

## **The Hague Convention of 1954 and its two Protocols (1954 and 1999)**

### **Revised format for national reports**

#### **Written observations received from the Parties**

1. Further to the letter from the Assistant Director-General for Culture dated 20 March 2015, regarding the "Revised format for national reports" and the "summary document of national reports", nine Parties to the Second Protocol of 1999 have submitted written observations (Austria, Belgium, Cyprus, Germany, Japan, Lithuania, Palestine, Slovakia, and the Netherlands).
2. The written observations are presented below in raw format and in alphabetic order.

**UNESCO, Hague Convention 2nd Protocol  
Revised Form for Reporting  
Summary Document of National Reports 2012-2013  
Statement Austria**

The Federal Chancellery of Austria (Department II/4, Protection of Monuments and Art Restitution Affairs) welcomes the opportunity to comment on the above mentioned documents and is pleased to provide you with the following statement.

**A. General remarks on the form for reporting**

**1. Necessity of separate reporting forms**

At its 9th Meeting on 18th and 19th of December 2014 in Paris the Committee for the Protection of Cultural Property in the Event of Armed Conflict (hereafter: Committee) requested the Secretariat of the Committee (which is provided by the UNESCO Secretariat) to prepare an electronic form for the submission of national reports in order to collect thematic information on the implementation of the Second Protocol by the Parties and particularly, on the monitoring of cultural property under enhanced protection (see Committee Decision 9.COM 12 and the letter of the Assistant Director-General for Culture addressed to the State Parties of the 1999 Second Protocol of 20 March 2015).

The legal basis for the report and therefore for the electronic form is Article 37 Paragraph 2 of the Second Protocol which compels the State Parties to submit, every four years, a report on the implementation of this Protocol. It does not however provide the legal basis for a combined report about the implementation of other international agreements such as for example the 1954 First Protocol or other documents such as the 1954 Resolution II of the Conference.

Neither does the 1954 Hague Convention (hereafter: Convention) itself provide such legal basis. Taking into account that all State Parties to the Second Protocol are also High Contracting Parties of the Convention and as such obliged to forward a report, at least

every four years, on the implementation of the Convention and the Regulations for its execution (see Article 26 Paragraph 2 of the Convention), the Guidelines for the Implementation of the 1999 Second Protocol (hereafter: Guidelines) invites State Parties to follow the same four-year reporting period for both the reports pursuant to the Convention and the Second Protocol. The report cycles are thus synchronised (see Paragraph 100 of the Guidelines).

Nevertheless the contents of the reports on the Convention and on the Second Protocol have to be formally and materially separate. This is also expressed in Paragraph 100 of the Guidelines which states that reports concerning the implementation of the Convention are addressed to the Director-General, periodic reports on the Second Protocol are addressed to the Committee through the Secretariat. The subsequent assessment and summary of the reports is also being handled in different organisational bodies with the participation of (partly) different stakeholders: Reports on the Convention are to be assessed during the Meeting of the High Contracting Parties, reports on the Second Protocol are to be assessed during the Meeting of the Committee or of the State Parties to the Second Protocol. If possible, all those meetings are coordinated to take place around the same time but they remain formally separate meetings.

Due to these facts it must be concluded that it is not permissible to use a combined form for multiple international agreements and other documents, in particular the 1954 Hague Convention, its First Protocol and its Second Protocol. The electronic form would therefore have to be changed, removing all titles and sections referring to agreements other than the Second Protocol.

For the sake of completeness it should also be mentioned that neither the Convention nor one of its protocols requires the parties to report on the implementation of the 1954 First Protocol. For this reason alone any reference to it should be removed from the form.

## 2. Submissions by State Parties

The form serves as a tool for the preparation and submission of reports by the State Parties to the Second Protocol. The reports usually are the result of a coordinated effort by multiple national institutions and stakeholders and are submitted by the State Parties, not individuals. In order to have the form reflect this fact, several changes are proposed:

**The text block on the first page titled "*Submission prepared by*" should be removed without replacement.**

**The line "*Signature*" at the end of the form should be removed without replacement.**

In order to indicate authorship of the report the official term for signatory parties to the Second Protocol should be used. **The line "*Member State*" (probably referring to "*UNESCO member state*") on the first page should therefore be changed to "*State Party*".**

Also all questions should be adapted in order to avoid directly addressing an individual person ("you").

### 3. Periodic Reporting

The Second Protocol provides for periodic reporting by the State Parties. Therefore the electronic form should include the possibility to refer to previous reports on the Second Protocol or reports on the Convention or rather to focus on the presentation of new developments since the last report. This could help avoid repetitions, such as the explanation of the relevant national legal framework despite the fact that no changes have been made since the previous report.

