



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

# 9 COM

CLT-14/9.COM/CONF.203/4/REV2  
Paris, 14 October 2014  
Original: French

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

### COMMITTEE FOR THE PROTECTION OF CULTURAL PROPERTY IN THE EVENT OF ARMED CONFLICT

Ninth meeting  
UNESCO Headquarters  
18 to 19 December 2014

#### Item 6 of the Provisional Agenda: Creation of a distinctive emblem for cultural property under enhanced protection and establishment of the modalities for its use

In accordance with Decision 8.COM 12 adopted by the Committee at its eight meeting, this document presents the modalities for use regarding the creation of a distinctive emblem for cultural property under enhanced protection.

To do so, it is raised successively:

1. The chosen method for the establishment of the modalities for use of the Distinctive Emblem and their scope under the Guidelines;
2. The basic principles relating to the Distinctive Emblem;
3. The modalities for use of the Distinctive Emblem;
4. The Protection of the Distinctive Emblem from misuse.

In the annex of this document, the Secretariat has prepared draft amendments to the Guidelines, and has incorporated the Distinctive Emblem proposals made by the members of the Bureau of the Committee. Comments expressed on the initial draft of this working document are also annexed.

**Draft Decision** : Paragraph 31.

## TABLES OF CONTENTS

### Introduction

I. Chosen method for the establishment of the modalities for use of the Distinctive Emblem and their scope under the Guidelines

II. Basic principles relating to the Distinctive Emblem

III. Modalities for use of the Distinctive Emblem

a) Use of the Distinctive Emblem *ratione materiae*

- *General rule*

- *Rules governing transport, including the personnel in charge of transport, of cultural property under enhanced protection*

b) Use of the Distinctive Emblem *ratione temporis*

- *General rule*

- *Use of the Distinctive Emblem in the event of suspension or cancellation of enhanced protection*

c) Modalities for placing the Distinctive Emblem

IV. Protection of the Distinctive Emblem from misuse

DRAFT DECISION 9.COM 4

#### *Annex 1*

Distinctive Emblem for cultural property under enhanced protection, including its graphic charter

#### *Annex 2*

Draft amendments to the Guidelines for the Implementation of the 1999 Second Protocol

## INTRODUCTION

1. At its eighth meeting, in December 2013, the Committee for the Protection of Cultural Property in the Event of Armed Conflict (hereinafter “the Committee”) adopted Decision 8.COM 12 concerning the creation of a distinctive emblem for cultural property under enhanced protection, in which it invited:
 

“the Bureau to submit to the Committee’s Ninth Meeting a proposal to create a specific distinctive emblem to mark cultural property under enhanced protection, as well as the modalities of its use, with a view to obtaining its adoption by the Sixth Meeting of the Parties in 2015”.
  2. As highlighted in document CLT-13/8.COM/CONF.203/12,<sup>1</sup> in accordance with the practice – in particular under the Convention for the Protection of the World Cultural and Natural Heritage (hereinafter “the 1972 Convention”), the Convention for the Safeguarding of the Intangible Cultural Heritage (hereinafter “the 2003 Convention”), and the Convention on the Protection and Promotion of the Diversity of Cultural Expressions (hereinafter “the 2005 Convention”) – the establishment of a distinctive emblem and the modalities for its use may be defined by the States Parties to the 1999 Second Protocol to the Hague Convention in the Guidelines for the Implementation of the 1999 Second Protocol to the Hague Convention (hereinafter “the Guidelines”), insofar as they outline the best practices for the implementation of the 1999 Second Protocol (hereinafter “the Second Protocol”).
  3. In order to implement Decision 8.COM 12, the Chairperson of the Committee (hereinafter “the Chairperson”) has taken the initiative of designing the distinctive emblem for cultural property under enhanced protection (hereinafter “the Distinctive Emblem”), and has requested the Secretariat to propose the modalities for use of the Distinctive Emblem.
  4. This document considers the possible modalities for use of the Distinctive Emblem. In this regard, so that the Committee, in accordance with Decision 8.COM 12, may propose to the Sixth Meeting of the Parties (2015) the adoption of the Distinctive Emblem and the modalities for its use, draft amendments to paragraphs 94 to 96 of the Guidelines – Use of the emblem – have been drawn up by the Secretariat. The draft amendments and the Distinctive Emblem proposals are annexed to the draft decision. The draft amendments and the Distinctive Emblem proposals were brought to the attention of the members of the Bureau during the informal consultations held on 20 May 2014 and 25 September 2014. During this consultation, the Bureau of the Committee also expressed its preference for proposals N°3 and N°6B of Distinctive Emblem. Comments were received, and may be consulted on the website of the 9<sup>th</sup> Meeting of the Committee.<sup>2</sup>
  5. To present the modalities considered for the use of the Distinctive Emblem, this document explains the methodology that led to their development and their scope under the Guidelines (Part I). It then presents the basic principles relating to the Distinctive Emblem as such (Part II) and the modalities for its use (Part III). Lastly, it proposes measures to protect the Distinctive Emblem against misuse (Part IV).
- I. Chosen method for the establishment of the modalities for use of the Distinctive Emblem and their scope under the Guidelines**
6. In order to establish the modalities for use of the Distinctive Emblem, two existing sets of rules were considered so as to highlight the relevant principles. The purpose of a Distinctive Emblem for cultural property under enhanced protection is primarily for the recognition of such property in the event of armed conflict. Thus, the first rules taken into account were the rules governing the distinctive emblem established by the 1954 Hague Convention (hereinafter the “Blue Shield”) as well as those governing the emblem of the Red Cross/Red

---

<sup>1</sup> Available at: <http://unesdoc.unesco.org/images/0023/002301/230109E.pdf> . See in particular paragraph 24.

<sup>2</sup> Available at: <http://www.unesco.org/new/en/culture/themes/armed-conflict-and-heritage/the-committee/9th-meeting-of-the-committee>

Crescent/Red Crystal<sup>3</sup> (hereinafter the “emblem of the Red Cross”). At the same time, in line with relevant practice, the “operational guidelines”<sup>4</sup> of UNESCO’s cultural conventions that have established an emblem were also taken into consideration. Nevertheless, since the Hague Convention and its two Protocols are the only treaties administered by UNESCO that set out rights and obligations regulating the conduct of belligerents during armed conflict, including occupation, it was not possible to transpose *mutatis mutandis* the “operational guidelines” of the other cultural conventions without taking into consideration that fundamental aspect.

