less vulnerable locations that have not necessarily been listed as shelter before.

The Guidelines¹ request that the description of the property shall include the identification of the property, and an overview of its history and development. All component parts that are mapped should be identified and described. In particular, where serial requests are proposed, each of the component parts should be clearly described. The history and development of the property should describe how the property has reached its present form and the significant changes that it has undergone. This information should provide the important facts needed to support and give substance to the argument that the property would meet the criteria required under Article 10.²

The explanation of what “requests and all necessary and relevant documentation to substantiate the request”³ should consist of, underlines the assumption that the authors of the Guidelines envisage built heritage in first instance, and secondly their contents. They seem not to refer at movable heritage as such.

‘The important facts needed to support and give substance to the argument that the property meets the criteria required under Article 10’ may suffice for registrations under the World Heritage Convention; however, they do not suffice as means of ‘unique identifier’ for movable property such as records and archives.

In the understanding that objects after legal or illegal removal from their housing as mentioned above would still benefit from enhanced protection, description of the property should thus contain a ‘finger print’ that could serve as a unique identifier. Subsequently the Guidelines should be amended and require ‘important facts’ that would be adequate as unique identifier for those objects and that would be acceptable as proof in case of litigation.

This illustrates the fundamental problem for ICA of these draft Guidelines – they are largely based on immovable heritage and do not address the complexities of protecting all form of movable cultural property.

Paris, 2007 March 27

¹ See 5.2.2. Description of the Property

² See *Operational Guidelines for the Implementation of the World Heritage Convention*, N°132 (2).

³ See 5.2.7. Format of Request and Documentation

2. Scope of Application

The first practical question is to understand to what situation the Second Protocol applies. The scope of application of the Second Protocol is clarified by illustrating its different criteria based on the subject-matter (*ratione materiae*), the time element (*ratione temporis*), the state and territories concerned (*ratione personae* and *loci*).

Additional clarifications cover the use of terms as armed conflict and occupation, as well as the specific situation of conflicts not of an international character.

2.1. The Definition of Cultural Property (Scope Ratione Materiae)

With a view to facilitating the application of both the 1954 Convention and its 1999 Protocol, the drafters of the Second Protocol made sure that the scopes of application of the 1954 Convention and the 1999 Protocol be identical.

As made clear under Article 1, b of the Second Protocol, "cultural property" means cultural property as defined in Article 1 of the 1954 Convention, i.e. which reads:

For the purposes of the present Convention, the term 'cultural property' shall cover, irrespective of origin or ownership:

- (a) movable or immovable property of great importance to the cultural heritage of every people, such as monuments of architecture, art or history, whether religious or secular; archaeological sites; groups of buildings which, as a whole, are of historical or artistic interest; works of art; manuscripts, books and other objects of artistic, historical or archaeological interest; as well as scientific collections and important collections of books or archives or of reproductions of the property defined above;
- (b) buildings whose main and effective purpose is to preserve or exhibit the movable cultural property defined in sub-paragraph (a) such as museums, large libraries and depositories of archives, and refuges intended to shelter, in the event of armed conflict, the movable cultural property defined in sub-paragraph (a);
- (c) centers containing a large amount of cultural property as defined in sub-paragraphs (a) and (b), to be known as 'centers containing monuments'.

2.2. Time Factor (Scope Ratione Temporis)

As other treaties, which do not state anything to the contrary, the Second Protocol is deemed not to operate retroactively. The Protocol applies vis-à-vis a State Party to acts or facts, which took place after its entry into force with respect to that State Party⁴.

The Second Protocol entered into force on 9 March 2004, three months after the twentieth instrument of ratification, acceptance, approval or accession was deposited⁵.

Vis-à-vis each new State Party, the Second Protocol shall enter into force, for each Party, three months after the deposit of its instrument of ratification, acceptance, approval or accession⁶.

As an exception to the three-month rule, situations of armed conflict, both of an international or non-international character, as referred to in Articles 18 and 19 of the 1954 Convention⁷, shall give

⁴ Article 28, *Non-retroactivity of treaties (1969 Vienna Convention on the Law of Treaties)*. Unless a different intention appears from the treaty or is otherwise established, its provisions do not bind a party in relation to any act or fact which took place or any situation which ceased to exist before the date of the entry into force of the treaty with respect to that party.

⁵ Article 43 (1).

⁶ Article 43 (2).

⁷ Article 18. Application of the Convention:

1. Apart from the provisions which shall take effect in time of peace, the present Convention shall apply in the event of declared war or of any other armed conflict which may arise between two or more of the High Contracting Parties, even if the state of war is not recognized by, one or more of them.
2. The Convention shall also apply to all cases of partial or total occupation of the territory of a High

immediate effect to ratifications, acceptances or approvals or accessions to the Second Protocol deposited by the parties to the conflict either before or after the beginning of hostilities or occupation. In such cases, the Director-General shall transmit the communications referred to in Article 46 by the speediest method⁸.

2.3. States and Territories Concerned (Scope Ratione Personae and Loci)

As with any treaty that expresses no different drafters' intention, the Second Protocol is binding only vis-à-vis its States Parties and does not create rights or obligations for third States (unless their consent is evidenced)⁹.

Furthermore, the Second Protocol applies to the entire territories of its States Parties¹⁰.

The drafters of the Second Protocol did not include a provision, which enables States Parties to limit the territorial extension of the Second Protocol. This provision exists under the 1954 Convention.¹¹

5.1. Conditions to Request Enhanced Protection

5.1.1. The Three Conditions

The Second Protocol provides in Article 10 that upon the application of a State Party the Committee may place the most important cultural property under enhanced protection, providing it meets three conditions¹², i.e.

- "a. it is cultural heritage of the greatest importance for humanity;
- "b. it is protected by adequate domestic legal and administrative measures recognising its exceptional cultural and historic value and ensuring the highest level of protection;
- "c. 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."

These conditions must be met at the time enhanced protection is applied for and must last as long as this protection is granted. Where cultural property no longer meets any one of these conditions, the Committee may suspend its enhanced protection status or cancel that status by removing that cultural property from the List¹³ (See below).

Contracting Party, even if the said occupation meets with no armed resistance.

3. If one of the Powers in conflict is not a Party to the present Convention, the Powers which are Parties thereto shall nevertheless remain bound by it in their mutual relations. They shall furthermore be bound by the Convention, in relation to the said Power, if the latter has declared, that it accepts the provisions thereof and so long as it applies them.

Article 19. Conflicts not of an international character

1. In the event of an armed conflict not of an international character occurring within the territory of one of the High Contracting Parties, each party to the conflict shall be bound to apply, as, a minimum, the provisions of the present Convention which relate to respect for cultural property.
2. The parties to the conflict shall endeavour to bring into force, by means of special agreements, all or part of the other provisions of the present Convention.
3. The United Nations Educational, Scientific and Cultural Organization may offer its services to the parties to the conflict.
4. The application of the preceding provisions shall not affect the legal status of the parties to the conflict.

⁸ Article 44.

⁹ Article 34. *General rule regarding third States (1969 Vienna Convention on the Law of Treaties)*. A treaty does not create either obligations or rights for a third State without its consent.

¹⁰ Article 29, *Territorial scope of treaties (1969 Vienna Convention on the Law of Treaties)*. Unless a different intention appears from the treaty or is otherwise established, a treaty is binding upon each party in respect of its entire territory.

¹¹ Article 35.

¹² "Condition" is the terminology used in Article 10 ("Critère" in the French version). These Guidelines use both "condition" and "criteria".

¹³ Article 14 (1).

Cultural property, which is eligible for enhanced protection, remains “cultural property” in the sense of the Second Protocol, i.e. as defined by Article 1 of the 1954 Convention¹⁴.

5.1.2. The Special Status of Condition b)

Again, the importance of the criteria (conditions) set forth under Article 10 is self-explanatory. They represent the only basis the Committee has for its decision to grant or deny enhanced protection¹⁵ and, *inter alia*, limit the scope of representations other States Parties may make (see below).

However, different from conditions a) and c), condition b) (Cultural property is protected by adequate domestic legal and administrative measures) may be unfulfilled at the time the Committee assesses the request. Indeed, in these exceptional cases, when the Committee has concluded that the Party requesting inclusion of cultural property in the List cannot fulfil the criteria of Article 10 sub-paragraph (b), the Committee may decide to grant enhanced protection, provided that the requesting Party submits a request for international assistance under Article 32¹⁶.

The same specific status of condition b) exists with regard to a different situation. Upon the outbreak of hostilities, a State Party to the conflict may request, on an emergency basis, enhanced protection of cultural property under its jurisdiction or control by communicating this request to the Committee. In this case the Committee may decide to grant provisional enhanced protection pending the outcome of the regular procedure for the granting of enhanced protection, provided that the provisions of Article 10 sub-paragraphs (a) and (c) are met¹⁷.

5.1.3. Does Condition c) Imply a Minimum Distance or even a “Buffer Zone”?

Condition c) requires the property not to be “used for military purposes or to shield military sites” and that “a declaration has been made by the Party which has control over the cultural property, confirming that it will not be so used”.

Condition c) does not make any distance between a potential military objective and the cultural property proposed for enhanced protection a formal requirement to request enhanced protection under Article 10. The Committee may, however, wish to consider whether a minimum distance (i), or even a “Buffer Zone” (ii), would be an appropriate additional element, though it would not operate as an additional formal requirement (beyond the three conditions under Article 10).

- i) A minimum distance of [500] meters between a potential military objective and the cultural property proposed for enhanced protection, appears a sound protection requirement. If this minimum distance fails in a given case, a request for enhanced protection remains possible under Article 10. The requesting State Party shall, however, state its views on the risks the proximity of a potential military objective may generate for the cultural property and endeavour to the possible extent to increase the distance to the minimum required [500 meters].
- ii) A further step would be to require the requesting State Party to propose a “Buffer Zone” wherever necessary for the proper protection of the cultural property submitted for enhanced protection. While a minimum distance [500 meters or a different distance] is a merely geographical requirement and involves no limitation on the use of the territory underlying the distance, a “Buffer Zone” would represent a step further, both more protective for the property and more demanding on the

¹⁴ See above on scope (*ratione materiae*). Article 1 of the 1954 Convention reads:

For the purposes of the present Convention, the term ‘cultural property’ shall cover, irrespective of origin or ownership:

- (a) movable or immovable property of great importance to the cultural heritage of every people, such as monuments of architecture, art or history, whether religious or secular; archaeological sites; groups of buildings which, as a whole, are of historical or artistic interest; works of art; manuscripts, books and other objects of artistic, historical or archaeological interest; as well as scientific collections and important collections of books or archives or of reproductions of the property defined above;
- (b) buildings whose main and effective purpose is to preserve or exhibit the movable cultural property defined in sub-paragraph (a) such as museums, large libraries and depositories of archives, and refuges intended to shelter, in the event of armed conflict, the movable cultural property defined in sub-paragraph (a);
- (c) centers containing a large amount of cultural property as defined in sub-paragraphs (a) and (b), to be known as ‘centers containing monuments’.

¹⁵ Article 11 (7).

¹⁶ Article 11 (8).

¹⁷ Article 11 (9).

territorial State. Indeed, it requires the requesting State Party to ensure that this zone - as in the example of the World Heritage Convention - has complementary legal and/or customary restrictions placed on its use and development to give an added layer of protection to the property¹⁸.

In any event, a "Buffer Zone" requirement is not part of the conditions set out in Article 10. Thus, even if the Committee wishes to adopt a "Buffer Zone" in the framework of requests for enhanced protection, it would imply an obligation on the requesting State Party i) to *propose* a "Buffer Zone" around the cultural property submitted for enhanced protection wherever necessary for the proper protection of it; ii) to *explain* why the buffer zone is *not* required for an effective protection of the cultural property concerned in the cases where it was not proposed. However, this obligation would not extend to making the *existence* of an effective "Buffer Zone" a formal requirement *in addition* to the three conditions set out in Article 10 for cultural property to be placed under enhanced protection.

5.2.2. Description of the Property

The description of the property shall include the identification of the property, and an overview of its history and development. All component parts that are mapped shall be identified and described. In particular, where serial requests are proposed, each of the component parts shall be clearly described.

The history and development of the property shall describe how the property has reached its present form and the significant changes that it has undergone. This information shall provide the important facts needed to support and give substance to the argument that the property meets the criteria required under Article 10.¹⁹

5.2.3. Significance of the Property as of the "Greatest Importance for Humanity"

Documentation providing clear evidence that the cultural heritage submitted to the Committee for the purposes of granting to it enhanced protection is of the greatest importance for humanity.

In addition, a comparative analysis of the property in relation to properties of a comparable significance, recognized both at the national and the international levels, shall be provided, regardless of whether or not these properties are on the List of Cultural Property under Enhanced Protection and/or on the World Heritage List.

5.2.4. Adequate Domestic Legal and Administrative Measures

Documentation providing clear evidence that the cultural heritage submitted to the Committee for the purposes of granting it enhanced protection is protected by adequate domestic legal and administrative measures recognising its exceptional cultural and historic value, and ensuring the highest level of protection.

This requires the requesting State Party to provide *inter alia* evidence of:

- i) Legal status and ownership of the property concerned, including full details of any national legal and administrative cultural heritage protection measure applicable to it, recognizing its exceptional cultural and historical value and ensuring the highest level of protection;
- ii) An appropriate management plan or management system and assurances of its effective implementation;
- iii) The emergency protective measures or plans and the means of implementing them;
- iv) The key indicators proposed
 - a. to measure and assess the state of conservation of the property,
 - b. the factors affecting it,

¹⁸ *Operational Guidelines for the Implementation of the World Heritage Convention*, N° 104.

For the purposes of effective protection of the nominated property, a buffer zone is an area surrounding the nominated property which has complementary legal and/or customary restrictions placed on its use and development to give an added layer of protection to the property. This should include the immediate setting of the nominated property, important views and other areas or attributes that are functionally important as a support to the property and its protection. The area constituting the buffer zone should be determined in each case through appropriate mechanisms. Details on the size, characteristics and authorized uses of a buffer zone, as well as a map indicating the precise boundaries of the property and its buffer zone, should be provided in the nomination.

¹⁹ See *Operational Guidelines for the Implementation of the World Heritage Convention*, N° 132 (2).

- c. conservation measures,
- d. the periodicity of their examination; and
- e. the identity and contact information of the responsible management authority for the property.

5.2.5. No Current and Future Use of the Property for Military Purposes

Documentation providing clear evidence that the cultural heritage submitted to the Committee for the purposes of granting to it enhanced protection is not used for military purposes or to shield military sites and that a declaration has been made by the Party, which has control over the cultural property, confirming that it will not be so used.

