

Hague Convention of 1954 and its two Protocols (1954 and 1999)

Procedure for granting enhanced protection

Written observations received from the Parties

1. Further to the letter from the Assistant Director-General for Culture dated 3 July 2015, regarding the "Procedure for granting enhanced protection" as part of the follow up to Decision 9.COM 6 of the Committee, nine Parties to the Second Protocol of 1999 submitted written observations (Belgium, Canada, Cyprus, Germany, Greece, Japan, Mexico, Spain, and The Netherlands).
2. The written observations are presented below in their original format and in alphabetical order.
3. Besides the nine Parties that participated in the consultation phase, the International Committee of the Red Cross as well as the International Blue Shield Committee submitted their written observations to the Secretariat in accordance with Decision 9.COM 6. These have been reproduced in their original format after the written observations of the Parties.

COMMENTS, OBSERVATIONS AND PROPOSALS OF THE REPUBLIC OF ARMENIA
REGARDING THE DRAFT DOCUMENT CLT-15/10.COM/CONF.203/...
“Procedure for Granting Enhanced Protection”

Taking into account the Secretariat’s suggestion to propose to the Tenth meeting of the Committee (a) a methodology to objectively evaluate the conditions set forth in Article 10 and (b) if needed, amendments to the Guidelines and related principles, the Republic of Armenia deems it appropriate to submit the following comments, observations and proposals:

1. Article 10(a) “it is cultural heritage of the greatest importance for humanity”

1.1. The Secretariat’s proposals to add a definition of greatest importance for humanity and to introduce a table of elements justifying “the greatest importance for humanity” into the Guidelines is acceptable (paragraphs 25 and 26 of the Draft Document). Nevertheless, the proposed definition should be broad enough but simultaneously very precise to avoid any ambiguity and improper interpretation.

1.2. Furthermore, there are two more aspects deserving attention: (1) whether the inclusion of a definition will artificially obstruct the procedure of inclusion of new sites, submitted for the enhanced protection to the list, since any definition is of subjective nature and some vital elements may be not deliberately omitted from it, creating even worse conditions for submitting new sites for the enhanced protection (the very notion “the greatest importance for humanity” is of the evaluative, qualitative nature and requires assessment); (2) the inclusion of proposed definition may somehow affect the granting of enhanced protection on the case by case basis, ruling by the provisions of the 1999 Protocol.

1.3. It is worth to mention that a definition suggested by ICOMOS (paragraph 2.2 of the Study) is rather of explanatory nature, but not a precise definition or notion. That is why the proposed definition as well as amendment to the Protocol Guidelines should be very carefully analyzed and amended.

1.4. Meanwhile, the table of elements justifying “the greatest importance for humanity” has to be exhaustive; otherwise we will face extensive interpretation and ambiguity in this aspect as well.

1.5. Addressing the other amendments to paragraphs 31-35 of the Protocol Guidelines proposed by ICOMOS (paragraph 6.5 of the Study) it should be mentioned that they actually do not clarify the issue but rather made technical correlations, which are useless from practical perspectives. It should be also noted that those amendments are not able to provide a single methodology for objective evaluation of the conditions set forth in Article 10.

2. Article 10(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”

2.1. The inclusion of an illustrated list of preparatory measures requiring adoption for every type of cultural property submitted for the enhanced protection may be deemed as justified and reasonable to ensure equal processing of all requests for the granting of enhanced protection.

2.2. Simultaneously the Secretariat’s proposal to include definition of notions (i.e. “inventory”; “emergency measures”; “removal”; and, “in situ protection”) to be drawn up for every kind of cultural property is also deemed as justified and appropriate taking into account that the mentioned notions should be precise enough to avoid any ambiguity and improper interpretation.

2.3. The Secretariat’s proposal to include a table in the Guidelines which will consolidate all preparatory measures requiring adoption for each kind of cultural property is acceptable (paragraph 37 of the Draft document).

3. Article 10(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”.

3.1. **The Secretariat’s proposal¹ regarding an amendment to paragraph 59 of the Guidelines, by which the Non-military use declaration would apply to the cultural property only, and not to its immediate surroundings does not comply with the requirements of the 1999 Second Protocol.**

3.2. Pursuant to Article 12 of the Second Protocol, the Parties to a conflict shall refrain from making cultural property under enhanced protection the object of attack or any use of property or its immediate surroundings in support of military action. Hence, in order to comply with the legal requirements of Article 12 of the Second Protocol, the non-military use declaration should apply not only to the cultural property, but its immediate surroundings as well. Furthermore, Article 15(1(b)) considers “using cultural property under enhanced protection *or its immediate surroundings* in support of military action” as a serious violation of the Protocol (i.e. war crime).

3.3. Anyhow the purpose of the Draft document is to address the criteria set forth in Article 10 of the Protocol but paragraph 59 of the Guidelines linked to the Article 11(2) which is out of the scope of the Draft Document.

3.4. Despite the adoption of the Document CLT-14/9.COM/CONF.203/5, “Cultural property and its immediate surroundings”, Annex 2, it is very dangerous to eliminate the notion “Immediate surroundings” from the Guidelines, keeping it only in paragraph 85 of the Guidelines, as it is proposed therein. It may be deemed as deviation from the will of High Contracting Parties intended to include such notion in the 1954 Hague Convention, as well as in the Second Protocol thereto. The proposed amendments may also reduce the protecting value of the relevant provisions of the Second Protocol and may endanger the whole system of enhanced protection.

¹ The draft Document, paragraph 43 indicates that this proposal was discussed and accepted/consulted by the Committee in April 2015, but there is no information available on such discussion.

Belgium – Translation of the Secretariat

Prior consultations regarding the development of a methodology for the objective evaluation of the three conditions set out in Article 10 of the Second Protocol of 1999 in preparation for the 10th Meeting of the Committee for the Protection of Cultural Property in the Event of Armed Conflict.

Observations from Belgium

1. In §11, replace "Se" with "Ce".
2. In §18, we propose reformulating the first bullet point as follows, in order to maintain consistency with the introductory paragraph:
"La présomption ne bénéficie
- Au niveau des biens culturels immobiliers, qu'au bien culturel immeuble inscrit sur la Liste du patrimoine mondial
- Au niveau du patrimoine documentaire, qu'aux biens culturels inscrits au Registre Mémoire du monde de l'UNESCO ;".
3. In §20, remove the "ce" in the second bullet point.
4. In §21, second bullet point, a footnote could be added referring to § 6.6 of the ICOMOS study which suggests clarifying this concept.
5. Regarding §25, Belgium has several observations:
 - a. The definition proposed by ICOMOS is used in §2.2 2.2 and 6.5 of its study. Sub-paragraph 3 of the definition proposed in 6.5 is clearly superfluous.
 - b. We propose clarifying if the introduction of a definition also implies the question of including the destruction of property constituting an irretrievable loss for humanity, rather than considering this aspect as an evaluation criteria as is currently the case in the Guidelines of the 1999 Second Protocol (see ICOMOS Study, §6.3).
 - c. It is important that the point of view from which enhanced protection is applied to property of national and regional importance be conserved.
6. Regarding §26,
 - a. We propose adding "ainsi que des propositions contenues dans l'étude d'ICOMOS" after "Principes directeurs".
 - b. It should be emphasised that the modifications do not solely concern the Guidelines but potentially also the Format for request for the granting of enhanced protection (justification of the greatest importance for humanity based on the criteria identified in §33, 34 and 35).
 - c. Be advised that, while this paragraph is connected to Article 10a, not to duplicate Article 10b. Reference should be made to scientific works or publications, published academic research etc. Requests for summaries in one of the working languages of the Committee should not be forgotten.
7. We propose adding an additional paragraph in the section regarding the theoretical questions to be addressed, such as those raised by the ICOMOS