7. The modalities for use of the Distinctive Emblem, once developed by the Committee, shall be submitted to the Meeting of the Parties for inclusion in the Guidelines, in place of the existing paragraphs 94 to 96. In this regard, it is important to note that the modalities for use of the Distinctive Emblem will have the same legal value as the principles contained in the Guidelines<sup>5</sup> and, as such, are not intended to create new rights and obligations in addition to those set out in the Second Protocol.
8. Lastly, to conclude on issues surrounding the method that led to the establishment of the modalities for use of the Distinctive Emblem and their scope under the Guidelines, it shall be emphasized that, according to this document, the term “modalities for use of the Distinctive Emblem” covers the basic principles relating to the Distinctive Emblem, the modalities for its use and the measures protecting it from misuse.

## II. Basic principles relating to the Distinctive Emblem

9. First, the Distinctive Emblem is intended to ensure recognition of cultural property placed under enhanced protection, because inasmuch as such protection changes the legal rules applicable to cultural property under international humanitarian law (hereinafter “IHL”), it has the effect of influencing the conduct of the belligerents with regard to the property. It is therefore necessary to ensure that cultural property under enhanced protection is identified when hostilities are under way, since identification contributes to ensuring the effective implementation of the Second Protocol in general and of its Article 12 on “immunity of cultural property under enhanced protection” in particular. Accordingly, the Distinctive Emblem, like the Blue Shield or the “emblem of the Red Cross”, is above all the outward sign of protection accorded under IHL. Moreover, it should be emphasized that, as a result, the Distinctive Emblem for cultural property under enhanced protection is fundamentally different from the emblems adopted under other UNESCO cultural Conventions, and in particular the World Heritage emblem. While it is indisputable that inclusion in the World Heritage List means that the international community recognizes the “outstanding universal value” of a cultural property, it is nevertheless the case that, despite being on the List, the property remains *de jure* under the general rules protecting cultural property under IHL.<sup>6</sup> In other

<sup>3</sup> The legal regime of such distinctive emblems is set by the Geneva Conventions (I, II and IV) of 1949, their two Additional Protocols of 1977, as well as the “Regulations on the use of the Emblem of the Red Cross or the Red Crescent by the National Societies” adopted by the 20th Red Cross and Red Crescent International Conference (1965). The red crystal was adopted under the Third Additional Protocol of 2005, providing a third distinctive emblem (the Third Additional Protocol entered into force on 14 January 2007). The name “red crystal” was adopted in the Final Act of the Diplomatic Conference held from 5 to 8 December 2005 in Geneva and under which the Third Additional Protocol was adopted.

<sup>4</sup> The term “operational guidelines” is used generically to refer to the “Operational Guidelines for the Implementation of the World Heritage Convention”, the “Operational Directives for the Implementation of the Convention for the Safeguarding of the Intangible Cultural Heritage”, and the “Operational Guidelines” of the 2005 Convention.

<sup>5</sup> As to the legal value of the Guidelines, it may be considered that they constitute a “subsequent agreement between the parties regarding the interpretation of the treaty or the application of its provisions” within the meaning of Article 31 (3) (a) of the Vienna Convention on the Law of Treaties (1969). *United Nations, Treaty Series*, Vol. 1155, pp. 331 and following. Available at: [https://treaties.un.org/pages/ViewDetailsIII.aspx?&src=TREATY&mtdsg\\_no=XXIII~1&chapter=23&Temp=mtdsg3&lang=en&clang=en](https://treaties.un.org/pages/ViewDetailsIII.aspx?&src=TREATY&mtdsg_no=XXIII~1&chapter=23&Temp=mtdsg3&lang=en&clang=en) (perused on 28 March 2014).

<sup>6</sup> From the treaty’s perspective, the general IHL rules protecting cultural property, if the State has expressed its consent to be bound by the following conventions’ provisions, are understood to be:

words, inclusion in the World Heritage List does not change the status of cultural property under IHL. It is then understandable that, from the IHL viewpoint, the World Heritage emblem – like the other emblems adopted under UNESCO cultural Conventions – has indicative value, in that it does not constitute, unlike the Blue Shield for instance, the outward sign of the cultural property protection recognized by IHL.<sup>7</sup>

10. Second, in addition to recognition of cultural property under enhanced protection, the purpose of the Distinctive Emblem is to ensure legal certainty for the belligerents, with a view to a “reasonable implementation”<sup>8</sup> of Article 15 of the Second Protocol – “Serious violations of this Protocol”. Insofar as attacks on cultural property under enhanced protection and the use of that property or its immediate surroundings in support of military action must be criminalized in the domestic criminal law of the Parties (in accordance with Chapter IV of the Second Protocol), it is necessary for the belligerents, in the context of the conduct of hostilities, to be able to identify the cultural property under enhanced protection so as not to incur individual criminal responsibility. This need emerges clearly moreover from the wording of Article 15 (1) of the Second Protocol, which stipulates that:

“Any person commits an offence within the meaning of this Protocol if that person **intentionally** and in violation of the Convention or this Protocol commits any of the following acts [...]”.<sup>9</sup>

11. Above and beyond these two objectives, which constitute the *ratio legis* of the Distinctive Emblem, it is important to emphasize that marking cultural property under enhanced

1. The relevant provisions of the 1954 Hague Convention and its two Protocols, with the exception of those concerning special protection and those concerning enhanced protection;
2. Articles 27 and 56 of the Regulations concerning the Laws and Customs of War on Land annexed to the 1907 Hague Convention;
3. Article 53 of the First Additional Protocol of 1977 to the 1949 Geneva Conventions and Article 16 of the Second Additional Protocol of 1977 to the 1949 Geneva Conventions; and
4. Article 85 (4) (d) of the aforementioned First Additional Protocol of 1977 to the 1949 Geneva Conventions and Article 8 paragraphs (b) (ix) and (e) (iv) of the Statute of the International Criminal Court adopted in Rome on 17 July 1998.

From a customary law perspective, the general IHL rules protecting cultural property, as long as the State is not a persistent objector, it is understood to be:

1. The customary rules in the matter as reflected in the ICRC study on customary international humanitarian law i; see Jean-Marie Henckaerts and Louise Doswald-Beck, Customary International Humanitarian Law. Volume I: Rules, Cambridge University Press/ICRC, 2006, in particular pp. 127-139; available at: <http://www.icr.org/eng/resources/documents/publication/pcustom.htm> (perused on 28 March 2014).

<sup>7</sup> On the distinction between “indicative emblem” and “protective distinctive emblem” which is widespread in international humanitarian law, see in particular: Article 44 of the First Geneva Convention of 1949, Article 8 (l) of the First Additional Protocol of 1977, as well as Articles 1 and 4, including the related commentary, of the “Regulations on the use of the Emblem of the Red Cross or the Red Crescent by the National Societies” adopted at the XX International Conference of the Red Cross Movement (1965). See also: *Study on the use of the emblems. Operational and commercial and other non-operational issues*, ICRC, Geneva, 2011, in particular pp. 23-26 (available at: <http://www.icr.org/eng/resources/documents/publication/p4057.htm>, perused on 28 March 2014).

