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## 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 5 of the Provisional Agenda:**  
**Protection of cultural property in the event of armed conflict, including  
occupation**

Pursuant to Decision 8.COM 7, the current document examines the operational and procedural arrangements allowing the Committee, on a discretionary basis, to monitor and supervise the implementation of the Second Protocol through the despatch of technical missions on the ground in the event of armed conflict, including occupation. In this regard, it is explained that, following the decision taken by the Committee to eventually despatch a technical mission on the ground, the consent of the Parties to the conflict is one of the *sine qua non* conditions to despatch such technical missions.

This document also mentions, for illustrative purposes, some results-based goals that might be assigned in the framework of the despatch of technical missions. At the same time it underlines that, through the international assistance, the Fund for the Protection of Cultural Property in the Event of Armed Conflict may be used as a source of financing.

**Draft decision:** paragraph 18.

## **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 7, in which it invited the Secretariat :

“to prepare a document for its ninth Meeting with a view to proposing concrete actions, including the carrying out of technical missions on the ground, in accordance with the Second Protocol and its Guidelines, for monitoring the state of the protection of cultural property in the event of armed conflict, including occupation”.

2. That decision was taken after discussions within the Committee in December 2013, during which the Committee examined document CLT-13/8.COM/CONF.203/7 concerning the provisions and mechanisms of the 1954 Hague Convention and the 1999 Second Protocol to the 1954 Hague Convention (hereinafter “the Second Protocol”) regarding the protection of cultural property in occupied territory.
3. The current working document was brought to the attention of the Bureau of the Committee during informal consultations that took place between the latter and the Secretariat on 20 May 2014 and on 25 September 2014. Comments were received, and may be consulted on the website of the 9<sup>th</sup> Meeting of the Committee.<sup>1</sup>
4. Without prejudice to the range of actions that the Committee might undertake at its discretion in accordance with the Second Protocol to monitor the state of protection of cultural property in the event of armed conflict including occupation (e.g. contacts with the Parties concerned; requesting information on the state of the protection of cultural property; establishing dialogue between the competent authorities of the Parties; and, making recommendations to the concerned Parties), the current document focuses essentially on the despatch of technical missions on the ground.
5. The carrying out of technical missions on the ground in order to monitor the state of cultural properties protection in the event of armed conflict, including occupation, raises several legal and practical questions. Accordingly, in considering the related operational and procedural arrangements, the goals of those technical missions and the provisions of the 1999 Second Protocol that constitute the legal bases should be recalled (I). Together with these basic considerations, it is also important to highlight the role of the Fund for the Protection of Cultural Property in the Event of Armed Conflict (hereinafter “the Fund”) as a source of financing (II).

- I. Operational and procedural arrangements related to the despatch of technical missions on the ground**

6. The Committee’s functions under Article 27 of the Second Protocol include monitoring and supervising the implementation of the Second Protocol. In carrying out this function, the Committee may find it necessary or appropriate to despatch technical missions on the ground to monitor and evaluate the state of protection of cultural property in the event of armed conflict, including occupation. As emphasized in the conclusions of document CLT-13/8.COM/CONF.203/7<sup>2</sup>:

“[...] pursuant to Article 27 of the Second Protocol, the Committee may exercise the function of protecting cultural property in occupied territory. It can [...] monitor and evaluate the state of cultural property in occupied territory and, for example, decide

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<sup>1</sup> Available at:  
<http://www.unesco.org/new/en/culture/themes/armed-conflict-and-heritage/the-committee/9th-meeting-of-the-committee/>

<sup>2</sup> Decision 8.Com 7, adopted at the Committee’s eight meeting, reads as follows  
« The Committee [...]

8. Endorses the conclusions contained in paragraphs 74 through 76 of the Document CLT-13/8.COM/CONF.203/7 [...] ».

to send to occupied territories missions similar to those already conducted by the Secretariat. The objective of such missions would be, on one level, **to monitor the progress of protection of cultural property, and on another level, to ensure that the provisions relating to the protection of cultural property in the field, particularly Article 9 of the Second Protocol, are respected**".<sup>3</sup>

Article 27 of the Second Protocol, and in particular its subparagraph 1(c), is therefore the legal basis for all technical missions despatched by the Committee on the ground to monitor the state of the protection of cultural property in the event of armed conflict, including occupation.