study in points 6.6 to 6.8, 6.15 and 6.16, as well as the Observations of the Japanese Government –particularly points 4 and 5 - on 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) prepared by Belgium http://www.unesco.org/new/fileadmin/MULTIMEDIA/HQ/CLT/pdf/CommentairesduJapon-propositionBelge-Fr_01.pdf. If the Guidelines are revised with regard to the question of concepts, the vision must be all-encompassing.

8. In §30, we propose adding "(« Responsabilité pénale et compétence »)" after "Deuxième Protocole".
9. In §31, in order to improve understanding of the paragraph, we propose replacing the end of the paragraph as follows:
"(...) des autres mesures préparatoires, à savoir les mesures de sauvegarde des biens culturels à prendre dès le temps de paix résultant de la mise en œuvre de l'article 5 et couvertes par l'article 10, paragraphe (b) du Deuxième Protocole tels que complétés respectivement par les paragraphes 27 à 29 et 39 des Principes directeurs – premier tiret. ".
10. In §35:
 - a. It could be stipulated that this is the second study, along with the references to the first study (on Article 10(a)) to which the second study refers:
§3.5, §4.7, §5 (3F), §7 (3.4 and 3.5).
 - b. The suggestion made in the ICOMOS First Study aiming to ensure that the Guidelines of the 1999 Second Protocol recognize that the safeguarding measures against the foreseeable effects of an armed conflict are identical to those to protect such property against natural disasters (ICOMOS First Study, §6.15) should also be taken into consideration.
11. In §37,
 - a. It may be of interest to include, within the framework of or in addition to these tables, an appendix by type of cultural property and bring together all of the specifications for each type of property. This work could be progressive;
 - b. it is important to remain at the definition stage of objectives: for States to determine the most appropriate means to achieve them.
12. In §39,
 - a. It would also be helpful to refer to comment 6.9 of the ICOMOS study on 10,a.
 - b. At the end of the paragraph, the possible synergy with the reports requested by the World Heritage Centre could also be indicated, given that the cultural properties under enhanced protection - all currently - are inscribed on the World Heritage List. Another synergy within UNESCO is possible within the framework of the missions related to the World Heritage which would also be placed under enhanced protection; the terms of reference of the mission also include a component relating

to enhanced protection.

13. In §42,

- a. in the brackets, add after "Principes directeurs" the words "qui renvoie à l'article 3 du Deuxième Protocole de 1999".
- b. it may be helpful to provide clarification for the situations in which the army is called upon to carry out surveillance and security measures (e.g. Vigipirate Plan in France, requisitioning of the army to secure access to certain public buildings).

14. In §46,

- a. Belgium cannot accept the Secretariat's interpretation of paragraph 46 of the Guidelines. Paragraph 46 of the Guidelines, as amended, provides that the Secretariat "forwards complete requests to the Bureau for *prima facie* consideration together with a review of completeness prepared by the Secretariat". This *prima facie* consideration cannot be exempt from a prerequisite for the validity of the request, that is to say its admissibility. The notions of "jurisdiction" and "control" are subject to international case law which should be referred to in the Guidelines by developing the content of this case law. This does not require the Secretary to take a stance: it could also be provided for that, in the event of uncertainty on the part of the Secretariat, it request the Bureau to rule on the basis of the Guidelines thus defined, as well as the opinion of the UNESCO Legal Department.
- b. The proposals of the Committee to remove the notion of "immediate surroundings", which should facilitate the implementation of Article 10,c, should be noted.

Consultations on development of a methodology to evaluate requests for the granting of enhanced protection under the Second Protocol to the 1954 Hague Convention for the Protection of Cultural Property in the Event of Armed Conflict

Comments and Observations by Canada on draft document CLT-15/10.COM/CONF.203

Canada became a State Party to the 1954 Hague Convention in 1999 and to its First and Second Protocols in 2005. Since joining these instruments, we have participated actively in initiatives to strengthen their implementation, such as development of the Guidelines for implementation of the Second Protocol. In that same spirit, we are pleased to offer input on the present initiative to strengthen the methodology for evaluation of requests for the granting of “enhanced protection” under the Second Protocol. The Committee for the Protection of Cultural Property in the Event of Armed Conflict and the Secretariat are to be commended for undertaking this important initiative. Canada believes that States Parties should continually seek ways to strengthen implementation of the Convention and Protocols, but in the face of significant risks to cultural heritage that current conflicts present, we feel that an initiative such as this, and the granting of “enhanced protection” under the Second Protocol, takes on a heightened importance and urgency. The efforts of ICOMOS through the studies it has undertaken, and its ongoing contribution to implementation of the Hague instruments, are also to be commended.

Canada offers the following specific observations and recommendations on the draft document:

Discussion concerning Article 10(a) – “greatest importance for humanity”

1. At the heart of the issue of evaluating requests against Article 10(a) is the need to determine the difference between that cultural property which generally enjoys protection under the Convention and Protocols (cultural property of “*great importance to the cultural heritage of every people*”) and that which is deserving of enhanced protection under the Second Protocol (cultural property of “*the greatest importance to humanity*”). Based on Canada’s own domestic experience, evaluating the relative importance of cultural property is unavoidably subjective. In the context of the Second Protocol, States Parties chose to provide guidance to the Committee through a range of considerations and factual elements in the Guidelines (paras 32-37).

Recommendation: It remains unclear why the existing content of the Guidelines is deemed (in paragraph 16 of the draft document) to be insufficient to allow the required evaluation, and Canada urges the Secretariat to elaborate further on that point, as it figures prominently as justification for the strategy being proposed.

2. Canada finds the articulation of the current problem (paragraphs 18-19) unclear, as the basis for the suggested strategy going forward (paragraph 20).

Is the point being made that, with the existing presumption (agreed to by States Parties) that World Heritage Sites are assumed to have met the criteria of Article 10(a), there is a problem

with cultural property being evaluated inconsistently? In other words, is the draft paper implying that it is problematic that one set of cultural property receiving enhanced protection is essentially evaluated for “outstanding universal value” and the rest evaluated for “greatest importance for humanity”? If so, then logically the only solution would be to remove the presumption for World Heritage Sites, rather than define “greatest importance for humanity”, since the latter would not solve the problem of reconciling that concept with “outstanding universal value”.

