

COMMENTS BY ARGENTINA

1. The document constitutes a good basis for discussion, much more synthetic and practice-oriented than the previous version. In general terms, it could be adopted on the understanding that it would be completed and updated in the future, for instance in areas of interest for Argentina, such as measures to be taken in time of peace.
2. From a formal point of view, it could be useful to use numbered paragraphs, as in the World Heritage Guidelines, for ease of reference.
3. Part 1.3 (relationship between the Convention and the Protocol) could be further clarified. The document should be consistent; sometimes provisions from the Protocol are cited but not in this section, where arts. 2 and 4 should be mentioned. Moreover, only section (b) of art. 30.4 of the Vienna Convention on the Law of Treaties is cited, while the entire art. 30 is applicable. A reference to the object and purpose of the Protocol could be included, since it was conceived to update, streamline and enhance the protection regime of the Hague Convention, with the idea of gradually replace it.
4. On part 3.1.1.1 (“greatest importance for humanity”) the reference to “outstanding universal value” may be questioned. This concept is not used in the Hague Convention or in the Protocol, but comes from the 1972 World Heritage Convention. We should be cautious to “import” such concepts that have a long and complex history; at the very least the source of the definition of “outstanding universal value” should be clearly stated, in order to avoid the risk of developing parallel or autonomous interpretations of the concept within the system of the Protocol. One example of this risk can be seen in the phrase “Immovable cultural properties inscribed on the World Heritage List provided for by the UNESCO Convention for the Protection of the World Cultural and Natural Heritage ... are considered **in principle** to meet the criteria of outstanding universal value.” By definition all properties inscribed in the World Heritage List are of outstanding universal value, and the World Heritage Committee is the only competent body to declare it.
5. For similar reasons, the expression “tentative list”, which is also imported from the World Heritage system, should not be used in part 3.1.2.1.
6. Regarding the emblem (part 3.5), the document is perhaps too cautious and does not retain any of the different options available. A practical solution may be preferred, such as following the same rules for general protection under the Convention and the Protocol (one emblem); and also for special and enhanced protection (three emblems).

COMMENTS BY CANADA ON THE DRAFT GUIDELINES FOR IMPLEMENTATION OF THE SECOND PROTOCOL TO THE 1954 HAGUE CONVENTION (21 August pm version)

Canada considers the current draft to be a significant improvement over the original draft text, and extends its gratitude in this regard to the Bureau of the Committee for Protection of Cultural Property in the Event of Armed Conflict for its efforts. Both the content and form of the present draft are considerably more appropriate for a set of guidelines than the previous version.

Canada would like to make three specific observations/recommendations for amendment:

1. Section 3.1.1.1 - criteria for a determination of “greatest importance for humanity”

Canada supports the use in the current draft of the model offered by the Guidelines for Implementation of the 1972 World Heritage Convention for criteria to be used to determine whether cultural property is “of greatest importance for humanity”. However, as currently drafted, cultural property that only meets the criteria of uniqueness could, on that basis alone, be considered to be “of greatest importance for humanity”. Canada considers that this would not be appropriate.

Rather, it would seem preferable that, in order to be determined to be “of greatest importance for humanity”, all candidate properties (unique or otherwise) should be required to meet the criteria of “outstanding universal value” and the criteria that its destruction would lead to an irretrievable loss for humanity.

On this basis, Canada recommends that Section 3.1.1.1 be revised as follows:

“The Committee considers cultural property to be of greatest importance for humanity if it meets both of the following criteria:

- a. it is of outstanding universal value; and**
- b. its destruction would lead to an irretrievable loss for humanity.”**

As a result, the subsequent explanatory text on the criteria of uniqueness should be removed.

2. Section 3.5 – Use of the emblem

Canada’s view on the matter of the emblem is that, since the Second Protocol contains no reference to the emblem, and provisions specifying its use are contained only in the Convention itself, it is beyond the authority of States Parties to the Second Protocol to

unilaterally decide to use the emblem in any way. As such, we feel that the Guidelines for implementation of the Second Protocol cannot include reference to the emblem.

If the Committee were to approach the High Contracting Parties to the Convention for consent to use the emblem to mark property subject to enhanced protection under the Second Protocol, that consent would have to be given by every High Contracting Party – not simply those participating in a meeting of High Contracting Parties. In any case, such an approach would raise the question as to whether consent by the High Contracting Parties would constitute a *de facto* amending of the Convention, and therefore not be permissible.