7. The objective of such technical missions, as stressed in the conclusions of document CLT-13/8.COM/CONF.203/7, is two-fold: on one hand, it is intended to monitor the progress of protection of cultural property and on the other, to ensure that the provisions relating to the protection of cultural property, including those designed specifically to protect cultural property in occupied territory, are respected. Moreover, it is also important to stress that such technical missions are not at all intended to deal in any way whatsoever with the conflicting Parties' claims that do not directly concern the protection of cultural property for which the 1954 Hague Convention and the Second Protocol provides for.
8. Having recalled the legal basis and the goals of the technical missions that the Committee might decide to despatch on the ground, the related operational and procedural arrangements will now be considered.
9. The key principle governing the despatch of technical missions on the ground by the Committee is the consent of the Parties to the conflict. This requirement is justified for many reasons, notably:
  - Respect of the sovereignty of the Parties;
  - Safety imperatives of the technical mission staff; and,
  - Proper conduct of the technical mission.
10. In order to despatch technical missions on the ground, the Committee defines, for example, the duration, membership and results-based goals of such missions. . To illustrate this point, results-based goals could, to name but a few, include:
  - evaluation of the state of the cultural property in order to prevent deterioration;
  - decisions on courses of action to be taken in order to protect and, if need be, restore the property;
  - the marking of cultural property; and,
  - raising awareness of basic cultural property protection rules among persons (military and/or civilian), in particular those living in the vicinity of cultural properties.
11. The Parties to the conflict should co-operate with the Committee in setting the terms of reference for all on the ground technical missions despatched by the Committee.
12. When the Committee rules on the desirability of monitoring and supervising the implementation of the Second Protocol by despatching a technical mission on the ground in a particular armed conflict or occupation under consideration, the Parties to the conflict that are members of the Committee may not vote, pursuant to Article 26(3) of the Second Protocol, which provides that:

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<sup>3</sup> Conclusions of the working document CLT-13/8.COM/CONF.203/7 "The protection of cultural property in occupied territory". Underlined by the Secretariat.

“Members [of the Committee] shall not participate in the voting on any decisions relating to cultural property affected by an armed conflict to which they are parties”.<sup>4</sup>

13. In order to most expeditiously reach an agreement negotiated in the interest of protecting cultural property, it is desirable, on a case by case basis, that after consulting the Parties to the conflict and securing their consent, the Committee appoint any qualified person to act, in a **personal capacity**, as “expert” or “personality” for the protection of cultural property in the armed conflict or occupation under consideration. In accordance with the terms of that appointment, the “expert” or “personality” will report to the Committee on developments in the situation, at each ordinary meeting and at each extraordinary meeting convened specifically on the armed conflict or occupation.
14. Should the Parties to the conflict reach a negotiated agreement on the terms of reference for one or several technical mission(s) proposed, they (one Party or both of them) may, in accordance with the provisions of the Second Protocol, request the Committee to provide international assistance, including financial assistance, to ensure that the activities listed in the agreement are actually carried out.

## **II. Possible use of the Fund for the Protection of Cultural Property in the Event of Armed Conflict to finance the despatch of technical missions**

15. Having considered operational and procedural arrangements for the despatch of technical missions in the event of armed conflict, including occupation, it is appropriate to consider the source of funds from which the Committee may draw in order to meet potential requests from a Party/ Parties to a conflict for international assistance to ensure actual implementation of technical missions set out in the negotiated agreement. In that regard, the Fund established under Article 29 of the Second Protocol seems to be appropriate as a source of financing. The Committee may, therefore, draw on resources in the Fund in order to provide international assistance to Parties to a conflict to enable them to implement the negotiated agreement.
16. From the legal point of view, the Fund may be used in accordance with Article 29(1)(b) of the Second Protocol 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]”.

More specifically, under Article 32 of the Second Protocol, as stressed in paragraph 111 of the Guidelines for the Implementation of the 1999 Second Protocol (hereinafter “the Guidelines”) and in accordance with the Guidelines concerning the use of the Fund as adopted at the Meeting of the Parties pursuant to Article 23(3)(c) of the Second Protocol, the Committee may provide international assistance in order to implement preparatory, emergency or post-conflict recovery measures through disbursements from the Fund.

17. In the case the Committee considers that the technical missions contained in the agreement negotiated by the Parties to a conflict are consistent with emergency and post-conflict recovery measures, such missions may be financed by disbursements from the Fund.

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<sup>4</sup> While Article 26 (3) of the Second Protocol refers to “[...] any decisions relating to cultural property affected by an armed conflict [...]”, it nonetheless goes without saying that the wording used also covers “occupation”.

18. The Committee may wish to adopt the following decision:

**DRAFT DECISION 9.COM 3**

The Committee,

1. Recalling Decision 8.COM 7 relating to the protection of cultural property in occupied territory, which it adopted at its Eighth Meeting,
2. Having examined document CLT-14/9.COM/CONF.203/3,
3. Reaffirms the importance of the mandate assigned to it under Article 27(1)(c) of the Second Protocol, particularly in the context of monitoring the protection of cultural property in the event of armed conflict, including occupation;
4. Encourages Parties to an armed conflict as well as Parties to the 1999 Second Protocol to draw its attention to the state of cultural property affected by an armed conflict or an occupation, and to implement their obligations under the 1999 Second Protocol in good faith.