Recommendation: Although Canada agrees that “greatest importance for humanity” and “outstanding universal value” are not synonymous, Canada would not support removing the current Article 10(a) presumption for World Heritage Sites. In our view, it would create unnecessary additional bureaucracy and requirements for requesting states, and could be seen as implying that, theoretically, the Committee could deem an already designated World Heritage Site as not being of “greatest importance for humanity” and risk undermining the World Heritage Convention and its credibility, as well as UNESCO’s.

On the other hand, is the point being made that, because to date the Committee has only had applications for enhanced protection for properties that are World Heritage Sites, it has never fully grappled with how to evaluate “greatest importance for humanity”? If that is the case, while we would support a strengthened methodology, Canada is unconvinced that – in addition to the existing Guidelines – a definition of “greatest importance for humanity” would be of any practical use and could, conversely, raise a range of problems.

3. Further to the above, Canada does not support development of a definition of the concept of “greatest importance for humanity”. We are not convinced that it will assist the Committee to resolve the specific issues that have been raised, and consider that it would have to be so general as to be of little practical value overall. The definition offered by ICOMOS, for example, is (suitably) very general and in our view, would be of little practical assistance to the Committee.

Canada also views the proposed definition by ICOMOS to be problematic from another perspective: it implies that it is only that heritage which is deemed to be of “greatest importance for humanity” that “should be protected today and as a legacy for the future”. Canada disagrees and feels that this wording calls into question the importance of protecting the wider range of cultural property covered by the Convention and Protocols, namely that which is “of great importance to the cultural heritage of every people”.

Any attempt to develop a useful definition would have to *clarify the distinction between* the two categories of property protected under the Hague instruments: that of “*great* importance to the cultural heritage of every people” and that of “*greatest* importance for humanity”. The ICOMOS draft definition fails to provide assistance in that regard, suggesting instead that what distinguishes the latter is that only it is deserving of protection. Canada disagrees.

Recommendation: In summary, Canada considers the idea of attempting to define “greatest importance for humanity” to be extremely problematic and of no potential practical use to the Committee in resolving the specific issues raised in the draft

document. We do not recommend that it be pursued. We also question the legal standing of any definition: whether defining the concept outside the Second Protocol itself would constitute a *de facto* amendment to the Second Protocol, and even if that were not the case, whether the definition of such an important concept in the Second Protocol should be a matter for the Committee, or whether it would require the approval of States Parties.

4. It is unclear to Canada why the Secretariat indicates in paragraph 19 of the draft document that it is “obliged” to first encourage requests for enhanced protection for cultural property that is already inscribed on the World Heritage List over other cultural heritage facing threats. In Canada’s view, it is the responsibility of States Parties to make requests for the granting of enhanced protection in the order that they deem appropriate.

Recommendation: If the Secretariat is to “encourage” requests for enhanced protection for certain types of properties, it should be on the basis of imminent threats, not on the basis that the property is already on the World Heritage List.

5. It is also unclear what is meant by the Secretariat when it suggests (paragraph 22) that the “restrictive conception” of the notion of “greatest importance for humanity” be “disregarded”. This and other aspects of the draft document risk implying that unless designated for “enhanced protection”, cultural property is otherwise unprotected, and that those responsible for acts against it may act with impunity. Neither, of course, is the case. There should be no inference, even indirectly, that cultural property facing risks during armed conflict or occupation are unprotected under the Convention and Second Protocol unless granted “enhanced protection”. In Canada’s view, to do so risks undermining the Hague instruments altogether.

Recommendation: The Secretariat should clarify the statements made in paragraph 22. The concept of “the greatest importance for humanity” – required to allow for enhanced protection – is by definition a restrictive concept, and intentionally so. In implementing the Second Protocol it is important to respect that original intent, and not alter it after the fact. The provision for enhanced protection under the Second Protocol is clearly intended to be restrictive and based on the importance of the property, not the degree of threat to it.

Discussion concerning Article 10(b) – “highest level of protection”

Canada supports the proposal to provide tools and methodology to assist both States Parties seeking the granting of enhanced protection, and the Committee in considering such requests, in ensuring a common and consistent range of considerations for the demonstration that the property in question enjoys the “highest level of protection”. The work advanced by ICOMOS on this point will, of course, require additional work and consideration with respect to issues specific to movable cultural property.

Discussion concerning Article 10(c) – “non-use for military purposes”

Canada supports the view of the Secretariat that no additional modifications to the Guidelines, other than that referred to in para 43 and already accepted by the Committee, are necessary with respect to Article 10(c).

Aug 28



REPUBLIC OF CYPRUS
MINISTRY OF
COMMUNICATIONS & WORKS



DEPARTMENT
OF ANTIQUITIES
1516 LEFKOSIA

File no.: 4.11.05/20
Tel. no.: 22865843
Fax no.: 22303148

28 August, 2015

Mr Jan Hladik
Secretary
Comitee for the Protection of Cultural Property in the Event of Armed Conflict
E-mail: j.hladik@unesco.org

Dear Mr Hladik,

SUBJECT: ARTICLE 10: PROCEDURE FOR GRANTING ENHANCED PROTECTION,
TENTH MEETING OF THE COMMITTEE

I refer to your electronic mail dated 8 July 2015, concerning the above subject and I would like to inform you that, the Department of Antiquities agrees with the proposals set forth by the Secretariat concerning both paragraph (a) and (b) of Article 10.

With concern to **paragraph (a)** adding a **definition** to the Guidelines broadening the definition of "*the greatest importance for humanity*" is considered to best project the spirit of the Convention and its two Protocols, which are meant to be inclusive and cover as much cultural property as possible. The introduction of a **table** is expected to provide further guidance and assistance to Member States as to the elements needed to justify "*the greatest importance for humanity*" without the table being exhaustive or exclusive as variability among cultural property is a given.

With concern to **paragraph (b)** both the introduction of a "check list" type of table defining the preparatory measures in need of adoption, as well as the enhancement of the monitoring of properties which made the List, it is our belief that this will enable the enhancement of the protection level of sites.

Yours sincerely,

(Dr. Marina Solomidou-Ieronymidou)

Director
Department of Antiquities

XK/γκ
4.11.05/18

Comments by Germany on the propositions brought forward by the UNESCO Secretariat laying out the methodology for the evaluation of requests for enhanced protection under the Second Protocol (1999) to the Hague Convention (1954)

Germany welcomes the efforts taken by UNESCO to further strengthen the protection of cultural property and endorses the Secretariat's respective work, represented by its draft dated 30 June 2015 for the procedure for granting enhanced protection. As a State Party to the Hague Convention as well as its Second Protocol, Germany is supportive of the protective regime for cultural property in the event of armed conflict set up by these treaties. Consequently, Germany supports the idea of improving the effectiveness of the enhanced protection system under article 10 of the Second Protocol by developing a methodology for the evaluation of cultural property. In the following, please find the detailed comments on the Secretariat's draft.