### 4. More Specific Information

The main purpose of periodic reporting is the regular exchange of information among the State Parties themselves. As such it might also be useful to learn, why a State Party has not (yet) implemented a certain measure.

The form should therefore include the request to provide further information if possible after each question, no matter if the answer was "YES" or "NO". The according text module could read as follows: *„Please explain and provide, if possible, more specific information (including, if applicable, a reference to relevant parts of former reports or reports on the implementation of the Hague Convention)“.*

## B. Remarks on the individual sections of the form

Sections I. to III. should be removed without replacement (see above A.1.).

### Section IV. :

- **Paragraph 1 "General provisions regarding protection":** The Second Protocol only requests State Parties to provide information on the implementation of the Second Protocol (Art. 26 Para. 2). This primarily means taking domestic measures, legislative or other, which expediently can be taken in peacetime in order to prepare and facilitate the compliance with the Second Protocol in the event of armed conflict or occupation. Questions of compliance in the event of a specific armed conflict or occupation are therefore generally not part of the report.

The only supplement to this can be found in Paragraph 102 of the Guidelines which asks State Parties which are occupying powers to inform how the provisions of the Protocol concerning the protection of cultural property in occupied territory are complied with. Due to its wording ("requests"), the non-binding legal nature of the Guidelines and the fact that it does not have a corresponding provision in the Convention or its Protocols this supplement does not oblige the State Parties to report on the compliance with the

provisions of the Second Protocol. **This fact should be pointed out accordingly in Section IV. Paragraph 1 Subparagraph ii.**

- **Paragraph 2 "Enhanced protection":** Due to logical and structural considerations the order of the question should be changed. First the reporting State Party should state whether or not cultural property under its jurisdiction or control has been included in the List of Cultural Property under Enhanced Protection yet.

Only if the answer is "YES" the subsequent questions concerning (ii) the conditions of Articles 10 (a), 10 (b) and 10 (c), (iii) the monitoring mechanism for cultural property under enhanced protection, (iv) the use of a distinctive emblem for cultural property under enhanced protection can be answered.

If the reporting State Party answers "NO", it can immediately proceed to answering question (v) concerning the submissions of a tentative list of cultural property for which enhanced protection should be granted to the Committee.

According to Article 11 Paragraph 1 of the Second Protocol the tentative list is a national (not an international) instrument. The preparation and inscription of cultural property on this list is therefore a national matter. This should be expressed in the wording of question (v), which could read as follows: **"Has a list of cultural property for which the reporting State Party intends to request the granting of enhanced protection ("tentative list") been submitted to the Committee?"**

- **Paragraph 3 "Criminal responsibility and jurisdiction":** The implementation of Article 15 and Article 21 of the Second Protocol requires the adoption of mostly different and separate measures. Therefore the questions should be separated as well. Additionally the question concerning **Article 16 should be included** in this paragraph, as it is closely related to Article 15, and the order of the subparagraphs should be adapted to match the order of the Articles in the Second Protocol.

- **Paragraph 4 "Jurisdiction":** As outlined above the content of Paragraph 4 should be included in Paragraph 3.

- **Paragraph 5 – 7:** The topics of financial and technical assistance should be separated and more detailed questions added. Additionally the order of the paragraphs should be changed as follows: First the paragraph on "Dissemination" (new Paragraph 4), then the "Fund" (new Paragraph 5) and finally "International Assistance" (new Paragraph 6).

- **Paragraph 8 "Single national focal point":** The wording of the question should be corrected to match Paragraph 103 of the Guidelines. The Guidelines only provide for a single national focal point, the State Parties should therefore not be invited to provide the Secretariat with additional national points of contact as this would constitute a departure from the Guidelines. The intention behind this provision is to put a stop to the practice of multiple national institutions independently (without consulting with each other)

communicating with the Secretariat (and vice versa). Therefore Paragraph 103 of the Guidelines automatically institutes each State Party's Permanent Delegation to the UNESCO as the single national focal point until or unless the State Party names a different institution as single national focal point. **The wording of Paragraph 8 should therefore be changed accordingly.**

**Section V. :**

After the removal of the first three sections as outlined above (see A.1.) it seems more practical to abandon the division of the form into sections. As the remaining Section V. also concerns the implementation of the Second Protocol it would be appropriate to convert it into a **new Paragraph 9.**

Paragraph 104 of the Guidelines invites the State Parties of the Second Protocol to inform the Committee through the Secretariat, on a voluntary basis, of all legislative, judicial or other matters relevant to the Parties' implementation of the Second Protocol. This – in contrast to the obligatory content of the national reports – **supplementary information** should be addressed as such in the form.