<sup>8</sup> “Reasonable implementation” is understood to be the incorporation of “Serious violations of this Protocol” into the domestic criminal law of the Parties as required in Article 15 (2) of the Second Protocol. In this respect, “reasonable implementation” means that the Parties criminalize the violations listed in Article 15 (1) of the Second Protocol in accordance with the general principles of law and international law. In this instance, one of the general principles states that the *mens rea* of an offence is not presumed but must be proven. Accordingly, as the offence cannot be established unless the material element (*actus reus*) is committed intentionally (*mens rea*), this implies that the person under trial was in a position to recognize the cultural property under enhanced protection which had been subject to the offence. The marking of cultural property under enhanced protection by means of a Distinctive Emblem which would be exclusive to it is a solution enabling that recognition.

<sup>9</sup> Emphasis by the Secretariat.

protection is declaratory of such protection and as such has no constitutive effect. In other words, the benefit of enhanced protection stems from the inclusion of a cultural site in the List of Cultural Property under Enhanced Protection (hereinafter the “List”) by the Committee, in accordance with the provisions of the Second Protocol, and not by the marking. The Distinctive Emblem merely denotes enhanced protection recognized by the Second Protocol and IHL and is not at all a condition for the granting of protection. In that regard, it is worthwhile to recall that by virtue of Article 11 (11) of the Second Protocol:

“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”.

Consequently, although the marking of cultural property helps to ensure the effectiveness of enhanced protection, in particular the consequent immunity, it is nevertheless the case that independent of any marking the competent authorities of the Parties are, in any event, informed of the cultural property under enhanced IHL protection rules as a result of that notification.

12. As shown, the main objective of the Distinctive Emblem is, in particular, to contribute to the recognition of cultural property under enhanced protection in the event of armed conflict and, more precisely, ensure its identification in the event of ongoing hostilities. This objective has a major consequence for the use of the Distinctive Emblem. Unlike the emblems adopted under UNESCO’s culture conventions – which provide for the emblems to be used either alone or together with the UNESCO logo<sup>10</sup> – the Distinctive Emblem for cultural property under enhanced protection, taking into consideration the scope of vision of the “combatant”, must be used alone.<sup>11</sup> As the purpose of the Distinctive Emblem is primarily “protection” and not “indication”, it must be “*simple, identifiable from a distance, known to everyone and identical for friend and foe alike*”.<sup>12</sup> This requirement is justified on two grounds. First, in the context of non-international armed conflicts, armed conflicts to which the Second Protocol applies,<sup>13</sup> the Distinctive Emblem, coupled with the UNESCO logo, might be perceived by non-governmental armed groups as being the symbol of an international Community that “lacks legitimacy” as it would not support their claim(s). On the other hand, used alone, the Distinctive Emblem is a guarantee of neutrality and would represent only enhanced protection accorded to cultural property under IHL. Moreover, the 1954 Hague Convention does not provide for the Blue Shield, used alone (general protection) or repeated three times (special protection), to be accompanied by a logo, whatever that logo might be.<sup>14</sup> Secondly, the need to use the Distinctive Emblem alone is justified for practical reasons, as the effective protection of cultural property implies that it should be visible during hostilities – whether from land, air or sea – taking into consideration “*the same distance by which the*

<sup>10</sup> In this respect, see: the “Operational Guidelines for the Implementation of the World Heritage Convention”, para. 268; the “Operational Directives for the Implementation of the Convention for the Safeguarding of the Intangible Cultural Heritage”, para. 125; and the “Operational Guidelines on the use of the emblem of the Convention on the Protection and Promotion of the Diversity of Cultural Expressions” (available at: [http://www.unesco.org/new/fileadmin/MULTIMEDIA/HQ/CLT/pdf/OG\\_emblem\\_EN.pdf](http://www.unesco.org/new/fileadmin/MULTIMEDIA/HQ/CLT/pdf/OG_emblem_EN.pdf), perused on 28 March 2014).

<sup>11</sup> For information, this is the practice followed in the context of the 1949 Geneva Conventions and Additional Protocols. See, in particular, the Article 38 of the 1949 Geneva Convention (I), the Article 2(4) of Additional Protocol III of 2005 and the *Study on the use of the emblems. Operational and commercial and other non-operational issues*, ICRC, Geneva, 2011, in particular pp. 35-39.

<sup>12</sup> These considerations prevailed on the adoption of the Geneva distinctive emblem recognized by the international Community as a whole. In this sense, see: the *Study on the use of the emblems. Operational and commercial and other non-operational issues*, ICRC, Geneva, 2011, in particular p. 22.

<sup>13</sup> Article 22 of the Second Protocol.

<sup>14</sup> Articles 16 and 17 of the 1954 Hague Convention. Article 17 paragraph (3) provides moreover that “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”.

*combatants are separated when they are able to shoot on sight*”.<sup>15</sup> Furthermore, “*scientific tests on the visibility of the distinctive emblems from a distance, undertaken with a view to ensure the most effective protection possible, have established that altering the shape of the emblems would reduce their protective impact on the battlefield*.”<sup>16</sup> As a result, without prejudice to the marking of cultural property with other emblems – for instance, with the World Heritage emblem – all of the foregoing considerations require use of the Distinctive Emblem for cultural property under enhanced protection which, in the field of vision of the combatant, would not be accompanied by any other emblem and /or logo.

13. The question of the use of the Distinctive Emblem with a view to contributing to the recognition of cultural property under enhanced protection brings to mind an important fact. It should be noted that some of the Organizations covered by Article 27 paragraph (3) of the Second Protocol, in particular the Association of National Committees of the Blue Shield (hereinafter “ANCBS”,<sup>17</sup> and some National Committees of the Blue Shield<sup>18</sup> have adopted emblems inspired by the Blue Shield as defined in Article 16 paragraph (1) of the Hague Convention. This observation provides an opportunity to review some founding principles on the use of such emblems by organizations involved in cultural property protection. Firstly, the emblems adopted in this context should not engender confusion with the Blue Shield as defined by the Hague Convention, in particular in the case of armed conflict. In other words, although those emblems may be inspired by the Blue Shield, they cannot imply that the object or individual on which they are placed benefits from any specific protection, other than that provided to them by ordinary law. It is therefore interesting to compare the use made by National Red Cross Societies of the “emblem of the Red Cross”.<sup>19</sup> In this instance, although the use of the “emblem of the Red Cross” is authorized under Article 4 of the “Regulations on the use of the Emblem of the Red Cross or the Red Crescent by the National Societies”, that provision also stipulates that the emblem has only indicative value. More specifically, when it is used by the National Red Cross Societies, the “emblem of the Red Cross” attests to a link between a person or an object and the Red Cross Movement<sup>20</sup> and not to specific protection recognized under IHL. In the light of these developments, it is important to stress that while organizations active in the protection of cultural property – in particular that concerned by Article 27 paragraph (3) of the Second Protocol – may draw inspiration in the design of their own emblems from the Blue Shield, and even the Distinctive Emblem when it has been approved, if that is the case, by the Meeting of the Parties, it is nevertheless the case that the emblems cannot engender any confusion as to the status of the person or object on which they are placed. This approach, in regard specifically to the Blue Shield, is supported, legally, by Article 17 paragraph (3) of The Hague Convention, which states that:

<sup>15</sup> *Study on the use of the emblems. Operational and commercial and other non-operational issues*, ICRC, Geneva, 2011, in particular p. 42.

<sup>16</sup> *Ibid.*

<sup>17</sup> The website of the Association of National Committees of the Blue Shield is available at: <http://www.ancbs.org/cms/index.php/en/about-us/about-ancbs> (perused on 28 March 2014). Even though the Association of National Committees of the Blue Shield is not mentioned explicitly in Article 27 paragraph (3) of the Second Protocol, it is important to emphasize that the aforementioned Article 27 paragraph (3) is not intended, given the wording employed, to be exhaustive.

<sup>18</sup> These national committees are established pursuant to Resolution II adopted at The Hague Diplomatic Conference of 1954. For an up-to-date list of National Committees of the Blue Shield, see: <http://www.ancbs.org/cms/index.php/en/home/blue-shield-national-committees/list-of-national-committees> (perused on 28 March 2014).

<sup>19</sup> It is important to emphasize that the “emblem of the Red Cross” is never used by the National Red Cross Societies in its “pure form”, as defined by Article 44 of the First Geneva Convention of 1949, as the use of the pure form is reserved for the protective function of the “emblem of the Red Cross”. In this respect, see the Article 5 of the “Regulations on the use of the Emblem of the Red Cross or the Red Crescent by the National Societies adopted at the XX International Conference of the Red Cross Movement (1965) (available at: <http://www.icrc.org/eng/resources/documents/article/other/57jmbg.htm>) (perused on 28 March 2014).

<sup>20</sup> In this respect, see the Article 4 and related commentary on the “Regulations on the use of the Emblem of the Red Cross or the Red Crescent by the National Societies adopted at the XX International Conference of the Red Cross Movement (1965). See also the *Study on the use of the emblems. Operational and commercial and other non-operational issues*, ICRC, Geneva, 2011, in particular pp. 23-26.

“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”.<sup>21</sup>

Since, as with the Blue Shield affording general/special protection, the Distinctive Emblem is designed to ensure recognition and identification of the enhanced protection accorded to some cultural property under the Second Protocol and IHL, the considerations that prevailed on the adoption of Article 17 paragraph (3) of the Hague Convention might be transposable mutatis mutandis to the Distinctive Emblem to be approved, as appropriate, by the Meeting of the Parties in 2015.

14. It is also useful to recall that the use of the Distinctive Emblem for protective purposes must comply with the rules of the Second Protocol and IHL; rules that the Distinctive Emblem is not intended to change. Accordingly, any use that would involve, directly or indirectly, a violation of the Second Protocol and/or IHL may not be countenanced and would, on that reckoning alone, be considered to constitute deliberate misuse. Such a consideration, apart from relying on good sense, is supported legally by practice based on Article 17 of the 1954 Hague Convention and practice based on Article 38 of the 1977 First Additional Protocol to the 1949 Geneva Convention. Indeed, as far as the aforementioned Article 17 is concerned, the latter sets the limits to the conditions in which the Blue Shield may be used, and its paragraph (3) specifies that:

“During an armed conflict, the use of the distinctive emblem [the Blue Shield] 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 [the Blue Shield], shall be **forbidden**”.<sup>22</sup>

Similarly, Article 38 of the First Additional Protocol of 1977 states that it is prohibited:

“**to misuse deliberately** in an armed conflict other internationally recognized protective emblems, signs or signals, including the flag of truce, and the **protective emblem of cultural property**.”<sup>23</sup>

In that respect, other than the fact that the commentary on that provision emphasizes that the prohibition it contains is absolute, “in the sense that any deliberate misuse is prohibited, and not only, for example, the deliberate misuse aimed at killing, injuring or capturing [...]”,<sup>24</sup> the commentary also specifies that by means of the prohibition, the States intended it to cover “all internationally recognized protective signs **existing now and in the future** [...]”.<sup>25</sup> Finally, it is important to stress that the prohibition of the misuse, that is use that is not compliant with the established rules,<sup>26</sup> of distinctive emblems, including distinctive emblems protecting cultural property, are very much a part of customary international humanitarian law.<sup>27</sup>

15. In the light of all of the foregoing and once the Distinctive Emblem has been, if it is, approved by the Meeting of the Parties, it is desirable for the Committee to introduce a practice by which, when it includes cultural property in the List under the ordinary procedure, it encourages the Party with jurisdiction or control over the property to mark it. Similarly, when

<sup>21</sup> Emphasis by the Secretariat.

<sup>22</sup> Emphasis by the Secretariat.

<sup>23</sup> Emphasis by the Secretariat.

<sup>24</sup> *Commentary on the Additional Protocols I and II of 8 June 1977 to the Geneva Conventions of 12 August 1949*, ICRC/Martinus Nijhoff, 1986, in particular p. 456, paragraph 1549. Available at: <http://www.icrc.org/applic/ihl/ihl.nsf/Comment.xsp?viewComments=LookUpCOMART&articleModified=90EFAD6E98595FE3C12563BD002C22F6&articleUNID=1FCA9F6DD470F5A9C12563CD0051DB28> (perused on 28 March 2014).

<sup>25</sup> *Ibid.*, paragraph 1548. Secretariat emphasis.

<sup>26</sup> With respect to cultural property under enhanced protection, in addition to the relevant rules of international humanitarian law, the established rules are also those relating to the use *ratione materiae* and *ratione temporis* that will be discussed below.

<sup>27</sup> In that connection, see: Jean-Marie Henckaerts and Louise Doswald-Beck, *Customary International Humanitarian Law. Volume I: Rules*, Cambridge University Press/ICRC, 2006, in particular p. 203-227.



the Committee grants enhanced protection provisionally under the emergency procedure described in Article 11 paragraph (9) of the Second Protocol, it is desirable if, in addition to granting enhanced protection, it introduced the practice of calling on the Party to the conflict that requires enhanced protection to mark the cultural property in question, owing to the emergency situation – namely the outbreak of hostilities.