General Introductory Remark

1. Germany wishes to underline the importance that the envisaged document on the procedure for granting enhanced protection must not introduce obligations not agreed upon by the States Parties in these treaties, nor interpret existing obligations in a manner inconsistent with the principles and rules laid down in Part III, section 3, of the 1969 Vienna Convention on the Law of Treaties or with their customary applicability.

Article 10(a) – “Greatest Importance for Humanity”

2. Germany welcomes the Secretariat's approach as laid out in § 25 of the draft.
3. According to the Secretariat's finding (in § 23), the domestic legal qualification of the submitting part should be “respected” when evaluating the property's importance for humanity. In this context it appears warranted to further specify if this is to be understood as a compulsory element in the evaluation procedure as well as by whom and in which stage of the evaluation process this respect of domestic qualification should become relevant.
4. The proposition (in § 26) to include into the Guidelines a table which shall allow for the gathering of factual elements as well as domestic documents to justify the greatest importance for humanity, is generally endorsed as a means of additional evidence of the property's unique cultural character. But because it is the application, on a case-by-case basis, of the factual elements as laid out in the paragraphs 33 and 34 of the Guidelines that establish the necessary credibility

Germany – Original Version

for a State's request for protection, the Guidelines should be clear that any findings in favor of an enhanced protection should be primarily based on these factual elements.

Article 10(b) – “The Highest Level of Protection”

5. The Secretariat's proposal (in § 37) to include into the Guidelines a further table consolidating all the preparatory measures requiring adoption for each kind of cultural property meets Germany's overall consent. Also this table should only be understood as additional, or auxiliary, evidence supporting the fulfillment of the criteria laid down in paragraph 39 of the Guidelines.
6. When specifying the adequate legal and administrative measures to ensure the highest level of protection of cultural property, the Parties must make a conscious decision if that level shall be judged according to a universal standard or according to the circumstances of each application. Though it would appear that a universal standard means treating every State alike—to the detriment of a case-by-case approach—it might at the same time impose too high a level of protection for some States that ultimately bars those States from lodging requests for enhanced protection. Therefore, when drawing up criteria that shall indicate the “highest level of protection”, the Parties to the Second Protocol should seek a balanced approach that takes into account the great varieties of national legal and administrative regimes for the protection and conservation of cultural property.

Article 10(c) – “Non-military Purposes”

7. Germany welcomes the efforts undertaken by the Secretariat to clarify the meaning of article 10(c) of the Second Protocol and to restrict the spatial scope of the non-military use declaration to the cultural property itself. Germany wishes to draw the Secretariat's attention to a legal inconsistency that arises from the interpretation, in § 41, of the legal consequences of the non-military use declaration. In the reading of the Secretariat, the non-military use declaration qualifies as a “unilateral declaration capable of creating legal obligations” as to the Parties' non-military use, which the Secretariat bases on the work of the International Law Commission on unilateral declaration of States.
8. Germany raises some concern regarding this reading of article 10(c) of the Second Protocol due to the questionable legal nature of the non-military use declaration. According to its wording, the applying Party is “confirming” by its declaration that the cultural property will not be used for military purposes. This wording leaves open if the declaring Party is hereby expressing its will to enter into a legal obligation under international law regarding the non-military use of the cultural property in question. Following the second clause of Principle 7 of the Guiding Principles by the International Law Commission applicable to unilateral declarations as referred to by the Sec-

- retariat, in the case of doubt as to the scope of the obligation arising from a unilateral declaration, such declaration has to be interpreted in a restrictive manner. In any way, the Secretariat's assumption requires a greater analysis of the legal nature of article 10(c) of the Second Protocol.
9. Moreover does the said declaration represent only one of the three prerequisites for the granting of enhanced protection under article 10 of the Second Protocol. It is arguably a procedural element, the legal implication of which becomes evident *(i)* once the enhanced protection has been granted and *(ii)* article 12 of the Second Protocol is to be applied.
 10. The assumption that a legal obligation of a Party already arises by submitting the non-military use declaration appears incoherent with the proceeding of granting enhanced protection. Only after an application has been successful the enhanced protection is granted to a cultural property and in turn, the obligation of the Parties to a conflict arises to ensure the immunity of the cultural object under article 12 of the Second Protocol. This becomes apparent when bearing in mind the consequences of a rejected application. Applying the Secretariat's reading would produce the unwanted effect that although the desired effect of an enhanced protection is being denied, the Party's binding declaration under article 10(c) of the Second Protocol would in this case still stand and continue to oblige it.
 11. The Secretariat points out, in § 44, the existence of a divergence as to the party able to request enhanced protection. While under article 11(2) of the Second Protocol the request for enhanced protection is made by the party "which has jurisdiction or control over the cultural property", the non-military use declaration according to article 10(c) of the Second Protocol in turn has to be made by the "Party which has control over the cultural property". Mindful of the fact that legally binding acts pursuant to articles 10(c) and 11(2) of the Second Protocol may be based on diverging legal powers, which in turn may raise issues as to the *de jure* or *de facto* recognition of the acting Party in terms of international law, it is important to maintain that any legal obligations arising from the non-military use declaration itself remain within the normative boundaries of article 11(4) of the Second Protocol, *i.e.* do not have any impact on the international legal status of the acting Party.

Prior consultations regarding the development of a methodology for the objective evaluation of the three conditions of article 10 of the Second Protocol of 1999 in preparation for the tenth meeting of the Committee for the Protection of Cultural Property in the Event of Armed Conflict.

Comments by GREECE

In response to the 1999 Second Protocol Secretariat's e-mail of July 3rd, 2015, asking for remarks by the Bureau and the Committee's Member States as to Document CLT-15/10.COM/ CONF.[203 \(30-06-2015\)](#), Greece would like, first, to thank the Secretariat for preparing such a thorough draft document and, second, to submit the following comments thereto:

1. In para. 1 (under the Introductory part), 3rd and 4th lines, Instead of using the term “enhanced immunity”, we would prefer using the term "immunity", the reason being that immunity, by itself, is a specific and enhanced status.

2. In paragraph 19, if the phrase "...the Secretariat is **obliged**" is used in the sense that this is an approach followed for practical reasons, we don't have any objection, having in mind paragraphs 36 and 37 of the Operational Guidelines. But, generally speaking, we believe that a more conciliatory approach should be used in what concerns properties which are not inscribed on the WH List, but might be more directly threatened and affected.

3. We also agree with paragraph 22 of the draft document in that the List's purpose is to be more inclusive. If this is the case, we are wondering how the proposed new definition (in para.25), to which we in principle agree, would be able to provide a non restrictive frame and, thus, resolve the problem.

