



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

CLT-10/CONF/204/4

Paris, 14 May 2010

Original: English

**UNITED NATIONS EDUCATIONAL, SCIENTIFIC
AND CULTURAL ORGANISATION**

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

**FIFTH MEETING
(UNESCO HEADQUARTERS, 22-24 NOVEMBER 2010, ROOM XII)**

**ITEM 8 OF THE PROVISIONAL AGENDA:
SYNERGIES BETWEEN THE SECOND PROTOCOL TO THE HAGUE
CONVENTION AND OTHER RELEVANT UNESCO INSTRUMENTS
AND PROGRAMMES**

I. Introduction

1. The fourth meeting of the Committee for the Protection of Cultural Property in the Event of Armed Conflict (“the Committee”) (UNESCO Headquarters, 27-29 May 2009) recommended, among other things, “to the third Meeting of the Parties to provide the Committee with the task of approaching, in the first instance, the World Heritage Committee in order to develop synergies between the List of Cultural Property under Enhanced Protection, the World Heritage List¹, the List of World Heritage in Danger² as well as the Memory of the World Programme.” The third Meeting of the Parties to the Second Protocol (UNESCO Headquarters, 23-24 November 2009) then requested the Committee “to approach the World Heritage Committee with a view to exploring possible cooperation”. It also requested the Secretariat “to further explore synergies with relevant UNESCO instruments and programmes”.

2. Before analyzing possible synergies between the List of Cultural Property under Enhanced Protection and the World Heritage list, it may be helpful to underscore that, following its entry into force, each of UNESCO standard-setting instruments operates in accordance with its content and scope of application. Such scope is delimited by the instrument’s subject matter (primarily the adopted definition of cultural heritage), as well as geographic (States Parties) and temporal factors. Unlike other UNESCO instruments, the Hague Convention and its two Protocols are predominantly applicable in the event of armed conflict and occupation, it is a unique instrument in that it comprises both aspects of international humanitarian law (i. e. provisions for respect of cultural property or penal provisions) and cultural heritage protection law (i. e. the system of the granting of enhanced protection). In this regard, each instrument is operationally autonomous among its States Parties and independent.

3. Depending on the circumstances, two or more international legal instruments may both apply with regard to the same cultural property (-ies) (i.e. the application of the Hague Convention and the World Heritage Convention to the Old Town of Dubrovnik during the conflict in the former Yugoslavia).

4. The 1999 Second Protocol, the 1972 World Heritage Convention and the 2003 Convention for the Safeguarding of the Intangible Cultural Heritage have some common features: the three of them deal with cultural heritage; they created intergovernmental committees; and the systems regarding the manner in which the lists are to be managed by such committees is more or less the same. Each instrument determines, among other things, the functions of its respective committee, whether and to what extent such body may develop guidelines for the implementation of the instrument, and the conditions according to which the committee may inscribe a cultural property or element on a list.

¹ currently 890 properties

² currently 31 properties

5. The conditions for inscription of cultural property on a “list” are specific to each instrument. For instance, the conditions required for the inscription of a cultural property on the World Heritage List are different from those required for inscriptions on the List of Cultural Property under Enhanced Protection under the 1999 Second Protocol. Furthermore, even if a State is party to both instruments, there is no automatic inclusion of cultural property on one list simply because it exists on the other. Similarly, a cultural property cannot be transferred between lists. Indeed, a cultural property may be inscribed on both such lists only if States Parties submit specific requests to each committee, and then the respective committees deem their set of applicable conditions to have been fulfilled. If a cultural property is simultaneously on two or more lists, then it would benefit from each respective regime of protection. For instance, if such a property is destroyed during an armed conflict, such destruction could be sanctioned under the 1999 Protocol and the 1972 Convention. It should be noted that the latter does not provide directly for such sanctions.

II. Synergies between the List of Cultural Property under Enhanced Protection established by the Second Protocol, and the World Heritage List and List of World Heritage in Danger, both instituted under the 1972 World Heritage Convention

6. Article 27(1)(b) of the Second Protocol provides for the establishment, maintenance and promotion of the List of Cultural Property under Enhanced Protection (“the List”) by the Committee. Cultural property complying with the three conditions of Article 10 of the Second Protocol³ may be granted enhanced protection by the Committee. The Second Protocol protects all cultural property defined by Article 1 of the Hague Convention⁴ (i.e.

³ Cultural property may be placed under enhanced protection provided that it meets the following three conditions:

- a. it is cultural heritage of the greatest importance for humanity;
- b. it is protected by adequate domestic legal and administrative measures recognising its exceptional cultural and historic value and ensuring the highest level of protection;
- c. it is not used for military purposes or to shield military sites and a declaration has been made by the Party which has control over the cultural property, confirming that it will not be so used.