### III. Modalities for use of the Distinctive Emblem

#### a) Use of the Distinctive Emblem *ratione materiae*

- *General rule*

16. Owing to its use for purely protective purposes (see paragraphs 9 and 10 of this document), the Distinctive Emblem is only used to mark cultural property under enhanced protection. Consequently, in order for the Distinctive Emblem to retain its high significance and prestige in all circumstances,<sup>28</sup> it is essential that it is not used for other purposes – e.g. commercial, non-commercial, – other than the identification of cultural property under enhanced protection. This is the same logic that prevailed on the adoption of Article 17 of the Hague Convention of 1954, insofar as it also restricts the use of the distinctive emblem to the marking of cultural property alone.

- *Rules governing transportation, including the personnel in charge of transportation, of cultural property under enhanced protection*

17. Pursuant to Article 5 of the Second Protocol, that is to say in the framework of the implementation, in times of peace, of the obligation for the “safeguarding of cultural property” against the foreseeable effects of an armed conflict, the Parties must prepare, among other things, either the removal of movable cultural property or the provision of adequate *in situ* protection. It follows that, insofar as enhanced protection may be granted to movable cultural property,<sup>29</sup> the question of their transport, and by implication, their marking, may arise.

18. The 1954 Hague Convention, in Articles 12, 13 and 14, as supplemented by the Regulations for its execution,<sup>30</sup> establishes particularly comprehensive legal rules as regards the “transport under special protection” of movable cultural property in the event of international armed conflict. This form of transport applies to cultural property in general and, *a fortiori*, to cultural property under enhanced protection. Therefore, for the purposes of transporting cultural property under enhanced protection, it is appropriate to apply the legal rules established by the 1954 Hague Convention and the Regulations for its execution. For information purposes, it is worth noting that unlike in cases of international armed conflict, neither the 1954 Hague Convention nor its two Protocols regulate the transport of cultural property in cases of non-international armed conflict. This is without prejudice, however, to the implementation of the rules relating to the “respect for cultural property” and the recognition of the enhanced protection rules. In other words, the absence of rules for “transport under special protection” in non-international armed conflicts does not exempt the belligerents from respecting cultural property, including the transport of such property to a

<sup>28</sup> See the Article 44 of the Geneva Convention (I) of 1949 and its commentary. *Commentaries on the Geneva Conventions of 12 August 1949*, Jean Pictet (s.l.d.), ICRC, 1952, in particular p.375. Available at:

<http://www.icrc.org/applic/ihl/ihl.nsf/Comment.xsp?viewComments=LookUpCOMART&articleModified=48264DBA0019977AC12563BD002BE689&articleUNID=5CCB6DD2AB618FABC12563CD0051A251> (perused on 28 March 2014).

<sup>29</sup> Here in particular, enhanced protection differs from the special protection afforded by the 1954 Hague Convention; special protection which, under Article 8 of that Convention may only be granted to “a limited number of refuges intended to shelter movable cultural property in the event of armed conflict, of centres containing monuments and other immovable cultural property of very great importance”, provided that they meet the prerequisites laid down by that provision.

<sup>30</sup> As stated in Article 20 of the Hague Convention of 1954, the Regulations for its execution are an integral part of the Convention. Issues relating to the transport of cultural property are governed by Articles 17 to 19 of the Regulations for its execution.

“safe haven”, and to ensure the protection of such transport, whether that transport is of cultural property under general protection or under enhanced protection.<sup>31</sup>

19. Alongside the question of the transport of cultural property under enhanced protection is the matter of the personnel assigned to the transport of such property. In accordance with the 1954 Hague Convention and its Regulations, personnel assigned to the protection of cultural property may wear an armband bearing the Blue Shield. By extension, personnel assigned to the transport of movable cultural properties under enhanced protection may also wear a similar armband, insofar as transport is tantamount to a measure of protection.

**b) Use of the Distinctive Emblem *ratione temporis***

- *General rule*

20. In times of peace, Parties with jurisdiction over cultural property under enhanced protection may prepare the marking of cultural property under enhanced protection. Such an approach is justified for two reasons. First, it is part of the implementation of the obligation to safeguard cultural property set out in Article 5 of the Second Protocol. In that respect, while Article 5 lists a number of preparatory measures taken in times of peace against the foreseeable effects of an armed conflict, the list is not exhaustive, as stated in the Guidelines, and the Parties are encouraged to consider other appropriate preparatory measures.<sup>32</sup> From all points of view, the marking of cultural property under enhanced protection appears to be a necessary and appropriate measure.<sup>33</sup> Second, this approach is part of the appropriate practice that it would be desirable for the Committee to establish when granting enhanced protection under the ordinary procedure – a practice that is referred to in paragraph 15 of this document.
21. However, in times of armed conflict – that is to say from the outbreak of hostilities leading to an armed conflict until the end of the armed conflict, including occupation – it is essential for the Parties in the conflict to mark cultural property under enhanced protection. Such marking would contribute to the effectiveness of the immunity of cultural property under enhanced protection as mentioned in paragraph 9 of this document. Moreover, the marking of cultural property under enhanced protection with the distinctive emblem is a modality of application, by extension, of the customary rule codified in Article 27 paragraph (2) of the Regulations annexed to the Hague Convention of 1907 on the Laws and Customs of War on Land:

“It is the duty of the besieged to indicate the presence of such buildings or places by distinctive and visible signs, which shall be notified to the enemy beforehand”.<sup>34</sup>

- *Use of the Distinctive Emblem in the event of suspension or cancellation of enhanced protection*

22. As outlined in paragraph 16 of this document, the Distinctive Emblem is exclusively reserved for the marking of cultural property under enhanced protection.<sup>35</sup> It follows that in the event of suspension or withdrawal of enhanced protection by the Committee, in accordance with the provisions of the Second Protocol, the Distinctive Emblem used to mark the cultural property under enhanced protection shall be removed. In this respect, without prejudice to the use of the “Blue Shield”, any marking with the Distinctive Emblem following a decision of suspension or withdrawal by the Committee constitutes its misuse, as understood in the

<sup>31</sup> Article 22 paragraph (1) of the Second Protocol emphasizes that “(t)his Protocol shall apply in the event of an armed conflict not of an international character, occurring within the territory of one of the Parties”, which includes the entire system for enhanced protection.

<sup>32</sup> Guidelines for the Implementation of the 1999 Second Protocol to the Hague Convention of 1954, paragraph 27.