4. Furthermore, as to the Table proposed in paragraph 26, we should make sure not to make it exhaustive. We have seen in practice that, whenever there is a Table, the parties concerned should comply with all the parameters included in it. Paragraph 57 of the Guidelines sets at least 6 elements to be fulfilled, as it is the case with paragraph 34 of the Guidelines, setting another 13 elements. Having said that, we would like to express our concern whether the whole procedure is tending to become more complicated for the State-Party when preparing a nomination file.

5. In para. 24, what is meant by "general law"??? Is it the " domestic or national legislation" of the State concerned?

6. As to the criterion established by article 10 para(a) and in accordance with our memories from the discussions held within the Committee during the negotiations for the elaboration of the Operational Guidelines some years ago, the lack in the text of the Guidelines of a specific definition for the term "greatest importance for humanity" was intentional, thus leaving a creative ambiguity to the future applicants of the Guidelines. However, we would not oppose a possible introduction of a specific new definition.

7. In para. 37, there might be a need to add a reference, i.e. Like " as provided in the internal legislation of the ...", or something similar, for the reason that all these measures should become internal law, subject to the specific national legal system of the MS.

8. In paragraph 49, we agree with Secretariat's opinion that no modification of the Guidelines is required, other than the one to be presented at the sixth meeting of the Parties.

In concluding, Greece would like to welcome the efforts undertaken by the Secretariat to clarify the legal and practical parameters of the methodology to follow for de-codifying the very essence of article 10 and its three sub paragraphs.

Japan wishes to make the following comments :

1. In paragraph 26,

The Secretariat proposes the introduction of a table into the Guidelines that would allow for the gathering of all elements that justify “*the greatest importance for humanity*” of cultural property, as provided for in Article 10(a) of the 1999 Second Protocol. In this regard, Japan would like to suggest that a concrete example of the table be presented in order to allow for an in-depth discussion.

2. In paragraph 37,

According to the Secretariat’s proposal, a table consolidating all the preparatory measures, as referred in Article 10(b) of the 1999 Second Protocol should be included into the Guidelines. In reference to this, Japan considers that a concrete example of the table would help with the discussions.

More precisely, this table would include all measures “for each kind of cultural property”. Japan would like to point out that the classification of cultural properties is not limited to moveable and immovable, but also concerns different types of property under the immovable property, such as monuments of architecture, historic areas and museums; each having a different type of legislation. Including the measures for all these properties could complicate the Guidelines. To take these concerns into account, and to create a clear and comprehensible table, Japan would like to suggest that a concrete example of the table be submitted, to serve as the basis for the discussion.

3. In paragraph 38,

Japan also appreciates that the proposal for a definition of the notions of Article 5 of the Second Protocol, detailing the preparatory measures that should be taken in times of peace (preparation of inventories, planning of emergency measures, removal of moveable cultural property, adequate *in situ* protection), will contribute to the clarity of the Guidelines. However, it is indispensable to ensure that the definition will not include unnecessarily strict conditions. In line with the spirit of the Convention, it would be suitable to establish minimum rather than overly rigorous conditions. This would also allow to increase the number of requests for enhanced protection.

Comentarios del Gobierno de México relativos al ejercicio de análisis referente al proceso para la concesión de “protección reforzada” conforme al Segundo Protocolo de la Convención de La Haya de 1954 para la Protección de los Bienes Culturales en caso de Conflicto Armado.

Comentarios generales

Premisa

México debe conferir apoyo a toda iniciativa legítima y bien fundada tendente a adecuar o hacer más eficaz el marco jurídico internacional en materia de protección de bienes culturales.

Protección Especial

Se estima que en el contexto del ejercicio en cuestión se omite tomar en consideración la relevancia del régimen de “protección especial” para conferir protección a bienes culturales en caso de conflicto armado.

La Convención de La Haya de 1954 para la Protección de los Bienes Culturales en caso de Conflicto Armado (Convención) es el instrumento principal para salvaguardar bienes culturales en tal supuesto. Si bien el Segundo Protocolo de la Convención (2° Protocolo) complementa el régimen convencional, éste es un instrumento accesorio que no reemplaza la Convención.

Conforme a la Convención, las Partes gozan de la prerrogativa de solicitar la inscripción de un número limitado de bienes culturales de importancia extraordinaria en el “Registro Internacional de Bienes Culturales bajo Protección Especial” (Registro).

Cuando un país satisface los requisitos establecidos en la Convención para que proceda la inscripción de alguno de sus bienes culturales en el Registro, y otras Partes no se oponen, la UNESCO atiende la solicitud respectiva.

En el caso de las 9 zonas mexicanas que recientemente fueron inscritas en el Registro, México sustentó exitosamente su relevancia histórica, cultural y científica de carácter extraordinario y, para los efectos de la Convención, fijó las coordenadas geográficas de las mismas.

Además, al solicitar la inscripción, México manifestó que en el contexto de los planes para la posible defensa del territorio nacional ninguna de las 9 zonas se utiliza para fines militares y que tampoco se contempla hacer uso de las mismas en tal supuesto.

Una vez que concluye el proceso de inscripción en el Registro, los bienes gozan, en el contexto de la Convención, de “inmunidad” respecto de actos hostiles; es decir, los Estados deben respetarlos y protegerlos.

Si bien la protección especial (al igual que la protección reforzada) se encuentra subutilizada, se trata de un régimen actual derivado de un tratado en vigor que ofrece a los Estados la posibilidad de adoptar medidas concretas y sustantivas para salvaguardar bienes culturales de especial valor.

En el sentido de lo anterior, se ponen de relieve las siguientes normas convencionales:

Artículo 8. Concesión de la protección especial

1. Podrán colocarse bajo protección especial un número restringido de refugios destinados a preservar los bienes culturales muebles en caso de conflicto armado, de centros monumentales y otros bienes culturales inmuebles de importancia muy grande, a condición de que:

a. Se encuentren a suficiente distancia de un gran centro industrial o de cualquier objetivo militar importante considerado como punto sensible, como por ejemplo un aeródromo, una estación de radio, un establecimiento destinado a trabajos de defensa nacional, un puerto o una estación ferroviaria de cierta importancia o una gran línea de comunicaciones;

b. No sean utilizados para fines militares.

2. Puede asimismo colocarse bajo protección especial todo refugio para bienes culturales muebles, cualquiera que sea su situación, siempre que esté construido de tal manera que según todas las probabilidades no haya de sufrir daños como consecuencia de bombardeos.

[...]

6. La protección especial se concederá a los bienes culturales mediante su inscripción en el «Registro Internacional de Bienes Culturales bajo Protección Especial». Esta inscripción no podrá efectuarse más que conforme a las disposiciones de la presente Convención y en las condiciones previstas en el Reglamento para su aplicación.

Artículo 9. Inmunidad de los bienes culturales bajo protección especial

Las Altas Partes Contratantes se comprometen a garantizar la inmunidad de los bienes culturales bajo protección especial absteniéndose, desde el momento de la inscripción en el Registro Internacional, de cualquier acto de hostilidad respecto a ellos [...].