On this basis, Canada recommends that section 3.5 be removed from the draft text.

3. Subjects not yet addressed in the current draft text

Canada considers that the current draft text omits three subjects that should be included in Guidelines for implementation of the Second Protocol. Those subjects are:

- **International assistance from the Committee** – while there are brief references in the draft to the fact that a Party may request international assistance from the Committee, the Guidelines should include a section specifying the process for requesting assistance, how the Committee will consider requests, and other relevant details;
- **The Fund** – once the Committee has had an opportunity to address the development of guidelines for the use of the Fund, this information should form part of the present document;
- **Monitoring of implementation** – the Guidelines should include a section specifying how implementation of the Second Protocol will be monitored, including details on reporting requirements, content and form of reports, and similar provisions.

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COMMENTS OF THE REPUBLIC OF CYPRUS WITH REGARD 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
VIENNA, 20/21 AUGUST 2007

The Republic of Cyprus has the following comments on the Draft Guidelines for the Implementation of the 1999 Second Protocol to the Hague Convention:

- Paragraph **3.1.1.3 No military use – Article 10c**

First paragraph, second line: The addition of the term “jurisdiction” after the term “control”, reading:

“The Party which has control or jurisdiction over the cultural property has to make a declaration...”

- Paragraph **3.1.2. Procedure for granting enhanced protection**

Fifth paragraph, second line: The addition of the phrase “which has control or jurisdiction” in the sentence “... the Committee may ask the party to submit a request for international assistance...”, reading:

“... the Committee may ask the Party which has control or jurisdiction to submit a request for international assistance...”

GREECE

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

The Greek delegation has the following additional comments regarding UNESCO's Draft Guidelines for the Implementation of the 2nd Protocol to the Hague Convention, taking into account the Outcome of the Informal Working Meeting of the Bureau, Vienna, 20-21/8/2007:

Greece agrees with the introductory paragraphs of the Draft Guidelines that the main purpose of the Guidelines should be to provide a concise and practical tool to facilitate the implementation of the Protocol. It notes, however, that the current draft in many instances provides for the mere repetition of relevant provisions of the Protocol and, with a few exceptions, does not offer substantial guidance for the implementation thereof.

It would, therefore, be advisable for the Committee first to identify the issues that need to be addressed by the Guidelines and, at a second stage, decide on the best way to elaborate their content.

Notwithstanding the above, Greece would like to make the following comments concerning specific provisions of the Draft Guidelines :

Point 1.4, last sentence: According to this sentence, Parties to the Second Protocol are encouraged to ensure the participation of a wide variety of stakeholders, including international and national governmental and non-governmental organizations, without, however, any indication as to the fields in which the participation of the above stakeholders should be ensured. This sentence must, therefore, be further clarified.

Point 1.4.1, second paragraph, second sentence, penultimate line: The term “Parties to the conflict” should be replaced by the term “**parties to the conflict**” in order to avoid misunderstandings and to be in line with the relevant provision of the Protocol (Art. 44).

Point 1.4.3 – The Committee In the final sentence, we consider that the expression “*are* also invited to attend in an advisory capacity” should be replaced by “*may* also *be* invited to attend in an advisory capacity”, bearing

in mind that this clause applies to international non-governmental organizations.

Point 2.1, first paragraph, last sentence: In order to reflect more accurately the relevant provision of the Protocol (Art. 5), this sentence should be replaced by the following: *“This obligation is complemented by the Second Protocol which provides for certain measures to be taken, as appropriate, by the Parties”*.

Point 3.1.1.1. :

We consider that the criteria of “*artistic craftsmanship*” and “*aesthetic value*” should be added as new bullet-points in the criteria related to “unique object”.

Greece is of the view that a further synergy should be established between the Second Protocol and the 1972 Convention concerning the Protection of the World Cultural and Natural Heritage. In this respect, Greece would like to propose the inclusion of a specific provision in the Guidelines according to which immovable cultural property inscribed on the World Heritage List shall be considered to fulfill the criterion of the greatest importance for humanity laid down in Article 10 (a). Such a provision would simplify and facilitate the work of the Committee, save time and money for States requesting the status of enhanced protection and contribute to the success of the enhanced protection system under the Protocol.

Point 3.1.1.2 – Adequate domestic legal and administrative measures of protection (Art. 10b)_The first line that reads “The cultural property is protected by adequate domestic, legal and administrative measures” should be supplemented by “The cultural property is protected by adequate domestic, legal and administrative measures *or measures of a corresponding nature*”.