<sup>33</sup> This ties in with the wording of Decision 8.COM 12 adopted by the Committee, insofar as the latter emphasizes that there is a “[...] need to create a specific distinctive emblem [...] to mark properties under enhanced protection [...]”.

<sup>34</sup> Emphasis by the Secretariat. The buildings in question are defined in Article 27 paragraph (1) of the Regulations annexed to the Hague Convention of 1907 as “buildings dedicated to religion, art, science, or charitable purposes, historic monuments, hospitals, and places where the sick and wounded are collected, provided they are not being used at the time for military purposes”.

<sup>35</sup> See paragraph 16 above.

basic principles relating to the Distinctive Emblem, as specified, particularly in paragraph 14 of this document.

### **c) Modalities for placing the Distinctive Emblem**

23. Regarding the modalities for placing the Distinctive Emblem, the 1954 Hague Convention, the 1949 Geneva Conventions and the “operational guidelines” of the relevant UNESCO cultural conventions provide an interesting indication of the appropriate practice to follow in this matter.
24. First, it is necessary to refer to the particularly relevant principles governing the affixing of the Blue Shield – principles laid down in Article 20 of the Regulations for the Execution of the 1954 Hague Convention – which may, in this respect, be applied *mutatis mutandis* to the Distinctive Emblem for cultural property under enhanced protection. Specifically, it follows from these principles that the location of the Distinctive Emblem and its degree of visibility shall, in any event, be left to the discretion of the competent authorities of the Parties. For example, the Distinctive Emblem may be displayed on flags or armbands; it may be painted on an object or represented in any other appropriate form.
25. Nevertheless, in the event of armed conflict, the Distinctive Emblem must be affixed in a way that is visible – by day or night, using, to the extent of the Parties’ capacities, the latest technological advances – in view of a combatant’s field of vision when leading an attack from land, sea or air, and taking into consideration the principles set out on the need to use the Distinctive Emblem without accompanying it with another logo and/or emblem.<sup>36</sup> For information, these are the same considerations as those that led to the drafting of Article 44 paragraph (4) of the First Geneva Convention of 1949.<sup>37</sup> Moreover, Article 20 paragraph (2) of the Regulations for the Execution of the 1954 Hague Convention provides interesting insights into the manners of displaying the emblem which, in the event of an armed conflict, would ensure visibility – by day or night – of the Blue Shield. In this case, for “a centre containing monuments under special protection” and for “immovable cultural property under special protection”, the Blue Shield repeated three times must be displayed: (1) at regular intervals sufficient to indicate clearly the perimeter of a centre containing monuments under special protection; and (2) at the entrance to other immovable cultural property under special protection. These indications may be applied *mutatis mutandis* to the Distinctive Emblem for immovable cultural property under enhanced protection.
26. From an aesthetic viewpoint, it is essential to highlight that the modalities for affixing the Distinctive Emblem must take into consideration the fact that, in the context of enhanced protection, it is a question of marking “cultural heritage of the greatest importance for humanity”.<sup>38</sup> Therefore, as specified in the “Operational Guidelines for Implementation of the World Heritage Convention”, regarding the marking of properties with the World Heritage emblem,<sup>39</sup> it is essential that the Distinctive Emblem be affixed in harmony with the cultural property under enhanced protection.
27. To conclude on the modalities for placing the Distinctive Emblem, it is recalled that enhanced protection is also likely to be granted to movable cultural property, unlike the special protection afforded by the 1954 Hague Convention, because enhanced protection may be granted to cultural property as defined in Article 1 of that Convention, which covers both movable and immovable cultural property. Such movable cultural property must also be marked with the Distinctive Emblem. In this context, it is useful to recall UNESCO’s

---

<sup>36</sup> See paragraph 12 above.

<sup>37</sup> For information, Article 42 paragraph (4) of the First Geneva Convention of 1949 mentions that: “Parties to the conflict shall take the necessary steps, in so far as military considerations permit, to make the distinctive emblems indicating medical units and establishments clearly visible to the enemy land, air or naval forces, in order to obviate the possibility of any hostile action”. In the same vein, see the Article 18 paragraph (4) of the Fourth Geneva Convention of 1949.

<sup>38</sup> Article 10 paragraph (a) of the Second Protocol of 1999.

<sup>39</sup> “Operational Guidelines for the Implementation of the World Heritage Convention”, paragraph 268. Available at: <http://whc.unesco.org/en/guidelines/> (perused on 28 March 2014).

“Recommendation for the Protection of Movable Cultural Property”<sup>40</sup> of 28 November 1978 recommending that Member States should encourage “the standardized identification of movable cultural property using **unobtrusive means offered by contemporary technology**”.<sup>41</sup>

#### IV. Protection of the Distinctive Emblem from misuse

28. Misuse of the Distinctive Emblem, in other words use inconsistent with observance of the prescribed rules,<sup>42</sup> including imitation,<sup>43</sup> must be combated in order to preserve the high significance of the Distinctive Emblem in all circumstances. Specific steps must therefore be taken.
29. Firstly, it would be desirable for States to incorporate measures designed to protect the Distinctive Emblem in their laws, once it has been approved by the Meeting of the Parties.
30. Secondly, in accordance with the dissemination obligations contained in the Second Protocol, it is of prime importance for the Parties to disseminate the Distinctive Emblem and the modalities for its use both within their civilian population and among their military authorities.
31. The Committee may wish to adopt the following decision:

#### DRAFT DECISION 9.COM 4

The Committee,

1. Recalling Decision 8.COM 12 concerning the creation of a specific distinctive emblem to mark cultural property under enhanced protection, which it adopted at its eighth meeting,
2. Having examined document CLT-14/9.COM/CONF.203/4,
3. Considers the Proposal No. ... in Annex I to document CLT-14/9.COM/CONF.203/4 to be the best proposal for marking cultural property under enhanced protection;
4. Recommends that the Meeting of the Parties examine that Distinctive Emblem, including its graphic charter, and the modalities for its use at its Sixth Meeting with a view, if appropriate, to approving them and amending the Guidelines accordingly.