Artículo 19. Conflictos de carácter no internacional

1. En caso de conflicto armado que no tenga carácter internacional y que haya surgido en el territorio de una de las Altas Partes Contratantes, cada una de las partes en conflicto estará obligada a aplicar, como mínimo, las disposiciones de esta Convención, relativas al respeto de los bienes culturales.

2. Las partes en conflicto procurarán poner en vigor, mediante acuerdos especiales, todas las demás disposiciones de la presente Convención o parte de ellas.

3. La Organización de las Naciones Unidas para la Educación, la Ciencia y la Cultura podrá ofrecer sus servicios a las partes en conflicto.

[...].

En vista de lo antes señalado, debe evitarse descartar la protección especial como un régimen obsoleto o carente de utilidad ante el conjunto de circunstancias que hoy día ponen en riesgo bienes culturales de especial valor.

Revisión de las Directrices para la aplicación del 2º Protocolo

Al establecer un conjunto de reglas, preceptos y puntos procedimentales en torno al 2° Protocolo, podría considerarse que las Directrices para su aplicación (Directrices) “reglamentan” (*i.e.*, contribuyen a desarrollar normativa y conceptualmente) el tratado.

Si bien las Directrices permiten desarrollar el sistema convencional para efectos de ejecución con el grado de precisión y rigor que se logre acordar en función de los propósitos pertinentes, no debe perderse de vista que la “finalidad principal” de las mismas es brindar un instrumento “conciso y práctico” que -precisamente- facilite la aplicación del 2° Protocolo.

Por lo tanto, se estima que convendría descartar iniciativas que impliquen convertir las Directrices en un instrumento innecesariamente complejo; intrincar el contenido de las Directrices constituiría un despropósito para los fines del 2° Protocolo.

Comentarios en torno al Proyecto

Sección II y III

Metodología para evaluar las condiciones asentadas en el Artículo 10 del 2° Protocolo.- Párrafos 14 y 20

El “sistema convencional” en materia de “protección reforzada” está integrado por:

- La Convención;
- El 2° Protocolo;
- Las Directrices; y
- El Reglamento del Comité para la Protección de los Bienes Culturales en caso de Conflicto Armado.

Una de las finalidades de las Directrices -según se asentó en las mismas- es “facilitar una orientación al Comité para la Protección de los Bienes Culturales en caso de Conflicto Armado (Comité) para el desempeño de sus funciones conforme las ha determinado el Segundo Protocolo” (en particular, conceder la protección reforzada).

Consecuentemente, en todo caso, una “metodología” relativa al examen de las condiciones del Artículo 10 del 2° Protocolo tendría que incorporarse al sistema convencional por medio de las Directrices; en otras palabras, resultaría improcedente pretender complementar o desarrollar el sistema en cuestión con elementos o instrumentos ajenos al mismo.

Sección III

Concesión de la protección reforzada.- Párrafos 22 y 25

Se coincide en que -en todo caso- debe evitarse adoptar una postura restrictiva que obstruya la concesión de protección reforzada.

Sin embargo, el espíritu del concepto “de mayor importancia para la humanidad” es cardinal ya que éste constituye el sustento de las obligaciones extraordinarias (*i.e.*, fuera de

lo común) que los Estados concernidos contraen según el 2º Protocolo, así como -de ser el caso- el origen de las consecuencias especialmente graves que generaría un acto hostil en contra de un bien cultural al que se le confirió protección especial.

Consecuentemente, resultará necesario encontrar un equilibrio a fin de evitar que el régimen de protección reforzada pierda relevancia; en otras palabras, conferir tal protección a un sinnúmero de bienes amenazados que no resultan particularmente extraordinarios desvirtuaría el 2º Protocolo y, por lo tanto, impediría contribuir a salvaguardar bienes culturales “de la mayor importancia para la humanidad” (Artículo 10 del 2º Protocolo) cuyo deterioro o pérdida daría lugar al “empobrecimiento de la diversidad cultural o el patrimonio cultural de la humanidad” (punto 35 de las Directrices).

Artículo 10, párrafo a) del 2º Protocolo

- No se comparte del todo la aseveración categórica -y premisa para proceder- de que la lista actual en las Directrices de elementos fácticos relativos al criterio “mayor importancia para la humanidad” (puntos 32-37) “no permite una evaluación objetiva” del mismo (párrafo 16 del Proyecto).

La elaboración de las Directrices conllevó un ejercicio (en el que México participó activamente) para establecer pautas que pudieran utilizarse como referencia a fin de conferir cierto grado de objetividad a la pretensión de un Estado de que la protección reforzada se conceda, así como a la decisión correspondiente -en sentido positivo o negativo- del Comité.

De hecho, se estima que las Directrices ofrecen en relación con el criterio en cuestión (desarrollado mediante las nociones de importancia excepcional, unicidad y de pérdida irreparable para la humanidad por deterioro o destrucción) un marco referencial adecuado -en todo caso perfectible- para encauzar la actuación del Comité respecto de la concesión de la protección reforzada.

- Una definición del concepto “de la mayor importancia para la humanidad” podría conferir a los Estados concernidos y al Comité un punto de referencia para abordar la concesión de protección reforzada con mayor coherencia. Por lo tanto, la definición podría contribuir a homogenizar la respuesta del Comité al cumplir con su mandato (párrafos 20 y 25 del Proyecto).

Si bien una definición podría reducir controversias acerca del concepto en cuestión, acuñarla y codificarla conllevaría el riesgo de que ésta carezca de equilibrio; esto es, que se acuerde una definición demasiado, o no lo suficientemente, amplia que -por motivos adicionales a aquellos técnicos- fracase en exponer con precisión los caracteres genéricos y diferenciales del concepto.

Asimismo, se pone de relieve que la propuesta del Consejo Internacional de Monumentos y Sitios para la revisión de las Directrices por lo que se refiere al concepto en cuestión (párrafo 25 del Proyecto) eliminaría de las mismas los elementos referenciales sobre “pérdida irreparable para la humanidad”; es decir, se generaría incertidumbre en torno a la acepción de dicha noción (páginas 18 y 19 del

documento intitulado *Two Studies on the assessment of movable and immovable cultural properties for enhanced protection under the second protocol*, ICOMOS; <http://www.unesco.org/new/fileadmin/MULTIMEDIA/HQ/CLT/images/ICOMOS-studies.pdf>).

Según los elementos supra, se estima que los puntos 32 a 37 de las Directrices ofrecen al Comité un buen marco referencial -si bien perfectible- para conceder protección reforzada y, por lo tanto, cumplir con su mandato con cierta prontitud.

Sección IV

Artículo 10, párrafo b) del 2º Protocolo

No se comparte del todo la aseveración categórica -y premisa para proceder- de que el Comité y el Secretariado carecen de una metodología que permita un análisis de la condición referida en el precepto en cuestión (párrafo 33 del Proyecto).