**Section VI. :**

The question of national official translation(s) of the Second Protocol also concerns the implementation of the Second Protocol and should therefore be converted into a **new Paragraph 7** (before the new Paragraph 8 "Single national focal point").

In order to help the assessment of the proposed changes by the Secretariat both a draft of the form tracking the changes and a cleaned up version of the form can be found in the attachment. For further information/discussion please do not hesitate to contact the Department using the contact information at the top of this letter.

**Attachment**

15. May 2015  
Für den Bundesminister für  
Kunst und Kultur, Verfassung und Medien:  
BAZIL

**Elektronisch gefertigt**

In reference to letter CLT/HER/CHP/15/1623 and our telephone conversation, please find below Belgium's observations, all of which relate to point IV:

Move point (v) to point (i) as the Tentative List is usually a preliminary step, even if it is neither mandatory nor essential;

Give details of the current point (II), by providing a criteria-based justification structure underneath the sentence requesting further information: 10 a), 10 b) and 10 c).

Remove the current point (IV): in the absence of an emblem for the Second Protocol, this field is premature. It may be considered at a later date if the Meeting of the Parties approves the emblem proposed by the Committee.

Please also note that the Belgium experts agree with part B of document CLT-14/9.COM/CONF.203/12.



REPUBLIC OF CYPRUS  
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11 May, 2015

Mr Emile Glélé  
Programme Specialist  
Cultural Heritage Protection  
Treaties Section  
E-mail: [99SP@unesco.org](mailto:99SP@unesco.org)

Dear Mr Glélé,

SUBJECT: FORM FOR REPORTING: SECOND PROTOCOL TO THE HAGUE  
CONVENTION OF 1954 FOR THE PROTECTION OF CULTURAL PROPERTY IN THE  
EVENT OF ARMED CONFLICT

I refer to Mr Alfredo Pérez de Armiñán's letter dated 20 March 2015 concerning the above subject and I would like to inform you that the Department of Antiquities agrees with the recommended additions to the revised form for reporting, which provide for additional emphasis on enhanced protection properties. The proposed additions to the form should be reflected in the new summary document thus improving the monitoring of properties under enhanced protection, which will also mirror the intentions of Parties concerning the submission of tentative lists. The same format of the summary document can continue to be used with the addition of the new information requested in the form for reporting.

Yours sincerely,

  
(Dr. Marina Solomidou-Ieronymidou)  
Director  
Department of Antiquities



Following a letter from the Assistant Director-General for Culture dated 20 March 2015, please find below two comments by Germany on the revised format for reporting on the implementation of the Second Protocol (1999) to the Hague Convention (1954) for the Protection of Cultural Property in the Event of Armed Conflict.

1. Germany would prefer to maintain the current version of Section IV.2 as amended on 26.03.1999. The report should inform about the actual implementation of the Hague Convention (1954) for the Protection of Cultural Property in the Event of Armed Conflict and its two Protocols (1954 / 1999). It should not contain mere intentions concerning the “enhanced protection” of cultural property. Therefore, the additional value of the proposed “Tentative List” (point IV.2 (v)) does not become clear.

2. Why does the revised format (new point IV:2(iv)) repeat the question from the old format (old point IV:2(i)) on the use of a distinctive emblem for cultural property under enhanced protection? Since the revised format could only be used after a respective decision of the Meeting of States Parties to the Second Protocol in December 2015, the format would possibly need to be revised once again.

Please do not hesitate to contact the German Delegation if you need any further information.

Subject: Japanese Comments regarding the submission of national reports on the implementation of the Second Protocol to the Hague Convention of 1954 for the Protection of Cultural Property in the Event of Armed Conflict (response to the letter Ref: CLT/HER/CHP/14/1623)

Japan would like to draw your attention to the following points for the improvement of the revised form for reporting.

- 1) In its decision 9.COM 12 taken at its 9th Meeting, the Committee requested the Secretariat to prepare an electronic form for the Submission of national reports, but the new form includes a designated space for the signature which might not be necessary.
- 2) There are several typing errors in the document, for example in “II. Resolution II of the 1954 Conference” (page 3), (i) is repeated twice in the list or in IV.3 (page 5) it is mentioned “Articles 15 “et” 21” in French. The form should therefore be reviewed.
- 3) When there are references to past documents, for example to national reports, in the letter to States Parties, it would be better to put a link or the full number of the document.
- 4) Given that not all States Parties are also parties to the Second Protocol, it would be advisable to have the revised form of reporting approved at/by the Meeting of the High Contracting Parties at the end of this year.