---

<sup>40</sup> The authentic text of the Recommendation is available at: [http://portal.unesco.org/en/ev.php-URL\\_ID=13137&URL\\_DO=DO\\_TOPIC&URL\\_SECTION=201.html](http://portal.unesco.org/en/ev.php-URL_ID=13137&URL_DO=DO_TOPIC&URL_SECTION=201.html) (perused on 28 March 2014)

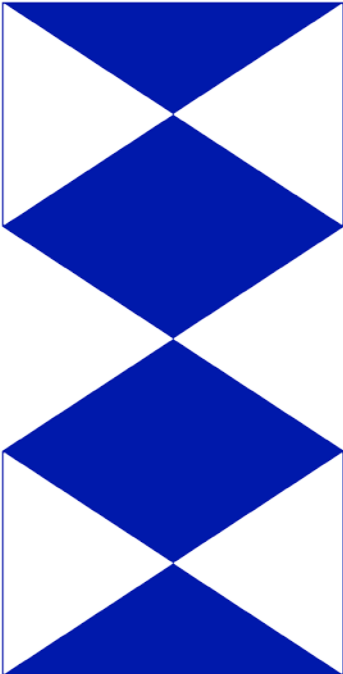

<sup>41</sup> UNESCO Recommendation of 28 November 1978, paragraph 12 (b). Emphasis by the Secretariat.

<sup>42</sup> In addition to the relevant rules of international humanitarian law, the prescribed rules relate to use *ratione materiae* and *ratione temporis* as outlined *supra*.

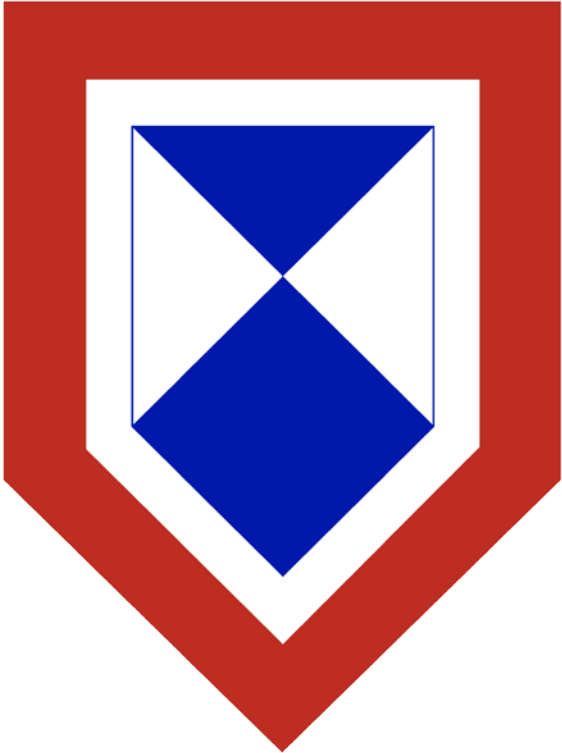
<sup>43</sup> Imitation may be considered to be the “use of a sign which, owing to its shape and/or colour, may be confused with the emblem”. In that connection, see the ***Study on the Use of Emblems: Operational and Commercial and Other Non-Operational Issues***, ICRC, Geneva, 2011, in particular p. 33. Furthermore, imitation is an occurrence covered by Article 17 paragraph (3) of the 1954 Hague Convention, which provides that “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”.

**Annex 1**

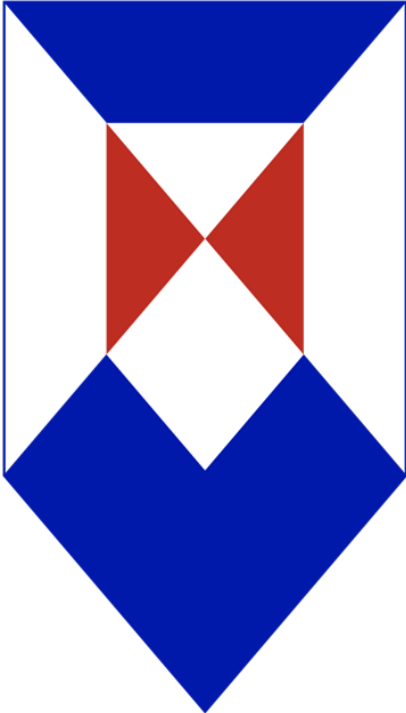
**Distinctive Emblem for Cultural Property under Enhanced Protection, including its graphic charter**

<p>Proposal 1</p>	
<p>Proposal 2</p>	

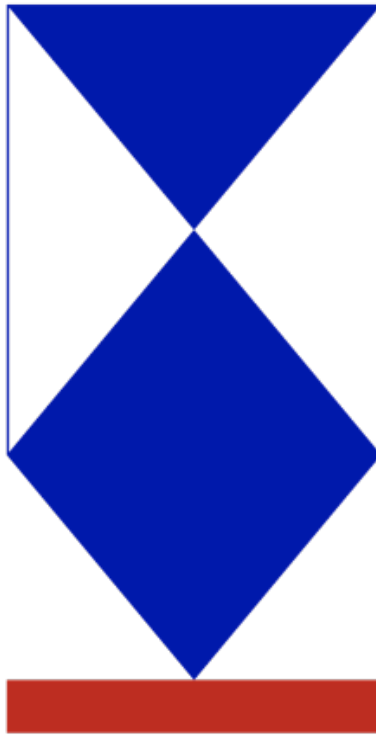
Proposal 3



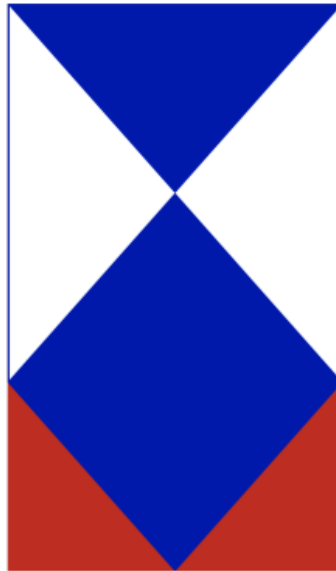
Proposal 4



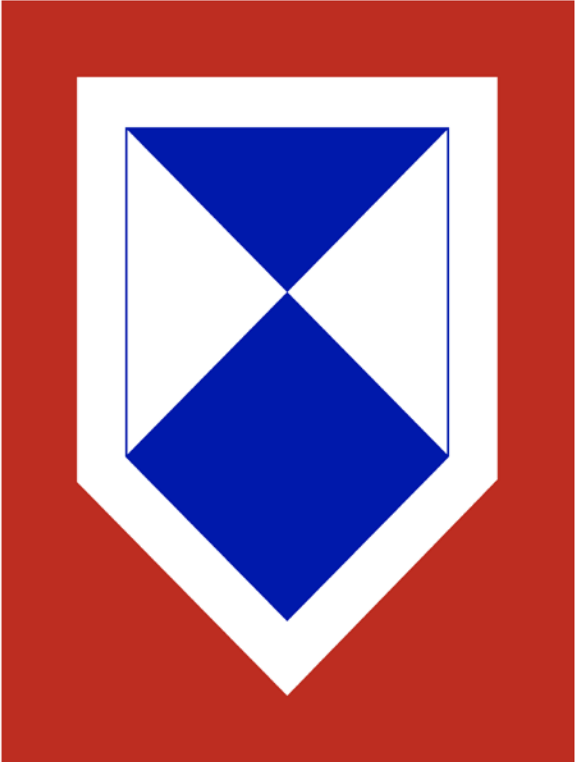
Proposal 5



Proposal 6 (A)