- No debe perderse de vista que al formular el proyecto de Directrices se realizó un importante esfuerzo para incluir pautas que pudieran utilizarse como referencia a fin de conferir cierto grado de objetividad a la pretensión de un Estado de que la protección reforzada se conceda, así como a la decisión correspondiente -en sentido positivo o negativo- del Comité.
- Al intentar ajustar las Directrices, debe tenerse en cuenta que la “finalidad principal” de las mismas es brindar un instrumento “conciso y práctico” que -precisamente- facilite la aplicación del 2º Protocolo.

Lo anterior adquiere relevancia ante la conclusión (párrafos 34 y 38 del Proyecto) que las Directrices podrían aclararse con definiciones para cada una de las 3 categorías de bienes culturales conforme al Artículo 1 de la Convención (*i.e.*, bienes muebles o inmuebles de gran importancia para el patrimonio cultural de los pueblos; edificios cuyo destino principal y efectivo sea conservar bienes culturales muebles; y centros monumentales) de cada una de las medidas a las que se refiere el Artículo 5 del 2º Protocolo (*i.e.*, preparación de inventarios; planificación de medidas de emergencia para la protección contra incendios o el derrumbamiento de estructuras; preparación del traslado de bienes culturales muebles o el suministro de una protección adecuada in situ de esos bienes; y designación de autoridades competentes que se responsabilicen de la salvaguardia de los bienes culturales).

Asimismo, se reitera que todo ejercicio tendente a acuñar y codificar definiciones conlleva el riesgo de que éste fracase en exponer con precisión los caracteres genéricos y diferenciales de los conceptos correspondientes.

Sección V

Artículo 10, párrafo c) del 2º Protocolo

Conforme al precepto en cuestión, un bien cultural puede gozar de protección reforzada cuando se excluya su uso con fines militares o para proteger instalaciones militares.

Adicionalmente, en el Artículo 12 (Inmunidad de los bienes culturales bajo protección reforzada) del 2º Protocolo se precisa:

Las Partes en un conflicto garantizarán la inmunidad de los bienes culturales bajo protección reforzada, absteniéndose de hacerlos objeto de ataques y de utilizar esos bienes o sus alrededores inmediatos en apoyo de acciones militares.

Según lo anterior, el párrafo c) del Artículo 10 establece una de las condiciones que debe satisfacerse para que la protección reforzada se conceda y el Artículo 12 se refiere a la condición para que -una vez conferida- ésta perdure (*i.e.*, evitar que se anule o suspenda).

Por lo tanto, según lo asentado en el Proyecto (párrafo 43), resulta pertinente reformular el punto 59 de las Directrices en consecuencia a fin de que este, en efecto, responda a lo que el párrafo c) del Artículo 10 establece:

59. La Parte describe la utilización que se da al bien cultural. Se adjunta a la petición una declaración que confirme que el bien cultural ~~y su entorno inmediato~~ no se utilizan ni habrán de utilizarse con fines militares ni para proteger instalaciones militares. [...].

Comments from the Mexican Government concerning the analysis of the process for the granting of “enhanced protection” under the Second Protocol to the Hague Convention of 1954 for the Protection of Cultural Property in the Event of Armed Conflict.

General comments

Premise

Mexico must give support to all legitimate and well-founded initiatives aimed at adjusting or improving the efficiency of the international legal frameworks on the protection of cultural property.

Special protection

It is considered that in the context of the exercise in question, the relevance of the regime of “special protection” has not been taken into consideration in the granting of protection to cultural property during armed conflict.

The Hague Convention of 1954 for the Protection of Cultural Property in the Event of Armed Conflict (hereinafter “the Convention”) is the main instrument for the safeguarding of cultural property in such circumstances. While the Second Protocol to the Hague Convention (hereinafter “the Second Protocol”) complements the conventional system, it is an ancillary instrument that does not replace the Convention.

According to the Convention, the Parties enjoy the prerogative to request the registration of a limited number of cultural properties of exceptional significance in the “International Register of Cultural Property under Special Protection” (hereinafter “the Register”).

When a country meets the requirements established in the Convention in order to proceed with the inclusion of any of its cultural property in the Register, and other Parties are not opposed, UNESCO grants the respective request.

In the case of the nine Mexican areas that were recently included in the Register, Mexico successfully defended their exceptional historical, cultural and scientific significance and, for the purposes of the Convention, set their geographical coordinates.

In addition, when applying for registration, Mexico stated that in the context of plans for the possible defence of the national territory, none of the nine areas were used for military purposes, nor were there plans to use them for any such purpose.

Once the process of registration concluded, in the context of the Convention, the property enjoys “immunity” from acts of hostility; that is to say, States should respect and protect them.

While special protection (just like enhanced protection) is underutilized, a current system derived from an existing treaty gives States the possibility to adopt specific and substantive measures to safeguard cultural property of special value.

Within the meaning of the above, the following conventional standards are highlighted:

Article 8. Granting of special protection

1. There may be placed under special protection a limited number of refuges intended to shelter movable cultural property in the event of armed conflict, of centers containing

monuments and other immovable cultural property of very great importance, provided that they:

- (a) are situated at an adequate distance from any large industrial center or from any important military objective constituting a vulnerable point, such as, for example, an aerodrome, broadcasting station, establishment engaged upon work of national defense, a port or railway station of relative importance or a main line of communication;
 - (b) are not used for military purposes.
2. A refuge for movable cultural property may also be placed under special protection, whatever its location, if it is so constructed that, in all probability, it will not be damaged by bombs.

[...]

6. Special protection is granted to cultural property by its entry in the 'International Register of Cultural Property under Special Protection'. This entry shall only be made, in accordance with the provisions of the present Convention and under the conditions provided for in the Regulations for the execution of the Convention.

Article 9. Immunity of cultural property under special protection

The High Contracting Parties undertake to ensure the immunity of cultural property under special protection by refraining, from the time of entry in the International Register, from any act of hostility directed against such property [...].

Article 19. Conflicts not of an international character

1. In the event of an armed conflict not of an international character occurring within the territory of one of the High Contracting Parties, each party to the conflict shall be bound to apply, as a minimum, the provisions of the present Convention which relate to respect for cultural property.
2. The parties to the conflict shall endeavour to bring into force, by means of special agreements, all or part of the other provisions of the present Convention.
3. The United Nations Educational, Scientific and Cultural Organization may offer its services to the parties to the conflict. [...].

In view of the above, special protection should not be ruled out as an obsolete or futile system in the set of circumstances that are currently jeopardizing cultural property of special value.

Revision of the Guidelines for the Implementation of the Second Protocol

By establishing a set of rules, precepts and procedural points around the Second Protocol, it could be considered that the Guidelines for its implementation (hereinafter “the Guidelines”) “regulate” (i.e. help with developing standards and concepts) the treaty.

Although the Guidelines help to develop the conventional system for enforcement purposes with the level of precision and rigour that is achieved according to the relevant purposes, it should not be

forgotten that the “main purpose” is to provide a “concise and practical” tool to facilitate the implementation of the Second Protocol.