We analyzed your request Ref .: CLT/HER/CHP/14/1623 (20 March 2015) about National reports (CLT-14/9COM/CONF.203/12 - <http://unesdoc.unesco.org/images/0023/002308/230819E.pdf>); and Consideration of national reports on the implementation of the Second Protocol 2012-2013 (CLT-13/8.COM/CONF.203/9 - <http://unesdoc.unesco.org/images/0023/002301/230118E.pdf>). We do not have comments, suggestions or improvements on these documents.

However we have a proposal for one item from the **2013-2016 Report on the implementation of the 1954 Hague Convention and its two (1954 and 1999) Protocols** (part IV (2) Enhanced protection). As the National reports are submitted every four years, **in our opinion there is not** a very clear part IV(2) subparagraph (i) the question of intention to request enhanced protection for cultural property. The fact National Reports are submitted for the previous year, and above-mentioned issue is raised for the future, so we would suggest to include in this issue a particular period and arrange this question as follows:

**„2. Enhanced protection (Chapter 3)**

The Second Protocol establishes an enhanced protection regime for cultural property, provided that the property is cultural heritage of the greatest importance for humanity, is properly protected by administrative and legal measures, and is not and will not be used for a military purpose or to shield military sites.

- (i) Do you intend to **request the granting** of enhanced protection for a cultural property **during the next four years?**

YES:

NO:

Name of the cultural property:“

We would like to thank the Secretariat for the quality and clarity of the revision of the national report on the implementation of the Hague Convention of 1954. However, we would like to make a few comments. Indeed, the yes or no answers (Yes/No) do not reflect the different situations that may exist within the framework of the implementation of the Convention of 1954. Perhaps a section allowing for general observations to be included a fortiori for certain questions to which the answers requires further qualification could be added to resolve this problem.

**Ministry of Culture of the Slovak Republic**

Cultural heritage section  
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Assistant Director-General for Culture  
United Nations Educational Scientific and Cultural Organization  
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Your ref./date   Our ref.  
MK-2017/2015-221/7138

Contact/tel.  
RNDr. Prokešová

Bratislava  
06 May 2015

Dear director,

In response to your letter CLT/HER/CHP/14/1623 containing information on the proposed electronic form for the submission of national reports on the implementation of the Second Protocol by Parties and information on the monitoring of cultural property that is under enhanced protection, we submit the following observations:

I. Article 10(a)

- We support the proposal that you sent stipulating that the Party should justify the extraordinary importance of the cultural property under enhanced protection by means of a list of characteristics of the property constituting valuable cultural heritage, and the reason why their conservation and presentation is of value to humanity.

II. Article 10(b)


- We agree that on this point the form should include measures to protect the cultural property against the foreseeable effects of armed conflict, including in particular administrative measures – stocktaking, emergency action plans and the creation of bodies responsible for the protection of cultural property. The competent bodies for the protection and security of cultural property should be made up of representatives of the ministry of culture, the ministry of defence and the ministry of interior and there should be regular communication between them to facilitate a rapid response to urgent threats.

III. Article 10(c)

- The Slovak Republic has no cultural property that is used for military purposes or to shield military sites.

IV. Tentative list

- We do not believe that Parties should be obliged submit a tentative list of cultural property for which they intend to request the granting of enhanced protection.

  
PhDr. Pavol Šimunič, CSc.  
Director-general

Referring to the letter of ADG Culture, dated 20 March 2015, we are happy to send you some remarks regarding the revised reporting form.

We do support the proposed form, with the different questions relating to the Hague Convention implementation.

We would suggest though to include more multiple choice questions. It would enable the Secretariat to establish more easily and better (quantitative) analyses. E.g. which articles are implemented well, and with which articles do several (High Contracting (HC) Parties appear to have some difficulties, challenges or even problems.

Please refer to examples of the reporting forms of the 2005 Convention and also the WHC, where some experience has been developed.

A further multiple choice format could also help the exchange between Parties. Instead of scrolling through (long) texts, you might more easily see in which states comparable issues are at stake, or which states have found desired solutions. In this way the report develops more into an instrument of exchange of knowledge and best practices, and not only an obligation of the (HC) Party to the UNESCO Secretariat or the Second Protocol Committee.

Questions could be added on:

- awareness raising (for the public at large, or towards specific stakeholders)
- cooperation with national Blue Shield committees
- synergies with other conventions and how these are obtained in the national implementation

As regards enhanced protection (page5): The option to answer 'if no' could be added under ii and/or the following questions.

This reaction has been established with the help of the Netherlands National UNESCO Commission.