

Observations of the Government of Japan to the document CLT-14/9.COM/CONF.203/13 (Proposal to Strengthen Synergies between the 1999 Second Protocol to the Hague Convention of 1954 for the Protection of Cultural Property in the Event of Armed Conflict and the 1972 World Heritage Convention) proposed by Belgium

Following the Ninth Ordinary Session of the Committee for the Protection of Cultural Property in the Event of Armed Conflict, which was held at UNESCO Headquarters on 18-19 December 2014, and in reference to the document CLT-14/9.COM/CONF.203/13, which was proposed by Belgium and discussed at that Session, the Permanent Delegation of Japan to UNESCO has sent the following comments of the Government of Japan to the aforementioned document.

As agreed during the Session, the Permanent Delegation of Japan to UNESCO would like that these comments reflected on the website of the Second Protocol to the Hague Convention as well as forwarded to all States Parties to the Second Protocol.

March 31, 2015

Comments on Belgium's proposal to Strengthen Synergies between the 1999 Second Protocol to the 1954 Hague Convention (hereinafter referred to as "Second Protocol") and the 1972 World Heritage Convention

We have carefully re-examined the aforementioned proposal including proposed modifications of the Operational Guidelines for the Implementation of the World Heritage Convention (hereinafter referred to as "the Operational Guidelines"), discussed at the 9th meeting of the Committee for the Protection of Cultural Property in the Event of Armed Conflict. While Japan appreciates and reiterates its solid support to Belgium's proposal, we would like to submit the following comments so as to facilitate the discussions at the World Heritage Committee at its 39th session to arrive at a satisfactory and feasible conclusion on this important issue.

1. Differences in time schedule of examination

A granting of enhanced protection under the Second Protocol is normally decided within a period not exceeding one year, in line with its present procedure. On the other hand, it takes 1 year and a half to make the decision of inscription on the World Heritage List from the submission of their complete nominations under the normal timetable. Therefore, it would take more than about 2 years until the enhanced protection is granted under the proposed procedure (modifications to paragraph 122) whereby the World Heritage Committee shall decide first and notify the Committee for the Protection of Cultural Property in the Event of Armed Conflict of its decision. These differences in time schedule should be made clear to the

States Parties which are eligible to submit such joint requests.

2. Status of requests for enhanced protection at the submissions of draft nomination for inscription on the World Heritage List

In the process of nomination for inscription on the World Heritage List, States Parties may submit draft nominations so as to have completeness checks by the World Heritage Center. However, the World Heritage Center does not have the authority to carry out a completeness check on the requests for the granting of enhanced protection. Therefore, it should be made clear in the modified Operational Guidelines that the World Heritage Center does not check the parts concerning the granting of enhanced protection and that the Secretariat of the Hague Convention should check them at an appropriate time.

3. The case of withdrawals of nominations for inscription on the World Heritage List

States Parties may withdraw their nominations after the evaluation of ICOMOS, in particular when they are not recommended for inscription. We should make sure that this means that the simultaneous request for the granting of enhanced protection, if such nominations are submitted as a joint request, is also cancelled.

If States Parties do not withdraw such nominations and the World Heritage Committee makes other decision than inscription (i.e. Decision not to inscribe, Referral or Deferral), paragraph 36 of the Guidelines for the implementation of the Second Protocol (hereinafter referred to as “the Guidelines”) cannot be applied in this case. Furthermore, the fact that these properties had not been inscribed on the World Heritage List could have negative influence on the considerations about the granting of enhanced protection. Therefore, we should be careful not to produce negative results contrary to the main purpose of Belgium’s proposal, which is to promote the requests for the granting of enhanced protection.

4. Mixed Heritage and Cultural landscapes

In light of article 1 of the 1954 Hague Convention and article 1 (b) of the Second Protocol, the Committee for the Protection of Cultural Property in the Event of Armed Conflict should discuss whether the joint request would be applicable to the nomination for Mixed Cultural and Natural Heritage and Cultural landscapes. It is possible that these categories of heritage may not be suited to the procedures of joint requests. It would be better to wait for the result of ICOMOS’s ongoing study on article 10 of the Second Protocol; therefore, it is not appropriate to prejudice the status of these categories of heritage by stipulating in the Operational Guidelines at this stage.

5. Serial properties nominations

(1) Requests for the granting of enhanced protection for all of the serial properties nominated for inscription on the World Heritage List

It should be specified in the modified Operational Guidelines that, when a nomination consists of serial properties within the territory of different States Parties, all of these countries must be States Parties to the Second Protocol to submit the joint request. Furthermore, it is necessary to discuss whether the suspension or cancellation of enhanced protection of serial properties could be decided on (an) individual component part(s) of the properties, or if such decision, even if it is based on the situation concerning only (a) part(s) of the properties, should be taken for the entire serial properties.

(2) Requests for the granting of enhanced protection for (a) part(s) of the serial properties nominated for inscription on the World Heritage List

The serial properties inscribed on the list do not mean that each property, as a single component part, has OUV on a stand-alone basis. Thus, it is necessary to discuss how paragraph 36 of the Guidelines for the Implementation of the Second Protocol can be applied or interpreted in such cases. In addition, it may be desirable to further revise the format to accommodate this type of joint requests.

6. Nominations to be processed on an emergency basis

There are differences in the conditions to apply for the nominations to be processed on an emergency basis. While paragraph 161 of the Operational Guidelines stipulates that emergency nominations can be submitted “ ... in the case of properties which would be in Danger, as a result of having suffered damage or facing serious and specific dangers from natural events or human activities...”, article 11.9 of the Second Protocol provides that “ Upon the outbreak of hostilities, a Party to the conflict may request, on an emergency basis, enhanced protection of cultural property...”. Therefore, the Operational Guidelines could be more elaborate to the effect that, in the case of joint requests for the granting of enhanced protection within the emergency nominations for the World Heritage List based on paragraph 161 of the Operational Guidelines, the granting of enhanced protection would be examined as follows;

(1) In case of outbreak of hostilities, Article 11.9 of the Second Protocol would be applied (emergency process).

(2) In all other cases (such as natural disasters or environmental pollutions), Article 11.5 of the Second Protocol would be applied (ordinary process).

7. The granting of enhanced protection to the World Heritages which are already inscribed on the List

While it is of great importance and additional value to facilitate the granting of enhanced protection to cultural properties which will be nominated in the future for inscription on the World Heritage List, it is also necessary and more practical to promote the granting of enhanced protection to those properties already on the World Heritage List, given their large number. Therefore, in addition to Belgium's proposal which concerns future nominations, we think that it may be equally worthwhile for the World Heritage Committee to discuss ways to encourage State Parties to both the World Heritage Convention and the Second Protocol to submit a request for the granting of enhanced protection for their properties already on the World Heritage List. We should henceforth further reflect on the modalities of this issue, including such measures as proposed in paragraph 7 of Decision 9.COM.13.