Proposal 6 (B)





## Annex 2

### Draft amendments to the Guidelines for the implementation of the 1999 Second Protocol

Guidelines for the implementation of the 1999 Second Protocol	Proposed amendments
<p><b>III.E Use of the emblem</b></p> <p>94. The provisions of the Convention define the use of the emblem to mark cultural property under general and special protection. The Second Protocol does not include any provisions on how to mark cultural property under enhanced protection with the emblem.</p> <p>95. As cultural property under enhanced protection is, by definition, cultural property, Parties are entitled to mark such cultural property in accordance with Article 6 of the Convention.</p> <p>96. The Parties should make an effort to increase awareness and enhance respect for the emblem at national and international levels.</p>	<p><del>III.E Use of the emblem</del> <b>The Distinctive Emblem for cultural property under enhanced protection and modalities for its use</b></p> <p>94. <del>The provisions of the Convention define the use of the emblem to mark cultural property under general and special protection. The Second Protocol does not include any provisions on how to mark cultural property under enhanced protection with the emblem.</del> <b>Without prejudice to the provisions of the 1954 Hague Convention and the Regulations for its execution relating to the marking of cultural property under general protection and to the marking of cultural property under special protection, a distinctive emblem (hereinafter the “Distinctive Emblem”) shall be created for the exclusive marking of cultural property under enhanced protection.</b></p> <p>95. <del>As cultural property under enhanced protection is, by definition, cultural property, Parties are entitled to mark such cultural property in accordance with Article 6 of the Convention.</del> <b>“Marking of cultural property under enhanced protection” means marking as defined <i>ratione materiae</i> in paragraph 103 of these Guidelines.</b></p> <p>96. <del>The Parties should make an effort to increase awareness and enhance respect for the emblem at national and international levels.</del> <b>The considerations related to the visibility of the Distinctive Emblem guides the Parties in their choice of modalities for placing of the Distinctive Emblem</b></p>

### **Modalities for using the Distinctive Emblem**

**97. The Distinctive Emblem shall be used in accordance with the modalities for its use, as set out below. Under these Guidelines, the expression “modalities for using the Distinctive Emblem” covers the basic principles relating to the Distinctive Emblem, the modalities for its use and measures protecting it from misuse.**

### **Basic principles relating to the Distinctive Emblem**

**98. The Distinctive Emblem is intended to ensure recognition and identification of cultural property under enhanced protection, particularly during the conduct of hostilities, in order to ensure the effectiveness of the provisions of the Second Protocol and, more particularly, to contribute to the effectiveness of its Article 12 on the “Immunity of cultural property under enhanced protection”. The Distinctive Emblem is also intended to ensure legal certainty in regard to criminal responsibility of belligerents in order to ensure reasonable implementation of Article 15 (1) of the Second Protocol. Under these Guidelines, “reasonable implementation” means incorporation of serious violations of the Second Protocol in the domestic criminal law of Parties in accordance with Article 15 (2) of the Second Protocol.**

**99. The marking of cultural property under enhanced protection is declaratory of the enhanced protection granted for cultural property pursuant to a decision taken by the Committee. The marking of cultural property, while contributing to the effectiveness of enhanced protection, has no constitutive effect.**

**100. On account of its use for protective purposes and in order to ensure its visibility, the Distinctive Emblem – without**

prejudice to the use of other relevant emblems, in particular the world heritage emblem, to mark cultural property – shall be affixed alone without any other logo and/or emblem, due consideration being taken of a combatant's field of vision when directing an attack, be it from the land, sea or air, during hostilities.

101. The Distinctive Emblem must be used in accordance with the relevant rules of international humanitarian law and the modalities *ratione materiae* and *ratione temporis* for its use specified in these Guidelines. All use of the Distinctive Emblem that is inconsistent with observance of the prescribed rules shall be considered to be misuse.

102. When the Committee grants enhanced protection for cultural property under the normal procedure, it shall encourage the Party that has jurisdiction over that cultural property to mark it by using the Distinctive Emblem for cultural property under enhanced protection. When the Committee is required to grant enhanced protection under the emergency procedure, it shall request the Party that has jurisdiction or control over the cultural property to mark the property.

#### Modalities for using the Distinctive Emblem

##### Use *ratione materiae*

103. The Distinctive Emblem shall be used only to mark cultural property under enhanced protection. It may not be used for purposes – e.g. commercial, non-commercial – other than those specified in these Guidelines.

104. The use of the Distinctive Emblem for cultural property under enhanced protection is without prejudice to the legal rules

established under the 1954 Hague Convention and the Regulation for its execution in regard to the application of the “transport under special protection”

*Use ratione temporis*

105. In peacetime, Parties that have jurisdiction over cultural property under enhanced protection may make preparations to mark such property by using the Distinctive Emblem.

106. In times of armed conflict – namely from the outbreak of hostilities leading to the advent of the armed conflict until the end of the armed conflict, including occupation – the Parties to the conflict shall mark cultural property under enhanced protection by using the Distinctive Emblem.

107. Without prejudice to Article 17 paragraph (2) of the 1954 Hague Convention, in the event of suspension or cancellation of enhanced protection by the Committee, Parties that have jurisdiction or control over the cultural property concerned by said suspension or cancellation shall remove the Distinctive Emblem that had been used to mark the property.

*Modalities for placing the Distinctive Emblem*

108. The Distinctive Emblem shall be placed and the extent of its visibility determined at the discretion of the Parties’ competent authorities.

109. As cultural property under enhanced protection is primarily part and parcel of heritage that is of the greatest importance to humanity, the Distinctive Emblem shall be placed on the cultural property in a manner befitting the property.

**110. The Parties' resources permitting, technological developments will determine the means used – in times of peace and in times of armed conflict – to place the Distinctive Emblem on cultural property, including movable property, under enhanced protection.**

**Protection of the Distinctive Emblem from misuse**

**111. Use of the Distinctive Emblem that does not comply with prescribed rules as set out in these Guidelines shall be combated.**

**112. The Parties shall disseminate, both within their civilian population and among military authorities, the Distinctive Emblem and the modalities for its use.**

**113. The Parties shall be encouraged to incorporate in their legislation measures designed to protect the Distinctive Emblem and the modalities for its use.**