Point 3.1.1.3

-second paragraph : In order to be in line with the relevant provision of the 1954 Hague Convention (Art. 8 par. 4), this sentence should be redrafted as follows: *“The guarding of cultural property by armed personnel specially empowered to do so, or the presence, in the vicinity of such cultural*

property, of police forces normally responsible for the maintenance of public order, is not deemed to be used for military purposes”.

-last sentence : This sentence should be deleted since it repeats the content of the first paragraph of this Point.

Point 3.1.2, fifth paragraph (In exceptional cases ...Art. 10 (b)): We think that this paragraph should be removed from this Point and merged appropriately with Point 3.1.3.1 which deals with the granting of enhanced protection in exceptional cases. Furthermore, the second sentence of this paragraph needs, in our view, further clarification.

Point 3.1.3.: According to Article 26 par. 2 of the Protocol, decisions of the Committee shall be taken by a majority of two-thirds of its members voting. Notwithstanding the above, the Protocol expressly provides that the decisions of the Committee are taken by a majority of four-fifths of its members present and voting in two cases: a) when representations concerning a request for inclusion in the List are before the Committee (Art. 11 par. 5), and b) in the case referred to in Art. 11 par. 9.

In view of the above, we believe that the first sentence of this Point should be redrafted accordingly.

Point 3.1.3.1: See above comments on Point 3.1.2. Moreover, with regard to the second paragraph (If the criterion ... cancelled by the Committee), we would like to note the following :

-The fulfillment of the criterion of Article 10 (b) in the case envisaged by this paragraph depends largely on the granting of the requested international assistance. However, the current Draft does not contain any provisions regarding the procedure for the submission of requests for international assistance and their consideration by the Committee.

-According to this paragraph, if the criterion set forth in Article 10 (b) is not met within a given period of time, the Committee may not only suspend but also cancel the enhanced protection. We wonder in this respect whether this provision is in conformity with the contents of Point 3.3.2.1, according to which : *“Since the cancellation is a definitive measure, the Committee may only cancel the enhanced protection, if the condition laid down in Article 10, which is no longer met can neither be fulfilled at a later date. This applies only to the condition laid down in Article 10 (a)....”.*

Point 3.3 – The loss of enhanced protection In sub-section b, we consider that the clause “the enhanced protection is cancelled by the Committee (Art.

13 paragraph 1, sub-paragraph (a), second alternative)” should be replaced by “the enhanced protection is cancelled by the Committee, *with reference to Article 13, paragraph 1, sub-paragraph (a), second alternative*”

Point 3.5 :

We consider that the Emblem should be placed in a separate section, wherein the procedure for its usage, as well as its form, will be described.

Greece believes that the use, within the context of the Second Protocol, of the emblem provided for in the context of the Hague Convention should be governed by clarity and certainty. Greece is of the view, however, that the recommendation contained in this Point is unclear and may lead to confusion. It would, therefore, suggest that the question of the use and form of the emblem be further discussed.

FROM INTERNATIONAL COUNCIL OF MUSEUMS (ICOM)

SUGGESTED CHANGES TO AUGUST 2007 DRAFT GUIDELINES FOR THE IMPLEMENTATION OF THE 2ND PROTOCOL TO THE 1954 HAGUE CONVENTION

The International Council of Museums (ICOM) thanks the Bureau of the International Committee for the Protection of Cultural Property in the Event of Armed Conflict and UNESCO for consulting us about the 21st August 2007 Draft prepared at the informal meeting of the Bureau in Vienna.

In general, we very much welcome this Draft, which we believe is a great improvement on previous ones. We have just one substantial point of concern, and two more minor and technical improvements which we believe could be made.

Eligibility for Enhanced Protection designation

Our major concern relates to the definition of "greatest importance for humanity" in respect of eligibility for an Enhanced Protection designation. In the August 2007 text we feel that the indented "bullet points" in particular lean towards the "cultural heritage" philosophy and practice of the World Heritage Convention, while the Hague Convention and its Protocols are specifically concerned with that Convention's definition of "cultural property", rather than the cultural heritage more generally, so that is the principle that must prevail.

The definition and criteria proposed in the Draft seem narrower than what is explicit or implied by the governing text of the 1954 Convention itself. There are no explicit references at all to refuges among the properties preserving or exhibiting cultural property, nor indeed to the buildings such as museums, libraries or archive depositories housing exceptional cultural property, only to the (largely movable) collections of different categories of cultural property. Also, restricting this part of the definition to collections would seem to exclude outstanding single objects of world importance.

