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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  
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#### Item 14 of the provisional agenda: National reports

The present working document explains the results of the reflection carried out within the Bureau of the Committee regarding national reports, including the monitoring of cultural property under enhanced protection, and the format of the summary document submitted to the Committee by the Secretariat. In this respect, the present document also proposes to the modalities to be implemented with regard to consideration by the Bureau of the Committee.

**Draft document:** paragraph 12.

## **I. Introduction**

1. During its eighth meeting (December 2013), the Committee for the Protection of Cultural Property in the Event of Armed Conflict (hereafter the "Committee") adopted the decision 8.COM 9, which:

"invites the Bureau to begin reflecting upon the issue of national reports, including the monitoring of cultural property under enhanced protection, and the format of the summary document submitted to the Committee".

2. The national reports constitute fundamental documents. On the one hand, they allow the Parties to the 1999 Second Protocol to assess the practices that they are initiating to implement this treaty instrument as optimally as possible. In this respect, the national reports and the document summarising national reports produced by the Secretariat (hereafter the "summary document") constitute a collection of best practices that are particularly useful for the purposes of inspiring national actors in making decisions (administrative, practical, and legal) relative to the protection of cultural property in the event of armed conflict. On the other hand, the national reports and the summary document also allow the Committee to exercise one of the key responsibilities expressly conferred thereon by the 1999 Second Protocol, namely to:

"[...] comment on reports of the Parties, to seek clarifications as required, and prepare its own report on the implementation of this Protocol for the Meeting of the Parties"<sup>1</sup>.

## **II. Reflection carried out by the Bureau on the question of national reports and the summary document**

3. During the informal consultation between the Bureau of the Committee and the Secretariat (20 May 2014), the Chairperson of the Committee discussed the question of national reports and the summary document with the members of the Bureau in order to identify the main actions necessary to best take advantage of the information and best practices that are shown in the national reports submitted by the Parties.
4. According to the terms of this reflection, it appears that setting up an electronic form for the purpose of submitting national reports constitutes a relevant approach. More precisely, it is apparent to members of the Bureau that moving in such a direction would allow generation, thanks to the aforementioned electronic form, of statistical data indicating the trends observed in the implementation of the Second Protocol. On this basis, in accordance with Article 27 (1) (d) of the 1999 Second Protocol, the Committee would be able to make relevant observations and, as appropriate, recommendations to the Parties in view of promoting the implementation of the 1999 Second Protocol. Furthermore, Article 27 (1) (c) of the Second Protocol, which assigns to the Committee the responsibility of monitoring and supervising the implementation of the Second Protocol, while promoting the identification of cultural property under enhanced protection, would allow the latter, once the recommendations have been made, to go back to the Parties in order to ask how they are receiving said recommendations.
5. The result is that the summary document produced by the Secretariat would take the form of a report showing the different trends observed for the implementation of the 1999 Second Protocol, the 1954 Hague Convention and its 1954 First Protocol (if applicable), and would be submitted to the Committee to allow it to study such trends and, as appropriate, make recommendations to the Parties.

## **III. Modalities of the implementation of the reflections carried out by the Bureau of the Committee**

6. In order to contribute to the discussions of the Committee on the subject of implementing the studies carried out by its Bureau on the issue of national reports, including the monitoring of

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<sup>1</sup> Article 27 (1) (d) of the Second Protocol of 1999.

cultural property under enhanced protection and the summary document, the Secretariat proposes the following elements:

#### **A. Format of the summary document**

7. Once the on-line form has been prepared for submitting national reports by the Parties – the Secretariat is responsible for its design<sup>2</sup> – the summary document should be presented by theme, in order to show the trends concerning the implementation by the Parties of the 1999 Second Protocol, the 1954 Hague Convention, and its 1954 First Protocol (as appropriate).
8. In its current state, the summary document consists of a summary of the national reports submitted by the Parties with regard to certain provisions of the 1999 Second Protocol, the 1954 Hague Convention (all Parties being automatically bound by the said Convention) and, if applicable, its 1954 First Protocol; the implementation of these three instruments being intimately linked<sup>3</sup>.
9. As the online form "Format for reporting" offers a range of more advanced questions – which would lead the Parties to provide more detailed information on their experience to the Secretariat – it does not seem necessary to move away from current practice concerning the summary document. Indeed, examining it should be sufficient, firstly, to identify issues relative to the protection of cultural property that should be the subject of particular attention by the Committee and, secondly, to promote the best practices initiated by the Parties, particularly through the recommendations of the Committee.

#### **B. Monitoring of cultural property under enhanced protection**

10. To illustrate this, it appears worthwhile to put forward the study concerning the "monitoring of cultural property under enhanced protection", which is specifically addressed in the Committee's decision 8.COM 9. On this theme, the summary document could, in particular, make use of the following elements taken from the practices of the Parties as reflected in their national reports, with particular emphasis on the practice of the Parties having cultural property under enhanced protection<sup>4</sup>:
  - Concerning Article 10 sub-paragraph (a)
    - Explanation of the arguments which, according to the Party, could justify, justify, or continue to justify the greatest importance for humanity of a cultural property benefiting from enhanced protection<sup>5</sup>.