⁴ Article 1. Definition of cultural property

For the purposes of the present Convention, the term ‘cultural property’ shall cover, irrespective of origin or ownership:

(a) movable or immovable property of great importance to the cultural heritage of every people, such as monuments of architecture, art or history, whether religious or secular; archaeological sites; groups of buildings which, as a whole, are of historical or artistic interest; works of art; manuscripts, books and other objects of artistic, historical or archaeological interest; as well as scientific collections and important collections of books or archives or of reproductions of the property defined above;

(b) buildings whose main and effective purpose is to preserve or exhibit the movable cultural property defined in sub-paragraph (a) such as museums, large libraries and depositories of archives, and refuges intended to shelter, in the event of armed conflict, the movable cultural property defined in sub-paragraph (a);

both movable and immovable), while the World Heritage Convention protects only three categories of immovable cultural property (i.e. monuments, groups of buildings and sites), which are of outstanding universal value (cf. Article 1 of the World Heritage Convention⁵). Thus, in practice both instruments may protect the same cultural property.

When considering the condition of “the greatest importance of humanity” with regard to Article 10(a) of the Second Protocol, the Committee will deem immovable cultural property inscribed on the World Heritage List in principle as satisfying this condition (i. e. paragraph 36 of the Guidelines for the Implementation of the Second Protocol).

7. When considering the condition of the protection by adequate domestic legal and administrative measures recognizing its exceptional cultural and historic value and ensuring the highest level of protection of sites already inscribed on the World Heritage List, the Committee may also wish to consider relevant existing legislative and regulatory measures (cf. paragraph 98 of the Operational Guidelines for the Implementation of the World Heritage Convention).

8. As to the granting of international assistance to cultural property under enhanced protection that has already been inscribed on the World Heritage List, or the List of World Heritage in Danger, the Committee will consider assistance already provided by the World Heritage Committee and will thereby determine whether any further assistance should be granted (cf. paragraph 137 of the Guidelines for the Implementation of the Second Protocol).

III. Synergy between the List established by the Second Protocol, and the Representative List of Intangible Cultural Heritage of Humanity and the List of Intangible Cultural Heritage in Need of Urgent Safeguarding, both established by the 2003 Convention for the Safeguarding of the Intangible Cultural Heritage

(c) centers containing a large amount of cultural property as defined in sub-paragraphs (a) and (b), to be known as 'centers containing monuments'.

⁵ Article 1

For the purposes of this Convention, the following shall be considered as 'cultural heritage':

monuments : architectural works, works of monumental sculpture and painting, elements or structures of an archaeological nature, inscriptions, cave dwellings and combinations of features, which are of outstanding universal value from the point of view of history, art or science;

groups of buildings : groups of separate or connected buildings which, because of their architecture, their homogeneity or their place in the landscape, are of outstanding universal value from the point of view of history, art or science ;

sites : works of man or the combined works of nature and of man, and areas including archaeological sites which are of outstanding universal value from the historical, aesthetic, ethnological or anthropological points of view.

9. It should be pointed out that the material scope of the Second Protocol and the 2003 Convention are not identical; however, they may partially overlap. The Second Protocol protects “works of art; manuscripts, books and other objects of artistic, historical or archaeological interest; as well as scientific collections and important collections of books or archives or of reproductions of the property defined above ...”(cf. Article 1(a) of the Hague Convention), while the 2003 Convention aims at safeguarding “the practices, representations, expressions, knowledge, skills as well as the instruments, objects, artefacts and cultural spaces associated therewith”, which “communities, groups and, in some cases, individuals recognize as part of their cultural heritage.” (cf. Article 1(a) of the 2003 Convention). The instruments, objects and artefacts that are typically included in the context of elements inscribed on the List of Intangible Cultural Heritage in Need of Urgent Safeguarding or the Representative List of Intangible Cultural Heritage of Humanity are generally not unique properties but often exist in multiples.

10. When considering requests for enhanced protection of movable cultural property already entered on the the List of Intangible Cultural Heritage in Need of Urgent Safeguarding or the Representative List of Intangible Cultural Heritage of Humanity, the Committee may wish to take into consideration the latter inscription when evaluating the condition of the greatest importance for humanity.

IV. Synergy between the List established by the Second Protocol and the 1970 Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property

11. As the 1970 Convention exclusively protects movable cultural property⁶, a synergy with the Second Protocol may be developed with regard to the fight against illicit traffic of

⁶ Article 1 of the 1970 Convention:

For the purposes of this Convention, the term 'cultural property' means property which, on religious or secular grounds, is specifically designated by each State as being of importance for archaeology, prehistory, history, literature, art or science and which belongs to the following categories:

- (a) Rare collections and specimens of fauna, flora, minerals and anatomy, and objects of palaeontological interest;
- (b) property relating to history, including the history of science and technology and military and social history, to the life of national leaders, thinkers, scientists and artist and to events of national importance;
- (c) products of archaeological excavations (including regular and clandestine) or of archaeological discoveries ;
- (d) elements of artistic or historical monuments or archaeological sites which have been dismembered;
- (e) antiquities more than one hundred years old, such as inscriptions, coins and engraved seals;
- (f) objects of ethnological interest;
- (g) property of artistic interest, such as:

such movable cultural property inscribed on the List in the event of armed conflict or occupation.