In this framework, it should be observed that the Second Protocol provides no definition of use for military purposes. However, it defines "military objective" as an object, which by its nature, location, purpose, or use makes an effective contribution to military action and whose total or partial destruction, capture or neutralisation, in the circumstances ruling at the time, offers a definite military advantage.

If the Committee decides to establish a mechanism of "minimum" distances from any potential military objectives, or even "Buffer Zones" (see above, 5.1.3.), the documentation provided shall cover also these issues.

5.2.6. Information about a Change of Situation

The requesting State Party is committed to inform promptly the Secretariat of any change affecting the capacity of the concerned property to meet the requirements set out in Article 10 so as to enable an up-date and, where appropriate, a revision of the status of enhanced protection and/or a new decision by the Committee.

5.2.7. Format of Request and Documentation

Requests and all necessary and relevant documentation to substantiate the request shall:

- i) include recent images and an image inventory ²⁰;
- ii) be transmitted in printed form (A4-size paper or "letter") as well as in electronic format (E-mail in Word or RTF Format, and CD-Rom);
- iii) be presented in English or French duly signed (by the official empowered to sign the request on behalf of the State Party), and transmitted to the Secretariat (International Standards Section, Division of Cultural Heritage, 1 Rue Miollis, 75015 Paris);
- iv) be in two copies (one for the President of the Committee, one for the Secretariat) with an additional third copy in a loose-leaf format to facilitate photocopying (rather than in a bound volume).

The Secretariat will retain all supporting documentation (maps, plans, photographic material, etc.) submitted with the request.

²⁰ States Parties shall provide a sufficient number of recent images (prints, slides and, where possible, electronic formats, videos and aerial photographs) to give a good general picture of the property. Slides shall be in 35mm format and electronic images in jpg format at a minimum of 300 dpi (dots per inch) resolution. If film material is provided, Beta SP format is recommended for quality assurances. This material shall be accompanied by the image inventory and photograph and audiovisual authorization form. At least one photograph that may be used on the public web page illustrating the property shall be included. States Parties are encouraged to grant to UNESCO, in written form and free of charge, the non exclusive cession of rights to diffuse, to communicate to the public, to publish, to reproduce, to exploit, in any form and on any support, including digital, all or part of the images provided and license these rights to third parties. The non exclusive cession of rights does not impinge upon intellectual property rights (rights of the photographer / director of the video or copyright owner if different) and that when the images are distributed by UNESCO a credit to the photographer / director of the video is always given, if clearly provided in the request. All possible profits deriving from such cession of rights will go to the Fund. (See *Operational Guidelines for the Implementation of the World Heritage Convention*, Annex V, 7 a).

International Committee of the Blue Shield

Draft Guidelines for the Implementation of the 1999 Second protocol to the Hague Convention of 1954 for the Protection of Cultural property in the Event of Armed Conflict

Comments are made on the substance of the text in so far as they affect cultural property. Comments on the legal aspects fall outside the expertise of the ICBS.

Fundamental comments

- 1 The proposals do not make provision for moveable cultural heritage. Separate systems with unique identifiers will be required for individual items such as paintings or archaeological objects and for objects which can be divided such as books or archives
- 2 The amount of work required both to generate documentation by State Parties and by UNESCO to verify the information submitted is significant. It is not clear where this additional resource, particularly at the checking/verification stage will come from. Such work is essential if the system is to be robust enough to be used in a court of law. If it is not done then there is a real danger in the system falling into disrepute.
- 3 There is no guidance as to what documentation is required for general protection and this was asked for at the first meeting of the committee.
- 4 There is no guidance in the documents as to what would constitute the type of information that would be required for cultural property damaged by armed conflict that could be used in post conflict proceedings
- 5 The guidelines should specifically mention ICBS and its constituent bodies

Specific Comments

Section 3 This section notes that these provisions relating to the Second Protocol and many other provisions will need to be implemented. It would be useful to have an indication of what the other provisions are and a timetable for implementation perhaps presented as a paper to the next committee.

Section 4

This section should make it clear that the methodology proposed here does not provide protection for moveable cultural property.

4.2 A fundamental difference between the 1972 World Heritage Convention and the Hague Convention is the element of selection; decisions have been made by the World Heritage Committee to limit numbers of particular types of property on the grounds that these types of property are overrepresented on the list of World Heritage Sites. This is not the case under the 1954 Hague Convention where any number of items of the same type can be identified for protection by State Parties eg the current World Heritage List is deemed to be over represented by medieval cathedrals and towns and applications for inscription as WHS are actively discouraged. This will not be the case for 1954 Hague proposals for general, special or enhanced protection.

There is no guidance as to what documentation needs to be provided for general protection and this also needs to be developed.

Section 5 Enhanced Protection

5.1 This will require considerable resources on the part of the committee to check and verify submissions by the State Parties. Presumably, given that the Committee is responsible for “granting, suspending or cancelling enhance protection for cultural property and for establishing, maintaining and promotion of the [Hague 1954] list” the Committee will have resources. This needs to be specified and the way in which these responsibilities will be exercised outlined.

It is not clear how the Committee will assess information it receives and this needs to be detailed. Will the Centre process applications or will it ask others to do so as it does with ICOMOS and IUCN? This will be an area where the ICBS could add value in assisting the Committee to discharge its obligations.

The last paragraphs could be clarified to make clearer the fact that it is the Committee that withdraws or grants protection rather than the State Parties

5.1.2 It is not clear how the Committee will monitor compliance with conditions b) and c). Is some sort of Periodic reporting exercise (as that done with World Heritage Sites) envisaged? A considerable capacity building exercise will be required to reach a basic common level of knowledge.

It is not clear how emergency meetings can be convened.

5.1.3 The creation of buffer zones, and specifying a size may create considerable challenges for those designated items or sites located in urban centres adjacent or close to railway stations,

major roads which could comprise legitimate military targets. Obvious examples include the British Library (next to St Pancras/Kings Cross Station), OTHER EXAMPLES REQUIRED HERE. It is recommended that this should not be mandatory requirement.

This section relates to only properties submitted for “enhanced protection”, presumably a similar system should be used for properties submitted for general protection (see comment above) as the two systems should be mutually compatible

5.2.1 It should be noted that this system is likely to provide insufficient protection for moveable cultural property which by its definition can simply be moved from its original location. Name of property should also include other names property has been known by and address including post code. Details of ownership and management – private or state
The geographic details should also include GPS data

5.2.2 Again this system does not really address the needs of moveable cultural property.

For the documentation to be useful in a court of law then there needs to be an assessment of the state of condition of the property including photographs and this would need to be regularly (twice yearly/5 yearly ?) updated.

Again to be robust in a court of law there presumably needs to an identification of potential “eg area X is the location of a 3rd Millennium BC temple and over half of this remains unexcavated. A detailed survey is attached together with photographs. The part of the temple that has been excavated has been reburied/ consolidated and is open to the public and is in a fair state of repair”. A precise terminology would need to be developed and there would need to be significant capacity building amongst State Parties to ensure consistency in use.

5.2.3 The comparative significance study is a new requirement and one that will require considerable work. It is not clear from the document whether this is also applicable to properties under general protection.

5.2.4 Some elements of this may be unworkable eg providing details of private owners particularly where there is a high level of change. Again this system does not adequately address the issue of moveable property. State Parties may not wish to see details of cultural property on a website and this should be voluntary not mandatory given the security implications.

It would not be sensible or sustainable to ask for copies of legal and administrative documents for every application as is done currently with WHS nominations.

We fully endorse the requirement for emergency protection plans and management plans although it needs to be recognised that the system should be flexible enough to cope with both a private house, a museum complex or a large estate

For the sake of consistency in usage and capacity building, not to mention avoiding duplication of resources, it would be sensible to develop key indicators and agree regular examinations in a partnership between the centre and the State Parties. This will avoid a number of different systems developing.

- 5.2.5 This is an area where many sites could be affected particularly where there is “an object which by its nature, location purpose or use makes an effective contribution to military action and whose total or partial destruction, capture or neutralisation in the circumstances ruling at the time offers a definite military advantage”. This definition obviously includes roads, bridges, train lines, transportation depots (eg bus or train), industrial complexes (eg the Ruhr), government buildings and this definition could include museums, libraries, archives etc. Further guidance is needed on this.
- 5.2.6 Clarification of “promptly” is required. Clarification is also required regarding Committee meetings – their frequency, arrangements for emergency meetings, their ability to deal with “business” in between meetings etc
- 5.2.7 Not all State Parties will wish their properties to be included on a website. Indeed given the possibility of targeting cultural property – as happened in the Balkans- it might be sensible not to do this as a matter of course. It would be helpful to identify how the data will be transmitted to a third party in the event of armed conflict.
- 5.8 This section is unclear and could be read in two ways. The first is that the State party deliberately violates the Convention by using the property for military purposes; the second is that the invading State Party uses the property for military purposes. The difference between the two situations is profound but the response seems to be the same. Differentiation between circumstances would seem appropriate.
- 6.1 Given previous comments on the inapplicability of the proposals to moveable property one form of assistance could be the development or introduction of systems such as

- Cataloguing (preferably electronic)
- Individual “fingerprinting” of objects
- Capacity Building in risk preparedness and mitigation strategies
- Development of appropriate stores
- Development of monitoring indicators

This list is not exhaustive

- 8.1 It would be sensible for the Committee to call on its advisors to help it discharge this duty. It is unclear that UNESCO has sufficient resources to undertake verification, assessment and monitoring so additional resources should be earmarked for this function.

Sue Cole 27th March 2007



Ministero degli Affari Esteri

DIREZIONE GENERALE PER LA PROMOZIONE E LA
COOPERAZIONE CULTURALE
Ufficio III

Draft Guidelines For The Implementation Of The 1999 Second Protocol To The Hague Convention Of 1954 For The Protection Of Cultural Property In The Event Of Armed Conflict. Italian comments

Italy fully agrees with the approach embodied in the *Draft Guidelines for the Implementation of the 1999 Second Protocol to The Hague Convention of 1954 for the Protection of Cultural Property in the event of Armed Conflict* prepared by the UNESCO Secretariat, which will contribute to a better understanding of the content of the II Protocol and a smoother implementation of this important legal instrument, both internally and internationally. At the same time, Italy desires to attract the attention of the Secretariat on the following particularly important question, examined in paragraph 5.1.3 of the proposed document:

“Does Condition ex art. 10. c) imply a Minimum Distance or even a “Buffer Zone” as an appropriate additional element, though it would not operate as an additional formal requirement (beyond the three conditions under Article 10)?

Even though we believe that the introduction of a *minimum distance* (i) and, above all, of a *buffer zone* (ii) will represent an effective instrument for the protection of cultural goods in case of armed conflict, also constituting a way for a more precise definition of the legal condition for a military action during an armed conflict, the introduction of these additional elements, though they would not operate as additional formal requirements, risks assimilating the criteria envisaged for the request of enhanced protection under article 10 of the II Protocol to those demanded by article 8.1.a) of the Aja Convention of 1954 for the granting of the special protection regime, and could bring to the consequence of a limited possibility to apply the Protocol.

As a consequence, it is necessary to clearly state that the mentioned elements (minimum distance and buffer zone) represent additional conditions, but not mandatory formal requirements. For the same reason, paragraph 5.1.3 could be so modified:

1. in subparagraph i), the sentence “If this minimum distance fails in a given case, a request for enhanced protection remains possible under Article 10” should be replaced by the following: *if the minimum distance fails in a given case, or cannot be respected, the enhanced protection can however be agreed, since a minimum distance is not an additional formal requirement, beyond the three conditions under Article 10*”.

2. in subparagraph ii), the sentence “The requesting State party must explain why the buffer zone is not required for effective protection of the cultural property concerned in the cases where it is not proposed”, should be replaced by the following: “*The requesting State Party clarifies why the buffer zone is not required or possible¹ for effective protection of the cultural property concerned in the cases where it was not proposed.*”

¹ This integration is necessary in order to include also the situations where a buffer zone can not be established.

Comments made by the Government of Japan on the Draft Guidelines for the implementation of the 1999 Second Protocol of the Hague Convention of 1954 for the Protection of Cultural Property in the Event of Armed Conflict

The Government of Japan would like to make the following comments concerning major issues and the overall structure of the Draft Guidelines in order to ensure the effective implementation of the second protocol. The Japanese Government will make further comments on individual or detailed points in question as the discussion on this matter progresses.

1. More detailed and practical procedures should be provided for the request for enhanced protection stipulated in paragraph 5.2. “How to Submit a Request and Information Required” and the request for international assistance mentioned in paragraph 6. “International Assistance”, in view of fact that this Guidelines will be consulted by officers of each State Party dealing with the implementation of the 1954 Hague Convention and its Second Protocol. Further and more appropriate modifications of the Draft Guidelines are necessary from this point of view. For example, it is useful to prepare a registration form to list a series of documents related to the registration and to describe the timetable (roadmap) concerning the procedure for the granting of enhanced protection. In making

modifications, it is highly recommended to refer to the Operational Guidelines for the implementation of the World Heritage Convention and the draft Operational Directives for the implementation of the Intangible Heritage Convention, both drafted by UNESCO.

2. In the Draft Guidelines, paragraph 5.1.3., “Does Condition c) Imply a Minimum Distance or even a ‘Buffer Zone’”, UNESCO proposes to the States Parties the introduction of “a minimum distance” or “a buffer zone” as an appropriate additional element besides three conditions for enhanced protection stipulated by Article 10 of the second protocol. The Japanese Government opposes this introduction for the following reasons.

a) The Draft Guidelines state that a minimum distance, or even a buffer zone would be an appropriate additional element, in other words an “informal” requirement, and that it would not operate as an additional formal requirement beyond the three conditions under Article 10 of the second protocol. However, it should be pointed out that, in fact, this is nothing but to add an additional requirement to the conditions for granting enhanced protection and that adding such a requirement would be considered as a *de facto* amendment of the second protocol, even if it is recognized as an “informal” requirement. In addition, Article 27 stipulates that the Guidelines should be developed for the “implementation” of the second protocol. Therefore, the introduction of “a minimum distance” or “a buffer zone” is beyond the objective to be achieved by the Guidelines and it is not acceptable for Japan.

b) The Government of Japan does not understand the reason why introducing “a minimum distance” or “a buffer zone” is necessary when Article 10 already stipulates conditions. Therefore, the Japanese Government does not believe that the introduction of “a minimum distance” or “a buffer zone” is indispensable in realizing the purpose of the second protocol which aims at protecting cultural property in the event of armed conflict.

c) Furthermore, in order to ensure an effective implementation of the second protocol, the lessons learned from past experiences of the 1954 Hague Convention should be remembered. The condition of “an adequate distance” between cultural property placed under special protection and “military objective” was one of the obstacles to promoting the special protection stipulated in the 1954 Hague Convention and, as a result, the notion of distance was excluded from the requirement for the granting of enhanced protection in order to ensure effective implementation. Therefore, Japan does not believe that it is appropriate to consider “a minimum distance” or “a buffer zone” as a *de facto* condition or requirement for granting enhanced protection.

d) The Draft Guidelines do not give any detailed definition of “military objective” related to the argument raised in paragraph 5.1.3. In case the definition of “military objective” under the Draft Guidelines appears identical to the definition prescribed by Article 8 of the 1954

Hague Convention, it should be noted that “military objective” constitutes a vulnerable point such as an aerodome, railway station or a main line of communication. In that case, it brings most cultural properties located in Japan into a difficult situation - to be protected under enhanced protection - because Japan has many cultural properties in its narrow territory and it is not easy for Japan to establish “a minimum distance” or “a buffer zone” between a cultural property and a military objective.