<sup>2</sup> The current model format of the national report is available on: [http://www.unesco.org/new/fileadmin/MULTIMEDIA/HQ/CLT/pdf/hague\\_nat\\_reporting\\_format\\_fr\\_2013\\_0305.pdf](http://www.unesco.org/new/fileadmin/MULTIMEDIA/HQ/CLT/pdf/hague_nat_reporting_format_fr_2013_0305.pdf) (consulted on 15 October 2014).

<sup>3</sup> See "Examination of national reports on the implementation of the Second Protocol of 1999 2012-2013", CLT-13/8.COM/CONF.203/9, especially paragraphs 2 and 3. Available on: [http://www.unesco.org/new/fileadmin/MULTIMEDIA/HQ/CLT/pdf/8COM-9-synthesis-national-reports\\_en\\_20131204.pdf](http://www.unesco.org/new/fileadmin/MULTIMEDIA/HQ/CLT/pdf/8COM-9-synthesis-national-reports_en_20131204.pdf) (consulted on 14 October 2014).

<sup>4</sup> It is worth remembering that the granting of enhanced protection by the Committee to a cultural property under the jurisdiction of a Party does not imply that this Party is exempt from all obligations. Indeed, the granting of enhanced protection and the maintenance of this protection implies that the Party continuously ensures the realisation of the criteria stated in article 10 of the Second Protocol. In this respect, article 14 (1) of the Second Protocol emphasises that:

" Where cultural property no longer meets any one of the criteria in Article 10 of this Protocol, the Committee may suspend its enhanced protection status or cancel that status by removing that cultural property from the List".

<sup>5</sup> Paragraph 36 of the Guidelines for the implementation of the Second Protocol states that:

"It is presumed that the Committee, subject to other relevant considerations, will consider that immovable cultural property inscribed on the World Heritage List satisfies the condition of greatest importance for humanity".

- Concerning Article 10 sub-paragraph (b)
  - Explanation of the measures preferred, or to be preferred, by the Parties to ensure the continuous realisation of the criteria stated in Article 10, sub-item (b) of the Second Protocol, including after the Committee has granted enhanced protection;
  - Explanation of the distinctions that the Parties make, as appropriate, between the measures resulting from the implementation of Article 5 of the Second Protocol, and those resulting from the implementation of its Article 10 sub-paragraph (b);
  - Mentioning the national authorities consulted, or to be consulted, for the choice of measures to be adopted to ensure the highest level of protection in accordance with Article 10 sub-paragraph (b), particularly in the area of plans and training programmes for military personnel, as well as in view of transposing, into national criminal legislation, the provisions of Chapter IV of the 1999 Second Protocol relative to enforcement and the jurisdiction of national courts with regard to offences committed against cultural property benefiting from enhanced protection.
- Concerning Article 10 sub-paragraph (c)
  - Mentioning the national authorities consulted, or to be consulted, in view of taking the decision not to use the cultural property proposed for granting enhanced protection for military purposes or to shield military sites, and, in the case where the said property benefits from enhanced protection, statement of the use that is made of it at the time of submitting the national report.
- Tentative list
  - Expression of the desire of a Party to submit, or not to submit, in accordance with Article 11 (1) of the 1999 Second Protocol, a tentative list of cultural property for which it intends to request enhanced protection.

11. On this basis, all of the information assembled from the replies given by the Parties to the online form "Format for reporting", and the summary made from them in the summary document, should allow for monitoring of the cultural property under enhanced protection. More precisely, the Committee will, among other things, be able to identify the measures taken by the Parties having cultural property under enhanced protection to ensure the continuous realisation of the criteria set forth in Article 10 of the 1999 Second Protocol. The same pattern may also be followed, as appropriate, for all of the themes governed by the 1954 Hague Convention and its two Protocols, such as, the training of military personnel and the dissemination of rules relative to the protection of cultural property in the event of armed conflict.

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

**DRAFT DECISION 9.COM 12**

The Committee,

1. Having examined the document CLT-14/9.COM/CONF.203/12,
2. Requests the Secretariat to prepare an electronic form for the submission of national reports in order to collect thematic information on the implementation of the 1999

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In parallel to this provision in the guidelines, the Secretariat has ordered two studies from ICOMOS on the fulfilment of the criteria set out in article 10 sub-paragraph (a) and (b) of the Second Protocol. Nonetheless, introducing a question relative to the arguments that justify, or continue to justify, the greatest importance for humanity of a cultural property benefiting from enhanced protection, to subsequently explain, as appropriate, these arguments in the Secretariat's summary document, would inform the Committee about the practices of the Parties having cultural property inscribed on the List of cultural property under enhanced protection.

Second Protocol by the Parties, and, particularly, on the monitoring of cultural property under enhanced protection;

3. Invites the Parties to inform the Secretariat of their suggestions to improve the summary document, particularly concerning the monitoring of cultural property under enhanced protection;
4. Requests the Secretariat to report to it at its tenth session in 2015.