At the same time the proposed requirement that the exceptional cultural property must bear "testimony to the development of humankind" would seem to exclude completely very many scientific collections, even though these are expressly covered by the 1954 Convention. We believe there is also a problem over the use of the term "museum inventory": in English at least this term actually means only the paper catalogue or computerised documentation of a collection, not the museum collection itself.

ICOM therefore recommends that para. 3.1.1.1. of the August 2007 draft be amended as indicated below (in **blue bold** type):

3.1.1.1. Greatest importance for humanity (Art. 10 a)

The Committee considers cultural property to be of greatest importance for humanity if it meets at least one of the following criteria:

- a. it is of outstanding universal value;
- b. it represents a unique object [**Add: or assemblage or collection of objects**];
or
- c. its destruction would lead to an irretrievable loss for humanity.

Outstanding universal value

Outstanding universal value means cultural **[Add: or scientific]** significance which is so exceptional as to transcend national boundaries and to be of common importance for present and future generations of all humanity.

Immovable and movable cultural property is considered to be of outstanding universal value if it meets, *inter alia*, at least one of the following criteria:

- It represents a masterpiece of human creative genius;
- it bears an exceptional testimony to a cultural tradition or to a civilization which is living or which has disappeared;
- it exhibits an important interchange of human values, over a span of time or within a cultural area of the world, on developments in architecture, technology, monumental arts, town-planning, painting, sculpture or another form of representational art **[Add: or of the history of the sciences]** ;
- it is an outstanding example of a type of building, architectural or technological ensemble, an archaeological site, a movable work of art or another kind of cultural property which illustrates (a) significant stage(s) in human history;
- **it is [Add: a building or group of buildings or emergency refuge which houses an] exceptional library, collection of works of art, museum ~~inventory,~~ collection,] archive or [another other] collection of objects bearing a testimony of one or more periods of the development of humankind at the national, regional or global level.**

Location

In the provisions relating to Location (para. 3.1.2.2.), UTM should be spelt out in full. We would also recommend an addition providing that in all cases where there is a published national or military grid in use for the State or territory concerned coordinates for these should also be used in addition to the UTM coordinates. (While satellite-based navigation is becoming common in the military, especially among the armed forces of more developed countries, traditional grid maps are still very widely used. It should be no hardship for States submitting proposals for Enhanced Protection to give their own national grid coordinates as well: indeed in most cases it is very likely that UTM coordinates would be calculated by converting of the established national or military grid references anyway.)

ICOM therefore recommends that para. 3.1.2.2. of the August 2007 draft be amended as indicated below (in **blue bold** type):

3.1.2.2a. Content of a request (Art. 11 paragraph 2)

a. Identification of the cultural property

The boundaries of an immovable property and its immediate surroundings are clearly defined. Maps are sufficiently detailed to determine precisely which area of land and/or building(s) are nominated. Movable property is identified by its detailed description and sufficient images.

Location of the property (including shelters or other storage for movable cultural property) should be indicated by reference to its geographical location. As a minimum the approximate central point of each property should be indicated by a pair of coordinates in [Add: **Universal Transverse Mercator [UTM] system.**] [Add: **Where the territory or location is covered by a published national or military grid the location should in similarly be indicated by reference to these coordinates in addition.**] Boundaries of a wider property could be indicated by providing a list of coordinates indicating the nodal points of the property boundary.

Numbering system used in the document

We feel that the Guidelines would be clearer and easier to follow if the numbering system was simplified, with no more than two or exceptionally three (rather than the present four) multiple indents for the sub-paragraph numbers.

PJB. 01/11/2007

Japan's comments on the draft Guidelines for the Implementation of the Second Protocol to the Hague Convention of 1954 for the Protection of Cultural Property in the Event of Armed Conflict