3. Concerning paragraph 5.6.2. “Should a Distinctive Emblem be used”, the Government of Japan supports the proposal made by UNESCO on which cultural property under enhanced protection would be identified with a distinctive emblem, repeated four times, and cultural property under general protection (the second protocol) would be identified with a distinctive emblem repeated two times. On the other hand, detailed procedures should be provided for how to use a distinctive emblem.

COMMENTS OF MEXICO TO THE DRAFT GUIDELINES FOR THE IMPLEMENTATION OF THE 1999 SECOND PROTOCOL TO THE HAGUE CONVENTION OF 1954 FOR THE PROTECTION OF CULTURAL PROPERTY IN THE EVENT OF ARMED CONFLICT

[To be considered by the second session of the first meeting of the Committee for the Protection of Cultural Property in the Event of Armed Conflict under Article 27(1)(a)]

For Mexico, these draft guidelines, from a technical and structural point of view, are remarkable. They can become a useful and concise instrument for ensuring an adequate implementation of the Second Protocol.

Given the abovementioned, Mexico wishes to make the following comments:

1) Article 10 of the Protocol states that cultural good may be placed under enhanced protection provided that -among other requirements- "it is cultural heritage of the greatest importance for humanity".

Due to the fact that the Protocol lacks provisions/criteria related to the designation of cultural goods as "of the greatest importance for humanity", the vagueness of the matter is highlighted.

Reflecting what Article 10 states, point 5.2.3 of the Draft Guidelines (Project) merely establishes that in order to substantiate a petition requesting the grant of enhanced protection for a particular cultural good, States must submit to the Committee documentation providing clear evidence of its "greatest importance for humanity".

Consequently, with full awareness of how complex it would be, the Parties could take advantage of the opportunity to attempt elaborating on the subject; for example, establish guidelines that could be used as a reference in order to give certain degree of objectivity to a State's intention to confer to a cultural good the qualification to which Article 10 refers to, as well as to the corresponding decision -either in a positive or negative sense- of the Committee.

For example, Article 1 Convention concerning the protection of the world cultural and natural heritage states that the following shall be considered as "cultural heritage": architectural works, works of monumental sculpture and painting, elements or structures of an archaeological nature, inscriptions, cave dwellings and combinations of features, which are of outstanding universal value from the point of view of history, art or science.

If States manage to take steps in such direction, it is underlined that in case of emergency -in conformity with point 5.4 of the Project- the Committee would be in a position to discharge its functions with higher efficiency and therefore, offer protection with greater promptness.

2) *Regarding point 7.2, Financial Regulations*, it is considered that the content of draft Article 7.1 must be expanded in order to establish precise guidelines of a technical and indicative nature so that the Director General of UNESCO may make the relevant investments.

3) *According to Article 37 of the Protocol, every four years State Parties must submit to the Committee a report on the measures adopted towards the latter's implementation.* It is clear that it would be very convenient for this Organ to discharge its functions making full use -among others- of such reports; just as it is already stated in the Project.

In this context, by way of point 8.3 of the Project, it is suggested that States inform on the legal, administrative, military and practical measures adopted in order to implement the Protocol; moreover specifying 24 points to be broached.

Regarding this matter, due to the high volume of information that it could involve, it is considered that there is a risk of the aforementioned translating into an obstacle for the efficient discharge of the Committee's duties and thus, work against the purpose of adequately evaluating the progress on the Protocol's implementation.

For that reason, as well as taking into consideration that -given the administrative loads involved- States generally manifest inconformity and discontent when arduous chores are imposed on them for the purpose of assessing the implementation of international treaties, point 8.3 of the Project could be studied in order to determine the feasibility of selecting those provisions of the Protocol whose inclusion in the report would be absolutely indispensable in order for the Committee to accurately discharge its duty.

In other words, reformulate and restructure the Project's point in question so that States submit "surgical" reports allowing the Committee to determine with precision the advancement on the Protocol's implementation.

Comments of The Netherlands on the Draft Guidelines for the Implementation of the 1999 Second Protocol to the Protection of Cultural Property in the Event of Armed Conflict

The Netherlands welcomes the Draft Guidelines prepared by the Secretariat for consideration and adoption by the Assembly of States Parties to the 2nd Protocol to the Hague Convention. It would like to make the following comments in order to strengthen the draft as it stands now.

General remarks

The Netherlands would like to stress that in its view the Draft guidelines should provide a practical tool for both State Parties and the Committee in implementing the Second Protocol. It should be a dynamic document that will be adaptable over time in order to take into account national and international developments and experiences in implementing the Protocol. The Draft Guidelines should not be confused with a handbook for public international law, a military manual nor with the explanatory report to the Protocol which The Netherlands hopes will also be available to States Parties in due time. In that respect The Netherlands would like to express once more its concern over the limited staff and resources available at UNESCO for the administration and implementation of the Second Protocol. In short the Netherlands suggests the draft guidelines be adapted in such a way that it will be a more concise and practical tool for the implementation of the protocol. It will therefore comment on major issues and will not go into the details of the current draft.

Specific issues

States and territories concerned (paragraph 2.3)

The Netherlands objects to the interpretation in this paragraph that the Second Protocol applies to the entire territories of its States Parties, and the reference to article 29 of the Vienna Convention on the Law of the Treaties as explanation for this. Besides, in line with the comments under “general remarks” above, the Netherlands considers this an issue that should not be dealt with in the guidelines but in the explanatory report. In general, in its view, chapter 2 and 3 can be considerably shortened.

As a rule, the Netherlands declares, when becoming a Party to international legal instruments, to which of the territories of the Kingdom of the Netherlands the instrument will apply. This was the case when becoming a Party to the 1954 Hague Convention, as well as when becoming a Party to the 1999 Protocol. It should be emphasized, that during the negotiations towards the Vienna Convention in the 1960's, the International Law Commission stated: “the words ‘unless a different intention appears from the treaty or is otherwise established’ [...] give the necessary flexibility to the rule to cover all the legitimate requirements in regard to the application of treaties to territory”. Also, it has been stated by the ILC that the rule in Article 29 of the Vienna Convention is a flexible one, which would not appear to give rise to difficulties with regard to the practice of the Kingdom, as well as of other States. Furthermore, state practice of the Kingdom of the Netherlands as well as of other States is consistent and undisputed.

Criteria for the inscription of cultural heritage of the greatest importance for humanity in the List (relating to paragraph 5.1.1)

Both the State Parties and the Committee will need guidance in deciding which cultural heritage qualifies for inscription in the List of Enhanced protection. The guidelines at hand are the place to elaborate on this issue. In this respect movable heritage will need extra consideration since this is an area for which no international points of reference exist.

Formats and formal procedures will surely help stakeholders in applying their legal obligations and the guidelines for implementation.

Buffer zone (paragraph 5.1.3)

The Netherlands objects strongly to the introduction of a buffer zone in the guidelines and would like to recall here that the concept of ‘adequate distance’ as contained in the Hague Convention is the main reason for the Special Protection regime in the Convention not to be an effective tool in practice. By introducing a buffer zone in the context of the Second Protocol we fear that the same problem will be introduced in the Enhanced Protection regime of the 2nd Protocol. Under the Enhanced Protection

Regime it is the responsibility of the State Party applying for enhanced protection to guarantee immunity of the cultural property concerned regardless of the introduction of buffer zones.

Loss, suspension or cancellation of enhanced protection (paragraphs 5.7 and 5.8)

Another issue The Netherlands would like to get some guidance on is the gliding scale between de jure loss of enhanced protection (article 13.1.b) and the role of the Committee in respect of suspension or cancellation of enhanced protection (article 14). During the ratification process of the 1999 Protocol, the Netherlands came to the conclusion that the line between Article 13, subparagraph 1b, and Article 14 may be very thin.

On the basis of Article 14, in case of serious violations of the immunity obligations in relation to cultural property under enhanced protection (such as the use of such property in support of military action), the Committee may –by concrete decision- suspend the enhanced protection status. However, in case the property is being used in support of military action, one may state that the object by its use may make an effective contribution to military action, which may make under circumstances the object as such a military objective (ref. article 1, sub f). In that case, not Article 14, but Article 13, paragraph 1, subparagraph b, is applicable and the loss of the status will be by right and with direct effect, without the need for a Committee decision.

The Netherlands would favour an opinion of both the UNESCO Secretariat and of other States parties that might need to be included in the guidelines.

Norway

Comments on the Draft Guidelines for the implementation of the 1999 Second Protocol to the Hague Convention

Norway finds it very important that such guidelines have been made and would like to congratulate the secretariat for the work done. Speaking from the experience with the World Heritage Convention it is of vital importance to have good operational guidelines to be able to implement the convention according to rules. We believe that the guidelines should be expanded to include all aspects of the implementation of the protocol and in this way make the implementation easier for the State Parties.

We are very satisfied with the work done, but a few comments must be made on some points.

Chapter 1.1

Norway suggests that the guidelines should include a description of the work of the committee, meeting frequency and rules of procedure, which already has been passed by the first meeting of the committee.

Chapter 5.1.3

Norway agrees that a distance between the military object and the cultural property should be defined. We suggest that the question of "Buffer zones", as in the World Heritage Convention, should be considered in the committee. We believe that the question of introducing a buffer zone should be optional.

Chapter 5.2

Norway would like to suggest that a form should be made in order to make the request for enhanced protection easy. We recommend this form to be a part of the guidelines.

Chapter 5.6.2

Norway finds the use of the distinctive emblem to be the main problem with the implementation of the Protocol. The Draft guidelines emphasises that there are two autonomous protection regimes and that the State Parties to both regimes must make two Lists and mark the sites according to both the convention and the protocol. Being aware that this is formally so, one must however try to find ways to simplify this.

During the diplomatic conference in The Hague 1999, it was discussed whether special protection according to the Convention should be substituted with enhanced protection of the Protocol. Several countries declared that they would only list sites with enhanced protection. Unfortunately this is not reflected in the text of the Protocol.

In the Draft Guidelines the following regime is suggested:

Distinctive emblem alone	general protection Convention
Distinctive emblem two times	general protection Protocol
Distinctive emblem three times	special protection Convention
Distinctive emblem four times	enhanced protection Protocol

Norway finds a system with four different markings on the sites, in the field during combat, too complicated. We recommend that one must find a simpler system. The system with one emblem for general protection and three for special protection must be considered known today. It is wise to build on this.

In section B of this chapter it is said that general protection of the Convention and the Protocol share the same definition. We tend to believe that the emblem alone could cover both these even though they legally are different and have different implications.

Norway would like to recommend the committee to discuss how to differ between enhanced protection of the Protocol and special protection of the convention or whether there is a point at all to differ between these categories in the field.

However Norway is generally sceptical to mark the monuments covered by the Convention and Protocol in the field. This is due to experiences during the hostilities in former Yugoslavia where it was reported situations where buildings with the Hague emblem were sought out and destroyed. It might seem that the emblem of protection did not protect these buildings.

Norway proposes that the State Parties to the Convention create individual systems to take care of this issue. At the State Party meeting of The Hague Convention in 2005 Norway mentioned that the Norwegian culture heritage management is working to create an electronic register for monuments protected by the convention. The inventory should be kept in Norway, but UNESCO will be given a password to this register in order to get access to the information when needed.

Norway believes that there might be alternatives to the physical marking of the cultural monuments by using modern technology. This could solve the problem of differing between the Convention and the Protocol. Norway proposes that this question being further considered.

Handbook

Norway suggests that when the guidelines are formerly adopted, they should be printed together with the text of the protocol and rules of procedure. One might consider including the text of the convention and first protocol and regulations for implementation in this publication. This will form a handbook for all the protection work in armed conflicts. A similar publication has been made on the World Heritage Convention.

**COMMENTAIRE DE LA DIRECTRICE DE PROTECTION DU PATRIMOINE
HISTORIQUE DE L'INSTITUT NATIONAL DE CULTURE DU PEROU SUR LE
PROJET DE PRINCIPES DIRECTEURS POUR L'APPLICATION DU
DEUXIEME PROTOCOLE RELATIF A LA CONVENTION DE LA HAYE DE
1954**

- 1) En general, el proyecto de Principios Directores es adecuado a sus fines de normar la aplicación del Segundo Protocolo.
- 2) No obstante, cabe mencionar que los Principios tocan sólo muy someramente las medidas dispuestas en el Capítulo 2 del Segundo Protocolo, sobre las disposiciones generales relativas a la protección. Particularmente la posibilidad de derogación unilateral de la condición de bien cultural ante una “necesidad militar imperiosa”, la cual puede abrir las puertas a una apreciación de carácter muy subjetivo y circunstancial
- 3) Por otro lado, el Segundo Protocolo contiene un capítulo dedicado a la responsabilidad penal y jurisdiccional; sin embargo, en los principios directores no se ha previsto que el Comité evalúe y/o haga recomendaciones respecto a las infracciones cometidas a este respecto.

(TRADUCTION NON OFFICIELLE)



- 1) En général, le projet de Principes Directeurs est conforme à ses fins de donner un cadre juridique pour l'application du Deuxième Protocole.
- 2) Néanmoins, il convient de signaler que les Principes ne touchent que superficiellement les mesures énoncées au Chapitre 2 du Deuxième Protocole, en ce qui concerne les dispositions générales relatives à la protection. Il s'agit surtout de la possibilité de dérogation unilatérale à la condition de bien culturel face à un « besoin militaire impérieux », ce qui peut laisser le chemin libre pour une appréciation à caractère très subjectif et circonstanciel.
- 3) D'un autre côté, le Deuxième Protocole contient un chapitre dédié à la responsabilité pénale et juridictionnelle ; pourtant, dans les principes directeurs il n'est pas prévu que le Comité évalue et / ou fasse des recommandations par rapport aux infractions commises à cet égard.