12. In addition, the Committee may wish to consider any administrative or legal measures taken by the States party to the 1970 Convention when evaluating whether a condition of Article 10(b) of the Second Protocol has been fulfilled.

V. The Memory of the World Programme

13. UNESCO's Memory of the World Programme aims to fully preserve and protect humanity's documentary heritage. Besides striving for the reconstitution and accessibility of documentaries, it also attempts to protect documentary heritage against deliberate destruction, i.e. during an armed conflict. The Memory of the World Register includes tangible objects such as documents, manuscripts, libraries and archives (193 inscriptions as of 1 March 2010). In particular, as far as libraries or archives are concerned, such property could be both protected under the Memory of the World Register and the List provided that, in the latter case, it complies with the three conditions of Article 10 of the Second Protocol.

14. The International Advisory Committee decides on the inscriptions of documentary heritage on the Memory of the World International Register according to its own procedures. The conditions for inscription are set forth in point 4.2 of the General Guidelines to Safeguard Documentary Heritage (2002) and include, among the criteria, authenticity, irreplaceability and world significance.

15. The Committee may wish to take into account the inscription of a specific property into the Memory of the World Register when evaluating the condition of the greatest importance for humanity (cf. paragraph 37 of the Guidelines for the Implementation of the Second Protocol).

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- (i) pictures, paintings and drawings produced entirely by hand on any support and in any material (excluding industrial designs and manu-factured articles decorated by hand);
 - (ii) original works of statuary art and sculpture in any material;
 - (iii) original engravings, prints and lithographs ;
 - (iv) original artistic assemblages and montages in any material;
 - (h) rare manuscripts and incunabula, old books, documents and publications of special interest (historical, artistic, scientific, literary, etc.) singly or in collections ;
 - (i) postage, revenue and similar stamps, singly or in collections;
 - (j) archives, including sound, photographic and cinematographic archives;
 - (k) articles of furniture more than one hundred years old and old musical instruments.

VI. Technical and international assistance and the Funds

16. A number of UNESCO standard-setting instruments provide for the possibility of parties and, in certain cases, non-parties to request international and technical assistance to achieve their respective objectives (cf. Articles 32 - 33 of the Second Protocol; Articles 13 and 19 - 26 of the World Heritage Convention; Articles 19 - 24 of the 2003 Convention for the Safeguarding of the Intangible Cultural Heritage).

17. This assistance may also include financial aid from Funds established by such instruments (cf. Article 29 of the Second Protocol; Article 15 of the World Heritage Convention; Article 25 of the 2003 Convention for the Safeguarding of the Intangible Cultural Heritage).

18. In order to avoid duplication of means and to ensure coherence and synergy in the implementation of different UNESCO instruments for the protection of cultural property, the Committee may consult with the Secretariat on whether assistance for the same purpose was already requested or obtained from the Secretariat within the framework of another instrument (cf. paragraph 143 of the Guidelines for the Implementation of the Second Protocol).

VII. Synergy on dissemination of UNESCO standard-setting instruments

19. As UNESCO's standard-setting instruments complement each other, UNESCO Member States may wish to encourage further cooperation among national bodies responsible for the implementation of those instruments in order to design comprehensive national implementation programmes based on all such instruments in order to ensure that they will be made known to the general public and the target groups (e.g. cultural heritage professionals, the military and law enforcement personnel) while taking into account the specificity of each instrument.

Draft Decision:

The Committee:

Recalling the relevant recommendations of its fourth meeting and the third Meeting of the Parties to the Second Protocol with regard to the development of synergies with relevant UNESCO instruments and programmes;

1. *Takes note* of document CLT-10/CONF/204/4 concerning synergies between the Second Protocol to the Hague Convention and other relevant UNESCO instruments and programmes;
2. *Requests* its secretariat to ensure that synergy foreseen in document CLT-10/CONF/204/4 applies at all levels when assisting Parties with the identification, submission of proposals for enhanced protection, inclusion of cultural property on the List, and protection and safeguarding measures of cultural property both under the 1999 Second Protocol and the 1972 Convention.

3. *Thanking* the Secretariat for its work;
4. *Welcomes* the efforts of the Secretariat to elaborate the cooperation between secretariats of different standard-setting instruments.