- With regard to Article 3.1.2.2, a format for requests for the granting of enhanced protection should be added to the Guidelines in order to facilitate submission of the requests by States Parties. The "Tentative List submission format" of the World Heritage Convention could be instructive in this regard.
- The 1st paragraph of Article 3.1.3 stipulates that "the Committee decides by a majority of four-fifths of its members present and voting... whether they refer or defer granting of enhanced protection." We will not oppose the idea of referring or deferring, however, we believe that such decisions should be made by a majority of two-thirds of its members present and voting, in line with the other related decisions and in accordance with Article 26.2 of the Second Protocol.
- The 3rd paragraph of Article 3.1.3 stipulates that "if the Committee decides to deny enhanced protection to a property, generally it will not consider an identical request." We do not think that this paragraph is appropriate because 1) it has no basis in the Second Protocol, and 2) it may inhibit the Parties from submitting requests since the Committee has a very strict decision making rule of four-fifths majority in order to grant enhanced protection or not.
- We do not oppose the idea that States Parties mark cultural property under enhanced protection with a distinctive emblem as described in Article 3.5, however, instructions as to how to do so should be consistent with the rules of the Hague Convention so that marking cultural property is a right instead of an obligation. Furthermore, with a view to improving recognition and understanding, we think it appropriate to mention in the Guideline how to mark cultural property, which should be based on the Regulations for the Execution of the Hague Convention.

**MEXICAN PROPOSED AMENDMENTS TO THE “DRAFT GUIDELINES FOR THE
IMPLEMENTATION OF THE 1999 SECOND PROTOCOL” PRODUCED BY THE BUREAU
DURING THE VIENNA MEETING IN AUGUST 2007**

1.4.3 The Committee

Going along with UN practice, it will be very convenient to add the following to the first part of the paragraph:

The Committee is composed of twelve Parties which, paying due regard to equitable geographical distribution, are elected by the Meeting [...].

3.1.2.2 Content of a request

In order to precise the content of this paragraph and link it with the previous one, the drafting of letter could be modified as follows:

f. Signature on behalf of the Party

The request is duly signed by the **Party’s responsible authorities**.

Furthermore, Mexico wishes to reiterate its comments related with *Financial Regulations* and *Reports*, that although are not included in this revised version of the document prepared for the bureau in its meeting of August 2007, they could be taken into account for a later development of these guidelines.

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.

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.

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. (draft of 21 August 2007)

Comments of The Netherlands.

The Netherlands is of the opinion that the Draft Guidelines have been considerably improved, and would like to thank the Secretariat and the Bureau for this. However, it would like to make the following remarks.

1.2 Scope of application of the Protocol

Here it is stated that Enhanced Protection is granted to the cultural property from the moment of entry in the List of Cultural Property under Enhanced Protection, as decided by the Committee.

The conclusion should be drawn therefore, that the Enhanced Protection is non-existent in the period between the adoption of a “Statement on Enhanced Protection” by the Committee (see paragraph 3.1.3) and the moment the cultural property in question is entered on the List.

As at the moment of the Statement it is clear that the property is in need of Enhanced Protection, but the Statement doesn’t already provide the sufficient protection, The Netherlands wishes to highlight that the timeframe between Statement and placement on the List should be as short as possible.

The Netherlands proposes to replace the full stops (“.”) between the different categories of cultural property listed as a-c with a semicolon (“;”) for consistency with the wording of the Convention.

2.2 Precautions against the effect of hostilities

The Netherlands suggests that the word “maximum” be inserted between “to the” and “extent feasible” to ensure consistency with Article 8 of the Protocol.

3.1.3 Decision of the Committee

This paragraph begins with the remark that the Committee decides by a majority of four-fifths of its members present and voting whether a property shall be granted or denied enhanced protection or whether the request should be referred or deferred.

The Netherlands would however like to point out, that according to Article 11, paragraph 5, of the Protocol, this four-fifth majority is only required in case of a representation. The general rule is the two-third majority as provided for in Article 26, paragraph 2, of the Protocol.

3.3 The loss of enhanced protection

Regarding this element, The Netherlands would like to refer to its April 2007 comments on the earlier draft. More specifically, it would like to ask UNESCO’s and States’ attention for the sliding 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). As stated before, 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, it may well be possible that the object by its use makes an effective contribution to military action, which may in certain circumstances make 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.

It is therefore advisable to try to identify the line between “use in support of military action” and “military use” of the object.

3.3.2.1. Article 14 (1), second alternative

In this subparagraph it is stated that the condition [of the cultural property] of being of greatest importance for humanity cannot be recovered once it has been lost.

The Netherlands would be grateful for further clarification concerning this statement. It cannot see why cultural property cannot regain the status of being of greatest importance for humanity. This does not follow from the criteria listed in paragraph 3.1.1.1: these do not preclude the possibility of regaining the status of being of greatest importance for humanity. Maybe what is meant to say is that to regain this status, the application procedure should again be followed from the beginning. If that is the case, it is advisable to state this explicitly.

The Hague, October 2007