(Tampon et signature de Mme Blanca Margarita Alva Guerrero, Directrice de l'Institut National de Culture du Pérou)

CLT-07/CONF/210/1
Париж, январь 2007 г.
Оригинал: английский/
французский

**ОРГАНИЗАЦИЯ ОБЪЕДИНЕННЫХ НАЦИЙ
ПО ВОПРОСАМ ОБРАЗОВАНИЯ, НАУКИ И КУЛЬТУРЫ**

**Вторая сессия первого совещания Комитета по защите культурных
ценностей в случае вооруженного конфликта**

(Париж, 11 июня 2007 г., 9.30-18.00)

Зал XI

ПРЕДВАРИТЕЛЬНАЯ ПОВЕСТКА ДНЯ

1. Открытие сессии
2. Утверждение повестки дня
3. Новая информация Секретариата о положении дел со Вторым протоколом и о его осуществлении
4. Рассмотрение проекта руководящих принципов по осуществлению Второго протокола
5. Принятие рекомендаций
6. Прочие вопросы (в частности, использование рабочих языков Комитетом)
7. Закрытие сессии

Ministry of Culture of the Slovak Republic
Cultural Heritage Section
Námestie SNP 33, 813 31 Bratislava 1

UNESCO Secretariat
Mr Jan Hladík

Your ref./date	Our ref.	Contact/Ext.	Bratislava
	MK /2007-51/	Ižvolt/ 471	2nd of May 2007

Subject

"Draft Guidelines for the Implementation of the 1999 Second Protocol to the Hague Convention of 1954 for the Protection of Cultural Property in the Event of Armed Conflict (1954) – submission of comments

At the request of the UNESCO secretariat and the Permanent Delegation of the Slovak Republic to UNESCO in Paris in the matter of comments on the material "Draft Guidelines for the Implementation of the 1999 Second Protocol to the Hague Convention of 1954 for the Protection of Cultural Property in the Event of Armed Conflict (1954).

We propose that Article I Introduction, Point 1.1 should define a permanent role for the Committee for the Protection of Cultural Property in the Event of Armed Conflict as part of the implementation and that this role should be to work to ensure that states that are not signatories to the first and second protocols should respect their main principles. To this end it should develop initiatives to ensure that recognition was covered by a document of the most representative international organization (a resolution of the General Assembly of the United Nations).

We recommend that the definition of cultural property based on the Hague Convention of 1954 should include a definition of "cultural property under enhanced protection (section 5.1.1) and be harmonized with the cultural value (outstanding and universal value) as defined in the Operational Guidelines for Implementation of the World Heritage Convention, because the other articles make use of these guidelines.

In article 5.1.3 (p.15) we propose that particular emphasis should be given to the obligation for states on whose territory military operations are taking place not to locate military objectives less than 500 m from cultural property subject to certain types of protection under both protocols. In this regard, it should be a permanent requirement that individual contracting parties also continuously incorporate the rules of the second protocol into specific documents directing the activities of their operating armed forces both on their own and on foreign territory.

In Article 5.6.2 (p. 24), if the Committee decides to ask States Parties to use a distinctive emblem for cultural property under enhanced protection, we recommend that this emblem should have a single form. We recommend that the set number of symbols for special and enhanced protection should be placed within a geometric figure (e.g. a rectangle) with a strong border (in terms of the size of the frame, the thickness and colour of the lines). The emblems should also be arranged geometrically within the frame (e.g. 3 emblems in a triangle, 4 in a square). One emblem would be used without a frame. This would allow easy identification of the cultural property by artillery observers, aerial and satellite targeting.

From a formal point of view, we recommend that the introduction to the guidelines should include legislative definitions for the Committee, Secretariat, Guidelines and Convention.

Best regards,

Mgr. Jozef Lenhart
General Director

Suisse

Principes directeurs: prise de position

Le document se contente dans une large mesure de reprendre in extenso le texte du Deuxième Protocole, ce qui n'était pas nécessaire (voir p. ex. pp. 4 et 5 - pour ne citer qu'un exemple parmi tant d'autres). La reprise de principes de base du droit international public, tel "pacta sunt servanda" (voir pp. 9 et 10), est également inutile. Si l'on supprimait tous ces passages superflus, le texte serait réduit de plus de la moitié.

Les "Principes directeurs" devraient avoir pour but de permettre et de faciliter l'application dans la pratique du Deuxième Protocole. Autrement dit, ils devraient concrétiser le protocole, régler les points qui ne sont pas fixés et donner des consignes opérationnelles, de façon à ce que les Etats Parties et les organes concernés puissent mettre en œuvre le protocole dans le bon sens avec un maximum d'efficacité. Or, cet objectif fondamental n'est rempli que de manière très partielle. Même les quelques propositions concrètes qui sont faites soulèvent des questionnements et des critiques. Les principales propositions sont à notre avis les suivantes:

- 1) Au point 2.4., il convient de clarifier la signification des notions de "conflit armé" et "d'occupation". Cette tâche d'une importance pourtant primordiale n'est pas résolue. On se contente de reprendre le texte du Deuxième Protocole.
- 2) Au point 4.1., est abordée la question essentielle des interconnexions entre la Convention de La Haye et le Deuxième Protocole, et en particulier la question de la coexistence de divers régimes de protection. Ce passage devrait aller beaucoup plus dans les détails. De plus, le contenu de certains développements laisse subsister des doutes sur le fond: ainsi, le qualificatif de "renforcée" désigne-t-il seulement une autre catégorie ou ne se réfère-t-il pas plutôt à un régime de protection plus élevé que la protection "spéciale"? La protection dite "générale" aux termes de la Convention de La Haye est-elle vraiment une autre forme de protection que la protection "générale" mentionnée dans le Deuxième Protocole? Autrement dit, y-a-t-il vraiment quatre régimes différents de protection au total? Et dans l'affirmative, où se situe exactement la différence? C'est en fin de compte à ce genre de questions que des "Principes directeurs" devraient apporter des réponses.
- 3) Au point 5.1., sont expliquées les conditions de classification d'un bien culturel sous la rubrique "protection renforcée". Il s'agit là d'un des plus importants passages! Pourtant à cet égard aussi, on ne trouve rien de concret. La formulation "la plus haute importance pour l'humanité" (lettre a) ne pourrait-elle pas être précisée par quelques critères (non exhaustifs)? Des explications seraient également plus que nécessaires concernant le critère "protégé par des mesures internes.... qui garantissent le plus haut niveau de protection" (lettre b). Selon notre estimation, très peu d'Etats sont actuellement en mesure de remplir ce critère. Il suffit pour s'en convaincre de considérer la problématique du patrimoine culturel mondial. Nous ne connaissons aucun Etat qui fasse la différence entre monuments "normaux" et "monuments du patrimoine mondial" dans sa législation nationale et qui accorde à ces derniers un niveau de protection plus élevé que dans le cas des monuments "normaux". Or, le Deuxième Protocole à la Convention de La Haye exige que l'on fasse cette différence au niveau de la protection. Il serait donc important de savoir en quoi pourrait concrètement consister ce niveau supérieur de protection au plan national.
- 4) Au point 5.1.3., on trouve (enfin) une proposition concrète comme on devrait en trouver sur tous les points abordés dans des "Principes directeurs": il s'agit de la question du critère à privilégier concernant l'usage non militaire. Faut-il exiger l'instauration d'une zone tampon ou le respect d'une distance minimale par rapport à l'installation militaire la plus proche? C'est une très bonne question, mais qui est encore formulée de façon trop imprécise. Indication: en Suisse, une distance de 500 m est déjà la règle pour les objets sous protection dite "normale"...
- 5) Au point 5.2., quelques explications sont données à propos de la procédure formelle de demande. Elles sont fondamentalement correctes. Il serait toutefois nécessaire - au moins ultérieurement - de concevoir un modèle de formulaire qu'il conviendrait de joindre en annexe. Une autre suggestion serait d'oser prendre le risque de préciser la notion "d'utilisation à des fins militaires" mentionnée au point 5.2.5, au lieu de seulement indiquer que le Deuxième Protocole n'en donne aucune définition.
- 6) La question posée au point 5.6.2., à savoir s'il ne faudrait pas utiliser un signe distinctif particulier pour la "protection renforcée", est une très bonne question. Une telle réglementation pourrait, voire même devrait, figurer dans les "Principes directeurs". A noter que l'emblème du patrimoine mondial a également été défini dans les Orientations devant guider la mise en œuvre de la Convention du patrimoine mondial, mais pas dans ladite convention. Toutefois, nous ne considérons pas comme adéquate la solution proposée dans le

projet, à savoir d'utiliser le même signe distinctif que celui prévu dans la Convention de La Haye, mais en double ou en quadruple exemplaire, alors que cette Convention prévoit d'utiliser ce signe, soit isolément, soit répété trois fois. D'une part, lorsqu'on met en parallèle la Convention de La Haye et le Deuxième Protocole, on peut douter qu'il y ait quatre régimes de protection au lieu de seulement trois. D'autre part, il y a un risque de confusion au niveau du nombre de signes distinctifs à attribuer à chaque catégorie. Enfin, le troisième argument que nous opposons est d'ordre tout à fait pratique: si lors d'affrontements militaires, l'un des signes répété trois fois venait à disparaître ou tout simplement tombait par terre, comment ferait-on alors pour attribuer l'objet à la bonne catégorie de protection? Deux possibilités pourraient être envisagées à titre de solution de rechange: d'une part, créer un nouveau signe distinctif pour la protection renforcée qui équivaldrait à conférer une quasi-immunité au bien culturel concerné. Ce signe devrait s'inspirer du signe distinctif classique adopté dans la Convention de La Haye, tout en mettant clairement en évidence l'immunité du bien culturel. Comme autre solution de rechange, on pourrait prévoir l'usage triplé du signe non seulement pour la "protection spéciale", mais aussi pour la "protection renforcée". Le fait que certains Etats - autant que nous sachions, il s'agirait de l'Allemagne, des Pays-Bas et du Vatican - veuillent faire passer dans la catégorie "protection renforcée" les objets placés jusqu'ici sous "protection spéciale", plaide en faveur de cette solution. Peut-être que ces deux catégories supérieures de protection sont en train de s'égaliser dans la pratique. Quoi qu'il en soit, la question du signe distinctif doit être absolument clarifiée.

- 7) C'est une bonne idée de préciser, au point 6.1., quelles formes pourrait prendre l'assistance internationale et quel contenu devrait avoir la présentation de demandes d'assistance internationale. A cet égard aussi se pose à nouveau la question des formulaires encore inexistantes qui devraient être joints en annexe.
- 8) Nous trouvons également judicieux l'adoption au point 7.2. de règles précises à propos de l'établissement et de la gestion du fonds pour la protection des biens culturels en cas de conflit armé.

En résumé, le document comporte un certain nombre de propositions de solutions, mais elles ne sont de loin pas suffisantes sur le plan du contenu pour figurer dans des "Principes directeurs". En revanche, de larges passages sont totalement superflus, du fait qu'ils ne sont qu'une répétition du Deuxième Protocole. Celui-ci nécessite d'ailleurs d'être concrétisé sur de si nombreux points que la formulation de "Principes directeurs" clairs et détaillés sera décisive pour une mise en œuvre efficace dudit protocole.

Citons à titre d'exemple les Orientations devant guider la mise en œuvre de la Convention de 1972 sur le patrimoine mondial que nous avons jointes à la présente. Si ces orientations sont si détaillées, c'est bien sûr aussi qu'elles ont été sans cesse remaniées et étendues depuis les années 70. Elles n'en constituent pas moins un modèle montrant à l'évidence tout ce qu'il est possible de régler dans ce genre de documents. Deux exemples à titre d'illustration: nous avons déjà évoqué la possibilité de créer un nouveau signe distinctif, non prévu dans la convention. Le deuxième exemple concerne l'obligation mentionnée au ch. marg. 172 (p. 58) des Etats Parties d'informer le Comité du patrimoine mondial de toute restauration d'un bien culturel ou de toute nouvelle construction importante qu'il serait prévu d'entreprendre dans la zone protégée par la convention. C'est sur ce devoir, sans cesse violé, que l'UNESCO s'appuie pour menacer les contrevenants de retrait du statut de bien culturel mondial - comme ce fut le cas pour la cathédrale de Cologne et comme c'est le cas actuellement pour la Tour de Londres. L'importante valeur pratique accordée aujourd'hui à la Convention sur le patrimoine mondial découle donc d'une disposition fixée dans les Orientations guidant la mise en œuvre. Par comparaison, le présent projet de "Principes directeurs" est encore loin d'avoir épuisé toutes les possibilités de doter le Deuxième Protocole à la Convention de La Haye de moyens d'application efficaces.

TURKISH PERMANENT DELEGATION
TO UNESCO

No: 02-3/239-47

Paris, 16 May 2007

Dear Ms. Assistant Director-General,

With reference to the Recommendation adopted by the First Session of the First Meeting of the Committee for the Protection of Cultural Property in the Event of Armed Conflict, (Paris, 26 October 2006) which invited "its Members and other States Parties to the Second Protocol and Member States of UNESCO not party to the Second Protocol...", to provide in writing to the Secretariat their submissions on the Draft Guidelines for the Implementation of the 1999 Second Protocol to the Hague Convention of 1954 for the Protection of Cultural Property in the Event of Armed Conflict, I have the pleasure to present herein below, on behalf of my Government, the comments of the Turkish side with regard to the said draft text:

- The sub-section 2.5 "Applicability in Conflicts not of an International Character" defines the applicability of the Protocol in situations of conflict not of an international character. The last sentence in the first paragraph, mentions the term "inter-ethnic conflicts". This term is unnecessary for the purposes of the Protocol and might also lead to further legal complications. Therefore no reference to "inter-ethnic conflicts" should be made in the document.

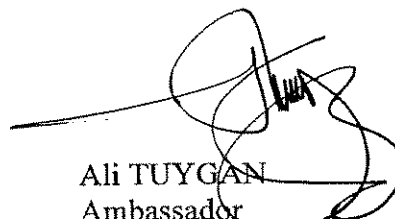
- The Draft Guidelines refers to the 1969 Vienna Convention on the Law of Treaties in many instances. It should be noted that several UNESCO Member States including Turkey are not parties to the said Convention.

Ms. Françoise RIVIÈRE
Assistant Director-General for Culture
UNESCO

- The sub-section 5.1.3 "Does Condition c) Imply a Minimum Distance or even a "Buffer Zone"?" suggests to consider whether a minimum distance or a "Buffer Zone" would be an appropriate additional element, and asserts that "a minimum distance of 500 meters between a potential military objective and the cultural property proposed for enhanced protection, appears a sound protection requirement." Considering the infinite dissimilarities that geographical and urban conditions create in different theatres of conflict, there is no sound reason for determining a precise minimum distance or buffer zone. Hence, the endeavour to impose an arbitrary minimum distance or buffer zone, is a redundant exercise. The Draft Guidelines should not undertake to determine a minimum distance or a buffer zone.

I would appreciate if you could kindly take into consideration the foregoing comments of the Turkish side in preparing the Draft Guidelines for the Implementation of the 1999 Second Protocol to the Hague Convention of 1954, to be submitted to the Committee for the Protection of Cultural Property in the Event of Armed Conflict.

Sincerely yours,

A handwritten signature in black ink, consisting of several loops and a long horizontal stroke extending to the left.

Ali TUYGAN
Ambassador
Permanent Delegate

Cc: Mr. Jan HLADIK
Programme Specialist
Division of Cultural Heritage
International Standards Section
UNESCO

United Kingdom (note of the Secretariat – the United Kingdom comments are inserted in the text on pages 7, 13, 15, 16, 17, 19, 20, 26, 27 and 35)

Draft Guidelines for the Implementation of the 1999 Second Protocol to the Hague Convention of 1954 for the Protection of Cultural Property in the Event of Armed Conflict

[To be considered by the first meeting of the Committee for the Protection of Cultural Property in the Event of Armed Conflict under Article 27(1)(a) of the 1999 Second Protocol to the Hague Convention of 1954 for the Protection of Cultural Property in the Event of Armed Conflict]

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1. Introduction

The present Draft Guidelines for the Implementation of the 1999 Second Protocol to the Hague Convention of 1954 for the Protection of Cultural Property in the Event of Armed Conflict (hereafter “the Second Protocol” or the “1999 Protocol”¹) have been prepared by the Secretariat to facilitate the development of the Guidelines for the implementation of the 1999 Second Protocol by the Committee².

The draft Guidelines are submitted to the first meeting of the Committee for consideration, possible amendment and/or adoption at the first or a subsequent meeting of the Committee. Once the Committee adopts the Guidelines, they will be submitted to the Meeting of the Parties for endorsement.³ This submission requirement for endorsement applies also to any future amendment and/or integration of the Guidelines, which the Committee may deem necessary.

It should be observed that these draft Guidelines

- i) are introduced by clarifications on crucial general issues such as the scope of application of the Second Protocol, standards for implementation and possible coexistence of protection regimes (See below N°2, 3 and 4);
- ii) cover only the provisions of the Second Protocol that present an institutional aspect, such as those related to enhanced protection, international assistance and the Fund (See below N° 5, 6 and 7);
- iii) thus do not cover all the other provisions of the Second Protocol which States Parties implement domestically and report thereon to the Committee (See below, N°8);

¹ This terminology is distinctive and prevents confusion with the “First Protocol” or the “1954 Protocol” adopted in 1954 on the same date that the 1954 Convention was adopted (14 May 1954).

² Article 27, 1, a) and Article 28.

³ Article 23 (1, 3, b).

1.1. Under the Second Protocol, the functions of the Committee for the Protection of Cultural Property in the Event of Armed Conflict (hereafter “the Committee”) are⁴:

1. The Committee shall have the following functions:
 - a. to develop Guidelines for the implementation of this Protocol;
 - b. to grant, suspend or cancel enhanced protection for cultural property and to establish, maintain and promote the List of Cultural Property under Enhanced Protection;
 - c. to monitor and supervise the implementation of this Protocol and promote the identification of cultural property under enhanced protection;
 - d. to consider and comment on reports of the Parties, to seek clarifications as required, and prepare its own report on the implementation of this Protocol for the Meeting of the Parties;
 - e. to receive and consider requests for international assistance under Article 32;
 - f. to determine the use of the Fund;
 - g. to perform any other function which may be assigned to it by the Meeting of the Parties.

2. The functions of the Committee shall be performed in co-operation with the Director-General.

3. The Committee shall co-operate with international and national governmental and non-governmental organizations having objectives similar to those of the Convention, its First Protocol and this Protocol. To assist in the implementation of its functions, the Committee may invite to its meetings, in an advisory capacity, eminent professional organizations such as those which have formal relations with UNESCO, including the International Committee of the Blue Shield (ICBS) and its constituent bodies. Representatives of the International Centre for the Study of the Preservation and Restoration of Cultural Property (Rome Centre) (ICCROM) and of the International Committee of the Red Cross (ICRC) may also be invited to attend in an advisory capacity.

2. Scope of Application

The first practical question is to understand to what situation the Second Protocol applies. The scope of application of the Second Protocol is clarified by illustrating its different criteria based on the subject-matter (*ratione materiae*), the time element (*ratione temporis*), the state and territories concerned (*ratione personae* and *loci*).

Additional clarifications cover the use of terms as armed conflict and occupation, as

⁴ Article 27.

well as the specific situation of conflicts not of an international character.

2.1. The Definition of Cultural Property (Scope Ratione Materiae)

With a view to facilitating the application of both the 1954 Convention and its 1999 Protocol, the drafters of the Second Protocol made sure that the scopes of application of the 1954 Convention and the 1999 Protocol be identical.

As made clear under Article 1, b of the Second Protocol, "cultural property" means cultural property as defined in Article 1 of the 1954 Convention, i.e. which reads:

For the purposes of the present Convention, the term 'cultural property' shall cover, irrespective of origin or ownership:

(a) movable or immovable property of great importance to the cultural heritage of every people, such as monuments of architecture, art or history, whether religious or secular; archaeological sites; groups of buildings which, as a whole, are of historical or artistic interest; works of art; manuscripts, books and other objects of artistic, historical or archaeological interest; as well as scientific collections and important collections of books or archives or of reproductions of the property defined above;

(b) buildings whose main and effective purpose is to preserve or exhibit the movable cultural property defined in sub-paragraph (a) such as museums, large libraries and depositories of archives, and refuges intended to shelter, in the event of armed conflict, the movable cultural property defined in sub-paragraph (a);

(c) centers containing a large amount of cultural property as defined in sub-paragraphs (a) and (b), to be known as 'centers containing monuments'.

2.2. Time Factor (Scope Ratione Temporis)

As other treaties, which do not state anything to the contrary, the Second Protocol is deemed not to operate retroactively. The Protocol applies vis-à-vis a State Party to acts or facts, which took place after its entry into force with respect to that State Party ⁵.

⁵ Article 28, *Non-retroactivity of treaties (1969 Vienna Convention on the Law of Treaties)*
Unless a different intention appears from the treaty or is otherwise established, its provisions do not bind a party in relation to any act or fact which took place or any situation which ceased to exist before the date of the entry into force of the treaty with respect to that party.

The Second Protocol entered into force on 9 March 2004, three months after the twentieth instrument of ratification, acceptance, approval or accession was deposited ⁶.

Vis-à-vis each new State Party, the Second Protocol shall enter into force, for each Party, three months after the deposit of its instrument of ratification, acceptance, approval or accession ⁷.

As an exception to the three-month rule, situations of armed conflict, both of an international or non-international character, as referred to in Articles 18 and 19 of the 1954 Convention ⁸, shall give immediate effect to ratifications, acceptances or approvals or accessions to the Second Protocol deposited by the parties to the conflict either before or after the beginning of hostilities or occupation. In such cases, the Director-General shall transmit the communications referred to in Article 46 by the speediest method ⁹.

2.3. States and Territories Concerned (*Scope Ratione Personae and Loci*)

As with any treaty that expresses no different drafters' intention, the Second Protocol is binding only vis-à-vis its States Parties and does not create rights or obligations for third States (unless their consent is evidenced) ¹⁰.

⁶ Article 43 (1).

⁷ Article 43 (2).

⁸ Article 18. Application of the Convention

1. Apart from the provisions which shall take effect in time of peace, the present Convention shall apply in the event of declared war or of any other armed conflict which may arise between two or more of the High Contracting Parties, even if the state of war is not recognized by, one or more of them.

2. The Convention shall also apply to all cases of partial or total occupation of the territory of a High Contracting Party, even if the said occupation meets with no armed resistance.

3. If one of the Powers in conflict is not a Party to the present Convention, the Powers which are Parties thereto shall nevertheless remain bound by it in their mutual relations. They shall furthermore be bound by the Convention, in relation to the said Power, if the latter has declared, that it accepts the provisions thereof and so long as it applies them.

Article 19. Conflicts not of an international character

1. In the event of an armed conflict not of an international character occurring within the territory of one of the High Contracting Parties, each party to the conflict shall be bound to apply, as, a minimum, the provisions of the present Convention which relate to respect for cultural property.

2. The parties to the conflict shall endeavour to bring into force, by means of special agreements, all or part of the other provisions of the present Convention.

3. The United Nations Educational, Scientific and Cultural Organization may offer its services to the parties to the conflict.

4. The application of the preceding provisions shall not affect the legal status of the parties to the conflict.

⁹ Article 44.

¹⁰ Article 34. *General rule regarding third States (1969 Vienna Convention on the Law of Treaties)*

A treaty does not create either obligations or rights for a third State without its consent.

Furthermore, the Second Protocol applies to the entire territories of its States Parties¹¹.

The drafters of the Second Protocol did not include a provision, which enables States Parties to limit the territorial extension of the Second Protocol. This provision exists under the 1954 Convention.¹² **UK comment – The United Kingdom does not accept the proposition in the second sentence of paragraph 2.3. It is the United Kingdom’s consistent practice to state, when ratifying international treaties of this sort, to which of the United Kingdom’s territories the treaty will apply, and then only to regard the treaty as applicable to those territories. The United Kingdom will follow this practice when acceding to the Second Protocol.**

2.4. Meaning of “Armed Conflict” and “Occupation”

The Second Protocol makes clear that it shall apply, in addition to its provisions which shall apply in time of peace, to armed conflict and occupation situations as defined under the 1954 Convention¹³, i.e. :

1. Apart from the provisions which shall take effect in time of peace, the present Convention shall apply in the event of declared war or of any other armed conflict, which may arise between two or more of the States Parties, even if the state of war is not recognized by, one or more of them.
2. The Convention shall also apply to all cases of partial or total occupation of the territory of a State Party, even if the said occupation meets with no armed resistance.

The Second Protocol applies also to more exceptional situations where the Protecting Powers are called upon to lend their good offices in cases where they may deem it useful in the interests of cultural property, particularly if there is disagreement between the Parties to

¹¹ *Article 29, Territorial scope of treaties (1969 Vienna Convention on the Law of Treaties)*

Unless a different intention appears from the treaty or is otherwise established, a treaty is binding upon each party in respect of its entire territory.

¹² Article 35.

¹³ See Article 3 (1) of the Second Protocol and Article 18 (1 and 2) of the 1954 Convention. With regard to the latter Article, the original terminology of « High Contracting Party » has been adapted to the Second Protocol (“States Parties”).

the conflict as to the application or interpretation of the provisions of the 1954 Convention or the Regulations for its execution¹⁴.

2.5. Applicability in Conflicts not of an International Character

The Second Protocol shall apply in the event of an armed conflict not of an international character, occurring within the territory of one of the Parties. In this regard, the Protocol is more protective than the 1954 Convention¹⁵. This is an important provision as it ensures the applicability of the Protocol in these situations of conflicts not of an international character. These situations appear to be not only increasingly frequent but also possess an increased risk to cultural property as this property may be deliberately targeted, as in inter-ethnic conflicts.

However, the application of the Second Protocol to these situations does not affect the legal status of the parties to the conflict. Furthermore, the Second Protocol shall not apply to situations of internal disturbances and tensions, such as riots, isolated and sporadic acts of violence and other acts of a similar nature.

With regard to conflicts not of an international character, nothing in the Second Protocol shall i) be invoked for the purpose of affecting the sovereignty of a State or the responsibility of the government, by all legitimate means, to maintain or re-establish law and order in the State or to defend the national unity and territorial integrity of the State; ii) prejudice the primary jurisdiction of a Party in whose territory an armed conflict not of an international character occurs over the violations set forth in Article 15.; iii) be invoked as a justification for intervening, directly or indirectly, for any reason, in the armed conflict or in the internal or external affairs of the Party in the territory of which that conflict occurs¹⁶.

¹⁴ See Article 3 (1) of the Second Protocol and Article 22 (1) of the 1954 Convention.

¹⁵ See Article 19 (1954 Convention). Conflicts not of an international character

1. In the event of an armed conflict not of an international character occurring within the territory of one of the High Contracting Parties, each party to the conflict shall be bound to apply, as, a minimum, the provisions of the present Convention which relate to respect for cultural property.

2. The parties to the conflict shall endeavour to bring into force, by means of special agreements, all or part of the other provisions of the present Convention.

¹⁶ Article 22.

3. Standards for Implementation

These Guidelines illustrate only some provisions of the Second Protocol, namely those related to institutional mechanisms such as the List of Cultural Property under Enhanced Protection, the Fund, International Assistance and Monitoring.

However, these and many other provisions need to be implemented by States Parties to the Second Protocol. As general guidance, it should be recalled that under the 1969 Vienna Convention on the Law of Treaties¹⁷, the main standards of implementation at a national level for States Parties are codified as follows (bold type is added):

i) *Article 26, Pacta sunt servanda:*

Every treaty in force is **binding upon the parties** to it and must be **performed by them in good faith**.

ii) *Article 27, Internal law and observance of treaties:*

A party **may not invoke the provisions of its internal law** as justification for its failure to perform a treaty. This rule is without prejudice to article 46¹⁸.

iii) *Article 28, Non-retroactivity of treaties:*

Unless a different intention appears from the treaty or is otherwise established, its provisions do not bind a party in relation to any act or fact which took place or any situation which ceased to exist **before the date of the entry into force** of the treaty with respect to that party.

¹⁷ It should be observed that under the 1969 Vienna Convention the term “Treaty” means “an international agreement concluded between States in written form and governed by international law, whether embodied in a single instrument or in two or more related instruments and whatever its particular designation” (Article 2, 1 a).

¹⁸ For the sake of clarity it is recalled that Article 46 (Provisions of internal law regarding competence to conclude treaties) reads as follows:

1. A State may not invoke the fact that its consent to be bound by a treaty has been expressed in violation of a provision of its internal law regarding competence to conclude treaties as invalidating its consent unless that violation was manifest and concerned a rule of its internal law of fundamental importance.
2. A violation is manifest if it would be objectively evident to any State conducting itself in the matter in accordance with normal practice and in good faith.

iv) *Article 29, Territorial scope of treaties:*

Unless a different intention appears from the treaty or is otherwise established, a treaty is **binding upon each party in respect of its entire territory.**

4. Coexistence of Protection Regimes: Analysis and Interrelations

4.1. Coexistence between the 1954 Convention and the Second Protocol

4.1.1. “General” Protection v. “Special” and “Enhanced” Protection

Both the 1954 Convention and the Second Protocol establish two distinct regimes of protection of cultural heritage. The 1954 Convention distinguishes them as “General” (Chapter I, Articles 1-7) and “Special” (Chapter II, Articles 8-11) protections. The Second Protocol also has two distinct sets of rules: a “General” regime of protection (Chapter II, Articles 5-9) and an “Enhanced” Protection regime (Chapter III, Articles 10-14).

Both “General” regimes of protection under the 1954 Convention and the Second Protocol apply to *any* cultural property (as defined by Article 1 of the 1954 Convention), which is situated in the territory of a State Party.

Both “Special” and “Enhanced” protection regimes under, respectively, the 1954 Convention and the Second Protocol apply *only* to cultural property (as defined by Article 1 of the 1954 Convention) in the territory of a State Party which is specific property as it: i) complies with specific requirements set forth under, respectively, the 1954 Convention (for “Special Protection”) and the Second Protocol (for “Enhanced Protection”); and ii) for which a specific request has been made by territorial State Party.

4.1.2. Coexistence of Regimes and its Rules

- a. As a general rule, each instrument (1954 Convention and Second Protocol) represents an autonomous set of rules ¹⁹ and regulates in its own way and according to its own provisions the cultural property it applies to through its implementation at a domestic level by its States Parties.

- b. However, in more exceptional cases the same cultural property may be subject to both instruments if it falls under their scopes of application (the same State is party to both instruments ²⁰) and meets any specific requirement under either of the instruments. As indicated above, such specific requirements exist only for the purposes of “Special” protection (1954 Convention) and “Enhanced” protection (1999 Protocol), while they do not affect “General” protection under both instruments.

- c. For the very exceptional cases where, following a request of the territorial State Party, the same property is put under both “Special” protection (under Chapter II of the 1954 Convention) and “Enhanced” protection (under Chapter III of the 1999 Protocol):
 - i. both regimes obviously share the same philosophy, i.e. to provide a legal specificity to cultural property which makes it better protected than “ordinary” property under domestic legislation;

 - ii. they do so by establishing a threshold of protection which is higher than, although it does not replace, the one granted under the “General” protections regimes in the 1954 Convention and 1999 Protocol;

 - iii. in particular, from an operational point of view attention needs to be drawn to the relationship between the two protection regimes:

¹⁹ With the exception of the provisions on scope of application which are common to the two instruments.

²⁰ Focus is put on the scope *ratione personae* as the scopes *ratione materiae* and *temporis* coincide in principle for the two instruments.

- i) the Second Protocol expressly states²¹ that “Enhanced” protection is without prejudice to the application of “General” protections under the 1954 Convention and/or the 1999 Protocol. As stressed above, the “Special” (under the 1954 Convention) and the “Enhanced” (under the Second Protocol) protection regimes are autonomous in their conditions and their effects, and the former does not generally replace the latter;
- ii) however, and to the contrary, only the “Enhanced” protection regime applies²², and not the “Special” protection, to the same cultural property which has been granted both Enhanced and Special protections between States Parties to the Second Protocol or as between a State Party (to the Second Protocol) and a State which accepts and applies this Protocol²³.

4.2.Coexistence between the 1954 Convention, the Second Protocol and the 1972 World Heritage Convention

Even if a State is party to these three instruments, cultural sites protected under the World Heritage List are *not automatically* granted “Special” (under the 1954 Convention) and/or “Enhanced” (under the Second Protocol) protections. This is because, while certain similarities exist (e. g. the system of Lists for properties granted a specific category of protection), each instrument, be it a Convention (1954 and 1972) or the Second Protocol, is specific and operates only among its States party and only in conformity with its provisions and scope of application.

²¹ Article 4, a).

²² See Article 4, b).

²³ In accordance with Article 3 paragraph 2, which reads: “When one of the parties to an armed conflict is not bound by this Protocol, the Parties to this Protocol shall remain bound by it in their mutual relations. They shall furthermore be bound by this Protocol in relation to a State party to the conflict which is not bound by it, if the latter accepts the provisions of this Protocol and so long as it applies them”.

One of the main visible differences in scope (*ratione materiae*) is that the 1972 World Heritage Convention applies only to monuments, groups of building and sites of “outstanding universal value”²⁴, while “Special” protection under the 1954 Convention may be granted only to “cultural property of very great importance”²⁵ and, under the Second Protocol, “Enhanced” protection is reserved to “cultural heritage of the greatest importance for humanity”²⁶. Thus, three different characterizations exist, and each of them is relevant for the purposes of its own instrument.

It is therefore clear that no automatic transfer of cultural property is operated from the World Heritage List to the List of Cultural Property under Enhanced Protection. Only properties listed in the World Heritage List, which comply with the three criteria under Article 10 of the Second Protocol, will be eligible for enhanced protection.

UK comment – The UK welcomes this explicit clarification and agrees that there should be no automatic transfer from the WHS list to the Enhanced Protection List. Nominations for enhanced protection should be made on the merits of each nomination as assessed against the criteria in Article 10. However, it would be very useful if the Committee could establish a benchmark (with examples) and publish a set of qualification criteria.

5. The List of Cultural Property under Enhanced Protection

A List of Cultural Property under Enhanced Protection (hereafter “the List”) is established under the Second Protocol. The Committee is in charge of granting, suspending or cancelling enhanced protection for cultural property and to establish, maintain and promote this List²⁷.

5.1. Conditions to Request Enhanced Protection

²⁴ See Article 1. It should be observed that the 1972 Convention applies both to cultural and natural heritage (see its Articles 1 and 2), while in the text reference is made only to cultural heritage, as both the 1954 Convention and Second Protocol apply only to cultural property.

²⁵ Article 8, 1.

²⁶ Article 10, a).

²⁷ Article 27 (1, b).

5.1.1. The Three Conditions

The Second Protocol provides in Article 10 that upon the application of a State Party the Committee may place the most important cultural property under enhanced protection, providing it meets three conditions²⁸, i.e.

- “a. it is cultural heritage of the greatest importance for humanity;
- “b. it is protected by adequate domestic legal and administrative measures recognising its exceptional cultural and historic value and ensuring the highest level of protection;
- “c. 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.”

These conditions must be met at the time enhanced protection is applied for and must last as long as this protection is granted. Where cultural property no longer meets any one of these conditions, the Committee may suspend its enhanced protection status or cancel that status by removing that cultural property from the List²⁹ (See below).

Cultural property, which is eligible for enhanced protection, remains “cultural property” in the sense of the Second Protocol, i.e. as defined by Article 1 of the 1954 Convention³⁰.

5.1.2. The Special Status of Condition b)

²⁸ “Condition “ is the terminology used in Article 10 (“Critère” in the French version). These Guidelines use both “condition” and “criteria”.

²⁹ Article 14 (1).

³⁰ See above on scope (*ratione materiae*). Article 1 of the 1954 Convention reads:

For the purposes of the present Convention, the term ‘cultural property’ shall cover, irrespective of origin or ownership:

- (a) movable or immovable property of great importance to the cultural heritage of every people, such as monuments of architecture, art or history, whether religious or secular; archaeological sites; groups of buildings which, as a whole, are of historical or artistic interest; works of art; manuscripts, books and other objects of artistic, historical or archaeological interest; as well as scientific collections and important collections of books or archives or of reproductions of the property defined above;
- (b) buildings whose main and effective purpose is to preserve or exhibit the movable cultural property defined in sub-paragraph (a) such as museums, large libraries and depositories of archives, and refuges intended to shelter, in the event of armed conflict, the movable cultural property defined in sub-paragraph (a);
- (c) centers containing a large amount of cultural property as defined in sub-paragraphs (a) and (b), to be known as ‘centers containing monuments’.

Again, the importance of the criteria (conditions) set forth under Article 10 is self-explanatory. They represent the only basis the Committee has for its decision to grant or deny enhanced protection³¹ and, *inter alia*, limit the scope of representations other States Parties may make (see below).

However, different from conditions a) and c), condition b) (Cultural property is protected by adequate domestic legal and administrative measures) may be unfulfilled at the time the Committee assesses the request. Indeed, in these exceptional cases, when the Committee has concluded that the Party requesting inclusion of cultural property in the List cannot fulfil the criteria of Article 10 sub-paragraph (b), the Committee may decide to grant enhanced protection, provided that the requesting Party submits a request for international assistance under Article 32³².

The same specific status of condition b) exists with regard to a different situation. Upon the outbreak of hostilities, a State Party to the conflict may request, on an emergency basis, enhanced protection of cultural property under its jurisdiction or control by communicating this request to the Committee. In this case the Committee may decide to grant provisional enhanced protection pending the outcome of the regular procedure for the granting of enhanced protection, provided that the provisions of Article 10 sub-paragraphs (a) and (c) are met³³.

5.1.3. Does Condition c) Imply a Minimum Distance or even a “Buffer Zone”?

Condition c) requires the property not to be “used for military purposes or to shield military sites” and that “a declaration has been made by the Party which has control over the cultural property, confirming that it will not be so used”.

Condition c) does not make any distance between a potential military objective and the cultural property proposed for enhanced protection a formal requirement to request enhanced protection under Article 10. The Committee may, however, wish to consider whether a minimum distance (i), or even a “Buffer Zone” (ii), would be an appropriate additional element, though it would not operate as an additional formal requirement (beyond the three conditions under Article 10).

³¹ Article 11 (7).

³² Article 11 (8).

³³ Article 11 (9).

UK Comment – The UK supports the introduction of a minimum distance as an additional element. Although Article 12 is not a criterion for granting enhanced protection it is clear that the obligation provided in Article 12 cannot be met unless there is a minimum distances between the cultural property being nominated and the nearest military objective.

i) A minimum distance of [500] meters between a potential military objective and the cultural property proposed for enhanced protection, appears a sound protection requirement.

UK comment – The UK believes that 500 metres is too large for such a minimum distance. Legitimate military targets include infrastructure such as railway lines, bus depots, power facilities, major road intersections, bridges etc. The incidence of such infrastructure in urban areas is so dense that the likely impact of such a large minimum distance is that no cultural property of the greatest importance for humanity will meet this additional requirement. We recommend that the advice of the military is sought as to what a reasonable minimum distance should be in urban areas, given the capabilities of modern GPS based ordnance.

If this minimum distance fails in a given case, a request for enhanced protection remains possible under Article 10. The requesting State Party shall, however, state its views on the risks the proximity of a potential military objective may generate for the cultural property and endeavour to the possible extent to increase the distance to the minimum required [500 meters].

ii) A further step would be to require the requesting State Party to propose a “Buffer Zone” wherever necessary for the proper protection of the cultural property submitted for enhanced protection. While a minimum distance [500 meters or a different distance] is a merely geographical requirement and involves no limitation on the use of the territory underlying the distance, a “Buffer Zone” would represent a step further, both more protective for the property and more demanding on the territorial State. Indeed, it requires the requesting State Party to ensure that this zone - as in the example of the World Heritage Convention - has complementary legal and/or customary restrictions placed on its use and development to give an added layer of protection to the property³⁴.

³⁴ *Operational Guidelines for the Implementation of the World Heritage Convention*, N° 104.

For the purposes of effective protection of the nominated property, a buffer zone is an area surrounding the nominated property which has complementary legal and/or customary restrictions placed on its use and development to give an added layer of protection to the property. This should include the immediate setting of the nominated property, important views and other areas or attributes that are functionally important as a support to the property and its protection. The area constituting the buffer zone should be determined in each case through appropriate mechanisms. Details on the size, characteristics and authorized uses of a buffer zone, as

In any event, a “Buffer Zone” requirement is not part of the conditions set out in Article 10. Thus, even if the Committee wishes to adopt a “Buffer Zone” in the framework of requests for enhanced protection, it would imply an obligation on the requesting State Party i) to *propose* a “Buffer Zone” around the cultural property submitted for enhanced protection wherever necessary for the proper protection of it; ii) to *explain* why the buffer zone is *not* required for an effective protection of the cultural property concerned in the cases where it was not proposed. However, this obligation would not extend to making the *existence* of an effective “Buffer Zone” a formal requirement *in addition* to the three conditions set out in Article 10 for cultural property to be placed under enhanced protection. **UK Comment – The UK would not support the introduction of a Buffer Zone. Firstly, it is not clear from the Guidelines whether it is envisaged that the Buffer Zone should only apply in times of armed conflict or at all times. The latter would seem to be unduly restrictive. A Buffer Zone would also require legislation to implement to ensure that the Buffer Zone is given adequate protection. Given the close proximity of cultural property in urban locations to other private and commercial property such legislation would be difficult to frame. There may also be human rights implications.**

5.2. How to Submit a Request and Information Required

Each State Party should submit to the Committee a list of cultural property for which it intends to request the granting of enhanced protection. In particular, the State Party, which has jurisdiction or control over the cultural property, may request that it be included in the List of Cultural Property under Enhanced Protection.

For this purpose, the request shall include all necessary information related to the conditions required under Article 10³⁵.

For a request to be considered as "complete", the following requirements are to be met:

well as a map indicating the precise boundaries of the property and its buffer zone, should be provided in the nomination.

³⁵ Article 11 (2).

5.2.1. Identification of the Property

Enhanced protection can be granted to movables or immovable cultural properties. For practical reasons, a clearly identifiable geographical location and a defined boundary are needed. Maps shall be sufficiently detailed to determine precisely which property is concerned and any buffer zone (when present). Official up-to-date and published topographic maps of the State Party annotated to show the property boundaries shall be provided if available³⁶.

The following relevant information must be provided in the request and/or attached to it:

- i) State Party
- ii) State, province or region
- iii) Name of property
- iv) Geographical coordinates to the nearest second³⁷
- v) Textual description of the boundary(ies) of the property
- vi) A4 (or "letter") size map of the property, showing boundaries and buffer zone (if present)
- vii) Attach A4 (or "letter") size map
- viii) Name and contact information of official local institution/agency

In the case of requests for “serial” inscription, i.e. comprising two or more related cultural properties at separate locations, the requesting State Party shall prepare a separate enhanced protection request for each property.

5.2.2. Description of the Property

The description of the property shall include the identification of the property, and an overview of its history and development. All component parts that are mapped shall be

³⁶ Compare with *Operational Guidelines for the Implementation of the World Heritage Convention*, N°132 (1).

³⁷ The latitude and longitude coordinates (to the nearest second) or UTM coordinates (to the nearest 10 meters) of a point at the approximate centre of the property are to be provided. Do not use other coordinate systems. If in doubt, please consult the Secretariat.

identified and described. In particular, where serial requests are proposed, each of the component parts shall be clearly described.

The history and development of the property shall describe how the property has reached its present form and the significant changes that it has undergone. This information shall provide the important facts needed to support and give substance to the argument that the property meets the criteria required under Article 10.³⁸

5.2.3. Significance of the Property as of the “Greatest Importance for Humanity”

Documentation providing clear evidence that the cultural heritage submitted to the Committee for the purposes of granting to it enhanced protection is of the greatest importance for humanity.

In addition, a comparative analysis of the property in relation to properties of a comparable significance, recognized both at the national and the international levels, shall be provided, regardless of whether or not these properties are on the List of Cultural Property under Enhanced Protection and/or on the World Heritage List.

UK Comment – This is not routinely done in the case of movable cultural property. Furthermore, it should not be the role of the requesting State Party to conduct a comparison with properties of comparable significance as that would require a value judgement of the relative merits of cultural property in other State Parties.

5.2.4. Adequate Domestic Legal and Administrative Measures

Documentation providing clear evidence that the cultural heritage submitted to the Committee for the purposes of granting it enhanced protection is protected by adequate domestic legal and administrative measures recognising its exceptional cultural and historic value, and ensuring the highest level of protection.

This requires the requesting State Party to provide *inter alia* evidence of:

- i) Legal status and ownership of the property concerned, including full details of any national legal and administrative cultural heritage protection measure applicable to it, recognizing its exceptional cultural and historical value and ensuring the highest level of protection;

³⁸ See *Operational Guidelines for the Implementation of the World Heritage Convention*, N°132 (2).

- ii) An appropriate management plan or management system and assurances of its effective implementation;
 - iii) The emergency protective measures or plans and the means of implementing them;
 - iv) The key indicators proposed to measure and assess the state of conservation of the property, the factors affecting it, conservation measures, the periodicity of their examination; and
- The identity and contact information of the responsible management authority for the property.

5.2.5. No Current and Future Use of the Property for Military Purposes

Documentation providing clear evidence that the cultural heritage submitted to the Committee for the purposes of granting to it enhanced protection is not used for military purposes or to shield military sites and that a declaration has been made by the Party, which has control over the cultural property, confirming that it will not be so used.

In this framework, it should be observed that the Second Protocol provides no definition of use for military purposes. However, it defines "military objective" as an object, which by its nature, location, purpose, or use makes an effective contribution to military action and whose total or partial destruction, capture or neutralisation, in the circumstances ruling at the time, offers a definite military advantage.

If the Committee decides to establish a mechanism of "minimum" distances from any potential military objectives, or even "Buffer Zones" (see above, 5.1.3.), the documentation provided shall cover also these issues.

UK Comment – The combination of 5.2.1 – 5.2.5 imposes a heavy burden of documentation on the requesting State Party. We would welcome a reduction in the amount of information requested to concentrate on that needed to enable the Committee to reach a decision in relation to Article 10. That is, the documentation should simply relate to:

- the status of the cultural property in terms of its importance to humanity ;
- whether it is protected by adequate legal and administrative measures ;
- a simple declaration (not an explanation) that the property is not used for military purposes or to shield a military site ;
- the minimum distance from any potential military objective.

We do not believe it is necessary to ask, for example, for emergency protective measures, key indicators for the state of conservation etc.

5.2.6. Information about a Change of Situation

The requesting State Party is committed to inform promptly the Secretariat of any change affecting the capacity of the concerned property to meet the requirements set out in Article 10 so as to enable an up-date and, where appropriate, a revision of the status of enhanced protection and/or a new decision by the Committee.

5.2.7. Format of Request and Documentation

Requests and all necessary and relevant documentation to substantiate the request shall:

- i) include recent images and an image inventory ³⁹;
- ii) be transmitted in printed form (A4-size paper or "letter") as well as in electronic format (E-mail in Word or RTF Format, and CD-Rom);
- iii) be presented in English or French duly signed (by the official empowered to sign the request on behalf of the State Party), and transmitted to the Secretariat (International Standards Section, Division of Cultural Heritage, 1 Rue Miollis, 75015 Paris);

³⁹ States Parties shall provide a sufficient number of recent images (prints, slides and, where possible, electronic formats, videos and aerial photographs) to give a good general picture of the property. Slides shall be in 35mm format and electronic images in jpg format at a minimum of 300 dpi (dots per inch) resolution. If film material is provided, Beta SP format is recommended for quality assurances. This material shall be accompanied by the image inventory and photograph and audiovisual authorization form. At least one photograph that may be used on the public web page illustrating the property shall be included. States Parties are encouraged to grant to UNESCO, in written form and free of charge, the non exclusive cession of rights to diffuse, to communicate to the public, to publish, to reproduce, to exploit, in any form and on any support, including digital, all or part of the images provided and license these rights to third parties. The non exclusive cession of rights does not impinge upon intellectual property rights (rights of the photographer / director of the video or copyright owner if different) and that when the images are distributed by UNESCO a credit to the photographer / director of the video is always given, if clearly provided in the request. All possible profits deriving from such cession of rights will go to the Fund. (See *Operational Guidelines for the Implementation of the World Heritage Convention*, Annex V, 7 a).

- iv) be in two copies (one for the President of the Committee, one for the Secretariat) with an additional third copy in a loose-leaf format to facilitate photocopying (rather than in a bound volume).

The Secretariat will retain all supporting documentation (maps, plans, photographic material, etc.) submitted with the request.

5.3. Requests, Invitations to Request and Representations

Upon receipt of a request for inclusion in the List, the Committee shall inform all States Parties of the request⁴⁰.

Without prejudice to the principle that only the State Party territorially concerned may submit a request, the Committee may invite a State Party to request that cultural property be included in the List.

Different from the request, which is reserved to the State Party territorially concerned and may be submitted to the Committee only by this State, other States Parties, as well as the International Committee of the Blue Shield and other non-governmental organisations with relevant expertise, may recommend specific cultural property to the Committee. In such cases, the Committee may decide to invite a Party to request inclusion of that cultural property in the List⁴¹.

For more exceptional cases where the same property is at the origin of a dispute between two (or more) States, the Second Protocol clearly distinguishes the protection and the underlying legal dispute (and/or political disagreement). Indeed, neither the request for inclusion of cultural property situated in a territory, sovereignty or jurisdiction over which is claimed by more than one State, nor its inclusion, shall in any way prejudice the rights of the State parties to the dispute⁴².

Bearing in mind that enhanced protection is reserved for cultural heritage of the greatest importance for humanity helps to understand that under the Second Protocol, while only the State Party territorially concerned may submit a request to the Committee, other States Parties may submit representations regarding this request within sixty days. However,

⁴⁰ Article 11 (5).

⁴¹ Article 11 (3).

⁴² Article 11 (4).

these representations shall be made only on the basis of the criteria mentioned in Article 10, shall be specific and related to facts. The Committee shall consider the representations, providing the Party requesting inclusion with a reasonable opportunity to respond before taking the decision. When such representations are before the Committee, decisions for inclusion in the List shall be taken, notwithstanding Article 26⁴³, by a majority of four-fifths of its members present and voting⁴⁴.

In deciding upon a request, the Committee is not obliged to, but should nevertheless ask, the advice of governmental and non-governmental organisations, as well as of individual experts⁴⁵.

5.4. Requests upon the Outbreak of Hostilities and Emergency Situations

Upon the outbreak of hostilities, a State Party to the conflict may request, on an emergency basis, enhanced protection of cultural property under its jurisdiction or control by communicating this request to the Committee.

In this case the Committee: i) shall transmit this request immediately to all Parties to the conflict; ii) will consider representations from the Parties concerned on an expedited basis; iii) will take a decision on whether to grant provisional enhanced protection as soon as possible by a majority of four-fifths of its members present and voting⁴⁶; iv) may decide to grant provisional enhanced protection pending the outcome of the regular procedure for the granting of enhanced protection, provided that the provisions of Article 10 sub-paragraphs (a) and (c) are met⁴⁷. Thus, also upon the outbreak of hostilities and on an emergency basis, only Article 10 sub-paragraph b) (Cultural property to be protected by adequate domestic legal and administrative measures) may be provisionally unfulfilled and provisional enhanced protection yet be granted.

⁴³ As Article 26 (2) accepts decisions of the Committee to be taken by a majority of two-thirds of its members voting.

⁴⁴ Article 11 (5).

⁴⁵ Article 11 (6).

⁴⁶ Again, notwithstanding Article 26 (2).

⁴⁷ Article 11 (9).

5.5. Committee's Decision

At the end of the process, the Committee shall take one of the following decisions:

- (a) to grant enhanced protection;
- (b) to grant provisional enhanced protection on an emergency basis upon the outbreak of hostilities;
- (c) not to grant enhanced protection;
- (d) to request the requesting State Party to provide further information or documentation and, where appropriate, to invite it to re-submit its request at a later stage;
- (e) to postpone a decision, until the next meeting of the Committee (unless differently requested by it), to enable an in-depth assessment of the request and the eligibility of the submitted property in relation to the criteria set out in Article 10.

5.6. Effects of Enhanced Protection

5.6.1. Notification and Immunity

If the Committee decides to grant enhanced protection, this protection is deemed to be granted to cultural property from the moment of its entry in the List. The Director-General shall, without delay, send to the Secretary-General of the United Nations and to all Parties notification of any decision of the Committee to include cultural property on the List ⁴⁸.

From a substantive law and policy perspectives, the effect of granted enhanced protection is immunity, i.e. States Parties to a conflict shall ensure the immunity of cultural property under enhanced protection by refraining from making such property the object of attack or from any use of the property or its immediate surroundings in support of military action⁴⁹.

⁴⁸ Article 11 (10 and 11).

⁴⁹ Article 12.

5.6.2. Should a Distinctive Emblem be Used?

It is well known that under the 1954 Convention the distinctive emblem for protected cultural property may be used either alone or, in other cases, repeated three times.⁵⁰

The Second Protocol makes no reference to the use of any distinctive emblem.

A) Enhanced Protection

Certainly, a great part of the usefulness of the distinctive emblem in the logic underlying the 1954 Convention, which is to ensure identification of, and visibility to, the protected property, is ensured under the Second Protocol thanks to the List of Cultural Property under Enhanced Protection. However, this visibility is reserved to the List and thus for property under enhanced protection, and does not cover other cultural property to which the Second Protocol applies (general protection).

The Committee may then wish to consider whether States Parties should be invited to use a distinctive emblem for cultural property under enhanced protection. If so, the main option would be to identify this property by using the distinctive emblem (adopted under the 1954 Convention) repeated *four* times. If States Parties implement this option, it would ensure identification of, and visibility to, the property concerned. It would also prevent any confusion between the different protection regimes. Indeed, the various regimes and uses of the distinctive emblem may be summarized as follows:

⁵⁰ Article 17. Use of the emblem

1. The distinctive emblem repeated three times may be used only as a means of identification of:
 - (a) immovable cultural property under special protection;
 - (b) the transport of cultural property under the conditions provided for in Articles 12 and 13;
 - (c) improvised refuges, under the conditions provided for in the Regulations for the execution of the Convention.
2. The distinctive emblem may be used alone only as a means of identification of:
 - (a) cultural property not under special protection;
 - (b) the persons responsible for the duties of control in accordance with the Regulations for the execution of the Convention;
 - (c) the personnel engaged in the protection of cultural property;
 - (d) the identity cards mentioned in the Regulations for the execution of the Convention.
3. During an armed conflict, the use of the distinctive emblem in any other cases than those mentioned in the preceding paragraphs of the present Article, and the use for any purpose whatever of a sign resembling the distinctive emblem, shall be forbidden.
4. The distinctive emblem may not be placed on any immovable cultural property unless at the same time there is displayed an authorization duly dated and signed by the competent authority of the High Contracting Party.

- i) cultural property protected under “enhanced” protection would be identified with a distinctive emblem repeated *four* times;
- ii) cultural property under “special” protection (1954 Convention) may be identified with a distinctive emblem repeated *three* times;
- iii) cultural property under “general” protection (1954 Convention) may be identified with the distinctive emblem used alone⁵¹.

B) General Protection

Additionally, the Committee may wish to consider a further issue, i.e. whether, under the Second Protocol, States Parties should be invited to use a distinctive emblem for cultural property under “general” protection (Chapter II).

If so, the main option would be to identify this property by using the distinctive emblem (adopted under the 1954 Convention) repeated *two* times. If States Parties implement this option, it would ensure identification of, and visibility to, the property concerned. By using the distinctive emblem repeated *two* times, it would also prevent any confusion in relation to the other protection regimes and uses of the emblem considered above.

As both the 1954 Convention and the Second Protocol share the same definition of cultural property, the property under “general” protection under the two instruments would be identical for States parties to *both* instruments. However, the two “general” regimes of protection remain distinct in terms of substance under the 1954 Convention and the Second Protocol, both domestically and vis-à-vis the other belligerent state, a clarification in this regard is useful.

Therefore, if the Committee decides to invite States Parties to use a distinctive emblem repeated *two* times for cultural property under “general” protection (Second Protocol, Chapter II), States parties to *both* the 1954 Convention and the Second Protocol may wish to identify (the same) cultural property, which is under general protection, as follows:

- i) Distinctive emblem used alone + within brackets (1954 Hague Convention)
- ii) Distinctive emblem repeated *two* times + within brackets (Second Protocol to the 1954 Hague Convention)

⁵¹ Both ii) and iii) apply already under the 1954 Convention (see Article 17).

UK Comment – The UK believes this system is too complicated and is unnecessary. If an emblem is to be used at all, its purpose is to indicate to attacking troops that the property in question receives either general protection or special/enhanced protection. It is not necessary to draw a distinction between whether the general protection flows from the Convention or from the Convention plus the Second Protocol as their practical effects are the same. Similarly, the amount of property receiving Special Protection is extremely small and it is not necessary to distinguish whether a property is receiving special protection, enhanced protection or even both as the practical effect of both special and enhanced protection is the same. Thus, only two emblems are needed – one shield and the shield repeated three times. To try to introduce a further two emblems at this stage would cause confusion and significant legal difficulties for all those countries who have already acceded to the Second Protocol as they would have to amend their legislation to recognise the two new symbols. We strongly recommend that this system is not adopted.

5.7. Loss of Enhanced Protection

Enhanced protection is not a status lasting forever and is crucially dependent on the fulfilment of the criteria set out in Article 10.

Cultural property under enhanced protection shall only lose such protection⁵²:

- a. if such protection is suspended or cancelled in accordance with Article 14 (see below); or
- b. if, and for as long as, the property has, by its use, become a military objective.

In this regard, it should be recalled that under the Second Protocol, "military objective" means an object which by its nature, location, purpose, or use makes an effective contribution to military action and whose total or partial destruction, capture or neutralisation, in the circumstances ruling at the time, offers a definite military advantage⁵³.

If, and for as long as, the property has, by its use, become a military objective, such property may only be the object of attack according to specific provisions⁵⁴.

⁵² Article 13 (1).

⁵³ Article 1, f).

⁵⁴ See Article 13 (2).

5.8. Suspension and Cancellation of Enhanced Protection

As enhanced protection requires the fulfilment of the criteria set out in Article 10, enhanced protection is lost, primarily ⁵⁵, if it has been suspended or cancelled ⁵⁶.

Where cultural property no longer meets any one of the criteria in Article 10, the Committee may suspend its enhanced protection status or cancel that status by removing that cultural property from the List.

Beyond compliance with the criteria to benefit from enhanced protection (see Article 10), the Second Protocol also grants relevance to the case of serious violation of the immunity obligations, which States Parties have to ensure for property under enhanced protection ⁵⁷, arising from its use in support of military action.

In case of serious violation of the immunity obligations, the Committee may suspend its enhanced protection status. Where such violations are continuous, the Committee may exceptionally cancel the enhanced protection status by removing the cultural property from the List.

Before taking such a decision, the Committee shall afford an opportunity to the Parties to make their views known. If the decision to suspend or cancel the enhanced protection of cultural property is taken by the Committee, the Director-General shall, without delay, send to the Secretary-General of the United Nations and to all States Parties notification of it⁵⁸.

6. International Assistance

The Committee is also to receive and consider requests for international assistance ⁵⁹. This assistance is regulated as follows under the Second Protocol ⁶⁰:

⁵⁵ In addition, enhanced protection is lost if, and for as long as, the property has, by its use, become a military objective.

⁵⁶ See Articles 13, (1, a) and 14.

⁵⁷ Article 12 reads: The Parties to a conflict shall ensure the immunity of cultural property under enhanced protection by refraining from making such property the object of attack or from any use of the property or its immediate surroundings in support of military action.

⁵⁸ Article 14.

⁵⁹ Article 27 (1, e).

- A State Party may request from the Committee international assistance for cultural property under enhanced protection as well as assistance with respect to the preparation, development or implementation of the laws, administrative provisions and measures referred to in Article 10.
- As an exception to the principle that the Second Protocol applies only to States Parties⁶¹, if a party to the conflict, which is not a State Party to this Protocol but accepts and applies its provisions⁶², may request appropriate international assistance from the Committee.

Outside international assistance granted by the Committee, States Parties are encouraged to give technical assistance of all kinds, through the Committee, to those States Parties or parties to the conflict who request it.

Among its functions, the Committee shall adopt rules for the submission of requests for international assistance and shall define the forms the international assistance may take.

In this regard, the Committee may wish to consider and, as appropriate, amend and/or approve the following draft forms and rules:

6.1. Forms of International Assistance:

- i) Preparatory assistance may be in the form of
 - grants for or the provision of expert assistance (or a combination of both) in general as well as for the purposes of preparing a request for enhanced protection for cultural properties, which appear to meet the requirements set out under Article 10;
 - the preparation of inventories, surveys, maps, publications, and other data required for the effective identification of cultural property;
 - protection plans against fire or collapse, or collateral damage due to attack;

⁶⁰ Article 32.

⁶¹ See above on scope (*ratione personae*).

⁶² In accordance with Article 3, paragraph 2, which reads as follows:

”When one of the parties to an armed conflict is not bound by this Protocol, the Parties to this Protocol shall remain bound by it in their mutual relations. They shall furthermore be bound by this Protocol in relation to a State party to the conflict which is not bound by it, if the latter accepts the provisions of this Protocol and so long as it applies them”.

- preparation for the removal of movable cultural property to refuges or other safe places, or the provision for adequate *in situ* protection of such property;
- technical assistance.

ii) Emergency assistance for cultural property, which has suffered damage due to armed conflict or which is in imminent danger, may be made available for the following purposes:

- (a) to draw up an emergency plan to safeguard cultural property;
- (b) to create temporary refuges or ensure transport of cultural property to a safe place;
- (c) to prepare urgent requests for enhanced protection.

The above-mentioned list of forms of international assistance serves as general guidance. However, the Committee may grant other forms in specific cases where circumstances so request.

6.2. Rules for Submission of Requests for International Assistance

- i) A State Party may submit a request for international assistance to the Secretariat at least 6 months before the next Committee's meeting;
- ii) The Secretariat receives and classifies the request, and may provide its views to the Committee;
- iii) The Committee endeavours to take a decision on the request within the next meeting, unless it deems that more time is required to better assess the request;
- iv) In case of requests for emergency assistance which could not satisfactorily be considered at the next meeting of the Committee, on the recommendation of the Secretariat and following consultations with at least one-third of the Committee Members, the Chairperson of the Committee may authorise assistance of up to US\$ [50,000]. In the case of request for an higher amount,

consideration would be given to calling a meeting of the Committee in extra-ordinary session⁶³;

- v) The requesting State Party shall substantiate its request for international assistance by providing all relevant information on the cultural property and on the circumstances, which allegedly justify the request.

7. The Fund

7.1. Use and Purposes

A Fund for the Protection of Cultural Property in the Event of Armed Conflict is established under the Second Protocol (“the Fund”). It operates as a trust fund in conformity with the provisions of the Financial Regulations of UNESCO⁶⁴.

The Committee shall determine the use of the Fund⁶⁵. However, it is the responsibility of the Meeting of States to provide guidelines for, and to supervise the use of the Fund by the Committee⁶⁶.

For both entities, the use of the Fund shall be in line with the institutional purposes listed below and the regime on international assistance.

The Fund serves the following purposes:

- a. to provide financial or other assistance in support of preparatory or other measures to be taken in peacetime in accordance with, inter alia, Article 5, Article 10 sub-paragraph (b) and Article 30; and
- b. to provide financial or other assistance in relation to emergency, provisional or other measures to be taken in order to protect cultural property during periods of armed conflict or of immediate recovery after the end of hostilities in accordance with, inter alia, Article 8 sub-paragraph (a).

⁶³ In accordance with Article 24 (2) of the Second Protocol.

⁶⁴ See Article 29.

⁶⁵ Article 27 (1, f).

⁶⁶ Article 23 (3, c).

7.2 Financial Regulations

The following draft Financial Regulations of the Fund are submitted for consideration and adoption:

Article 1 – Creation of a Special Account

1.1 Article 29 of the Second Protocol to the Hague Convention of 1954 for the Protection of Cultural Property in the Event of Armed Conflict establishes a Trust Fund.

Given the multi-donor nature of the Fund, it will be managed as a Special Account.

1.2 In accordance with Article 6, paragraph 6, of the Financial Regulations of UNESCO, there is hereby created a Special Account for “Protection of Cultural Property in the Event of Armed Conflict – Second Protocol”, hereafter referred to as the Special Account.

1.3 The following regulations shall govern the operation of the Special Account.

Article 2 – Financial period

The financial period shall correspond to that of UNESCO.

Article 3 – Purpose

The purpose of the Special Account is:

- (a) to provide financial or other assistance in support of preparatory or other measures to be taken in peacetime in accordance with, inter alia, Article 5, Article 10 sub-paragraph (b) and Article 30 of the Second Protocol; and
- (b) to provide financial or other assistance in relation to emergency, provisional or other measures to be taken in order to protect cultural property during periods of armed conflict or of immediate recovery after the end of hostilities in accordance with, inter alia, Article 8 sub-paragraph (a) of the Second Protocol.

Article 4 – Income

The income of the Special Account shall consist of:

- (a) Voluntary contributions made by the Parties of the Second Protocol;
- (b) Contributions, gifts or bequests made by:
 - (i) Other States;
 - (ii) UNESCO or other organizations of the United Nations system;
 - (iii) Other intergovernmental or non-governmental organizations; and
 - (iv) Public or private bodies or individuals;
- (c) Any interest accruing on the Fund;
- (d) Funds raised by collections and receipts from events organized for the benefit of the Fund; and
- (e) All other resources authorized by the guidelines applicable to the Fund.

Article 5 – Expenditure

5.1 Disbursements from the Fund shall be used only for such purposes as the Committee shall decide in accordance with the guidelines as defined in Article 23 sub-paragraph 3(c) of the Second Protocol and in accordance with Article 3 above, including administrative expenses specifically relating to it.

5.2 The Committee may accept contributions to be used only for a certain programme or project, provided that the Committee shall have decided on the implementation of such programme or project.

5.3 Expenditure shall be made within the limits of funds available.

Article 6 – The accounts

6.1 The UNESCO Comptroller shall maintain such accounting records as are necessary.

6.2 Any unused balance at the end of a financial period shall be carried forward to the following financial period.

6.3 The accounts of the Special Account shall be presented for audit to the External Auditor of UNESCO, together with the other accounts of the Organization.

6.4 Contributions in kind shall be recorded outside the Special Account.

Article 7 – Investments

7.1 The Director-General may make short-term investments of sums standing to the credit of the Special Account.

7.2 Interest earned on these investments shall be credited to the Special Account.

Article 8 – General provision

Unless otherwise provided in these Regulations, the Special Account shall be administered in accordance with the Financial Regulations of UNESCO.

8. Monitoring and Supervising the Implementation of the Second Protocol

The Second Protocol has allocated two important functions to the Committee⁶⁷:

- to monitor and supervise the implementation of this Protocol and promote the identification of cultural property under enhanced protection;
- to consider and comment on reports of the Parties, to seek clarifications as required, and prepare its own report on the implementation of this Protocol for the Meeting of the Parties;

8.1. Sources for Monitoring and Supervising Purposes

With regard to monitoring and supervising the implementation of the Second Protocol, the Committee will fulfil this function, with the assistance of the Secretariat, by making full use of the periodic reports of States Parties, other communications from the concerned States Parties, other States and the Secretariat, reliable available information and publications, as well as the reports possibly submitted by the entities listed in Article 27 (3) of the Second Protocol, if the Committee decides to invite them to attend one or more of its meetings in an advisory capacity.

⁶⁷ Among other allocated functions, see Article 27 (c and d).

As States Parties' reports are the primary tool to monitor the implementation of the Second Protocol by its States Parties, the Committee intends to make full use of its power to consider and comment on these reports and to seek clarifications as required. Once relevant and necessary information is gathered, the Committee shall prepare its own report on the implementation of this Protocol for the Meeting of the Parties.

8.2. Identification of Cultural Property and Promotion of the List

With regard to the function to promote the identification of cultural property under enhanced protection, it should be observed that by the time this property is under enhanced protection it has already been identified through the information provided by the (territorially concerned) State Party. To this extent, promoting the identification of cultural property under enhanced protection *de facto* joins in the promotion of the List of Cultural Property under Enhanced Protection, which is formally a distinct function of the Committee ⁶⁸. **UK Comment – The UK believes that the impact of the Convention would be significantly enhanced if all States Parties were to provide UNESCO with detailed lists of all their cultural property which they consider to be protected by the Convention. To act as a further incentive for States Parties to do this, the UK believes that these guidelines should indicate how this list containing property nominated for enhanced protection is to be accessed (e.g. through the Committee, through a web-site etc). Furthermore, we would also request that a States Party's wish to keep their list password protected should be upheld. There is a strong concern about not providing terrorists with a ready made target list and, therefore, the UK would not want its list of property under enhanced protection to be publicly available.**

8.3. Periodicity and Scope of Reports

States Parties shall submit to the Committee every four years a report on the implementation of the Second Protocol ⁶⁹. Reporting must duly inform on the adopted legal, administrative, military and practical implementation measures.

⁶⁸ See Article 27, (1, b).

⁶⁹ Article 37 (2).

With regard to the Second Protocol, the implementation measures to be reported about shall cover the relevant provisions below:

Article 5 Safeguarding of Cultural Property

Article 6 (c and d) Respect for Cultural Property

Article 7 Precautions in Attack

Article 8 Precautions against the Effects of Hostilities

Article 9 Protection of Cultural Property in Occupied Territory

Article 11 (1, 2, 3, 5) The Granting of Enhanced Protection

Article 12 Immunity of Cultural Property under Enhanced Protection

Article 13 (2) Loss of Enhanced Protection

Article 15 (2) Serious Violations of the Second Protocol

Article 16 (1) Jurisdiction

Article 17 Prosecution

Article 18 Extradition

Article 19 Mutual legal assistance

Article 21 Measures regarding other violations

Article 24 (3-4) Committee for the Protection of Cultural Property in the Event of Armed Conflict

Article 29 (4) The Fund for the Protection of Cultural Property in the Event of Armed Conflict

Article 30 Dissemination

Article 31 International Cooperation

Article 32 International Assistance

Article 33 Assistance of UNESCO

Article 34 (if relevant) Protecting Powers

Article 35 (if relevant) Conciliation Procedure

Article 36 (if relevant) Conciliation in absence of Protecting Powers

Article 37 Translations and Reports

For the sake of clarity, it should be observed that with regard to the provisions listed above:

- i) States Parties report as such, i.e. States implementing domestically the Second Protocol and reporting thereon individually, and not as possible Members of collective entities as the Committee and/or of the Meeting of Parties⁷⁰, which have their own reporting system⁷¹;
- ii) for the sake of comprehensiveness of information and quality of reports, States Parties report on any adopted legal, administrative, military and practical implementation measure, including both measures which had to be adopted (“Parties shall..”) and measures which might have been adopted (“Parties may..”);

States Parties’ obligation to regularly report to the Committee under the Second Protocol every four years⁷² is not to be confused with the obligation for High Contracting Parties to report, at least once every four years, to the Director-General on the implementation of the 1954 Hague Convention under Article 26 (2) of the 1954 Hague Convention⁷³. Both obligations to report under the two instruments are to be fulfilled by their respective States Parties in light of the provisions and implementation requirements of each instrument.

However, States party to *both* the 1954 Convention and the Second Protocol, if they so wish, may submit at the same time (every four years) their two, distinct reports, one addressed to the Committee (Implementation of the Second Protocol), the other addressed to the Director General (Implementation of the 1954 Convention).

* * *

⁷⁰ This explains that the list of provisions to be reported thereon by States Parties acting as such does not include provisions whose implementation is the responsibility of the Committee as an institutional body (as in Article 27), and at times of the Director General (as for instance in Articles 14 or 28) and/or of the Meeting of the Parties (as in Article 23).

⁷¹ See for instance Article 27 (1, d).

⁷² Article 37 (2).

⁷³ “2. Furthermore, at least once every four years, they shall forward to the Director-General a report giving whatever information they think suitable concerning any measures being taken, prepared or contemplated by their respective administrations in fulfillment of the present Convention and of the Regulations for its execution”.