Therefore, it is considered that initiatives that could make the Guidelines into an unnecessarily complex instrument should be ruled out; complicating the content of the Guidelines would not serve the purposes of the Second Protocol.

Comments on the Draft

Sections II and III

Methodology to assess the conditions established in Article 10 of the Second Protocol - paragraphs 14 and 20

The “conventional system” regarding “enhanced protection” comprises:

- The Convention;
- The Second Protocol;
- The Guidelines; and
- The Rules of Procedure of the Committee for the Protection of Cultural Property in the Event of Armed Conflict.

One of the purposes of the Guidelines – as established therein – is “to provide guidance to the Committee for the Protection of Cultural Property in the Event of Armed Conflict (hereinafter “the Committee for the fulfilment of [its] functions as established by the Second Protocol” (in particular, the granting of enhanced protection).

Consequently, in any event, a “methodology” regarding the review of the conditions of Article 10 of the Second Protocol must be incorporated into the conventional system using the Guidelines; in other words, it would be inappropriate to seek to complement or develop the system in question with elements or instruments that do not belong to it.

Section III

Granting of enhanced protection – paragraphs 22 and 25

It is agreed that – in any event – a restrictive approach that would obstruct the granting of enhanced protection should be avoided.

However, the spirit of the concept of “greatest importance for humanity” is key, because it constitutes the maintenance of extraordinary (i.e. out of the ordinary) obligations that the States concerned enter into under the Second Protocol, as well as – as the case may be – the origin of the particularly serious consequences that a hostile act would generate against cultural property that is specially protected.

Consequently, it would be necessary to strike a balance in order to prevent the regime of enhanced protection from losing relevance; in other words, to grant such protection to an unknown number of threatened properties that are not particularly extraordinary would undermine the purpose of the Second Protocol and, therefore, would prevent it from contributing to safeguarding cultural property “of the greatest importance for humanity” (Article 10 of the Second Protocol) whose damage or

destruction would result in the “impoverishment of the cultural diversity or cultural heritage of humankind” (paragraph 35 of the Guidelines).

Article 10 (a) of the Second Protocol

- The categorical assertion – and premise in order to proceed – that the current list in the Guidelines of factual evidence regarding the criterion “of greatest importance for humanity” (paragraphs 32-37) “does not allow an objective assessment” of the list (paragraph 16 of the Draft) is not shared at all.

The development of the Guidelines entailed an exercise (in which Mexico participated actively) to establish benchmarks that could be used as a reference to give a degree of objectivity to a State’s claim that enhanced protection should be granted, and the Committee’s corresponding decision for or against that protection.

Indeed, it is considered that the Guidelines provide, in connection with the criterion in question (based on the concept of exceptional significance, uniqueness, and the irretrievable loss for humanity resulting from its damage or destruction) an appropriate – or in any case, perfectible – frame of reference to channel the work of the Committee with regard to the granting of enhanced protection.

- A definition of the concept “of greatest importance for humanity” could provide the States concerned and the Committee with a frame of reference to address the granting of enhanced protection more consistently. Thus, the definition could help to harmonize the Committee’s response in accordance with its mandate (paragraphs 20 and 25 of the Draft).

While a definition could reduce the number of disputes regarding the concept in question, its formulation and codification could risk a lack of balance; that is to say, if the definition is too wide or too narrow – for technical or other reasons – it could fail to show accurately the generic and differential natures of the concept.

It is also emphasized that the proposal by the International Council on Monuments and Sites (ICOMOS) to revise the Guidelines with regard to the concept in question (paragraph 25 of the Draft) would remove from them the elements referring to “irretrievable loss for humanity”; that is, uncertainty about the meaning of the concept would be raised (pages 18 and 19 of the document entitled “*Two Studies on the assessment of movable and immovable cultural properties for enhanced protection under the second protocol*”, ICOMOS; <http://www.unesco.org/new/fileadmin/MULTIMEDIA/HQ/CLT/images/ICOMOS-studies.pdf>).

According to the above, it is considered that paragraphs 32 to 37 of the Guidelines provide the Committee with a good, albeit perfectible frame of reference to grant enhanced protection and, therefore, to fulfil its mandate with alacrity.

Section IV

Article 10 (b) of the Second Protocol

There is not full agreement with the categorical assertion – and premise in order to proceed – that the Committee and the Secretariat do not have a methodology allowing an analysis of the criterion in question (paragraph 33 of the Draft).

- It should not be forgotten that when formulating the Draft Guidelines, a considerable effort was made to include benchmarks that could be used as a reference to give a degree of objectivity to a State’s claim that enhanced protection should be granted, and the Committee’s corresponding decision for or against that protection.
- When attempting to adjust the Guidelines, it should be noted that their “main purpose” is to provide a “concise and practical” tool to facilitate the implementation of the Second Protocol.

The latter becomes relevant when considering the conclusion (paragraphs 34 and 38 of the Draft) that the Guidelines could be clarified with definitions for each of the three categories of cultural property under Article 1 of the Convention (i.e. movable or immovable property of great importance to the cultural heritage of every people; buildings whose main and effective purpose is to preserve or exhibit movable cultural property; and monumental sites) for each of the measures described in Article 5 of the Second Protocol (i.e. the preparation of inventories; the planning of emergency measures for protection against fire or structural collapse; the preparation for the removal of movable cultural property or the provision for adequate *in situ* protection of such property; and the designation of competent authorities responsible for the safeguarding of cultural property).

In addition, is reiterated that any exercise aiming to formulate or codify definitions could risk failing to show accurately the generic and differential natures of the corresponding concepts.

Section V

Article 10 (c) of the Second Protocol

Under the provision in question, cultural property may enjoy enhanced protection when it is not used for military purposes or to shield military sites.

In addition, Article 12 (Immunity of cultural property under enhanced protection) of the Second Protocol stipulates that:

The Parties to a conflict shall ensure the immunity of cultural property under enhanced protection by refraining from making such property the object of attack or from any use of the property or its immediate surroundings in support of military action.

In the light of the above, Article 10 (c) establishes one of the conditions that should be met for granting enhanced protection and Article 12 refers to the condition that once granted, it should endure (i.e. ensures that it is not cancelled or suspended).

Therefore, as established in the Draft (paragraph 43), it is appropriate to reformulate paragraph 59 of the Guidelines accordingly, so that it corresponds to Article 10 (c) as follows:

59. The Party describes the use of the cultural property. The declaration confirming that the cultural property and its immediate surroundings are **is** not and will not be used for military purposes or to shield military sites is attached to the request. [...].

Art.10.A: "Gran importancia para la Humanidad"

El informe de ICOMOS (21), que la secretaría hace suyo en este punto, y su propuesta de que la lista sea lo más "inclusiva" posible, parece muy acertado y coherente.

ICOMOS propone incluir en la lista de bienes de protección reforzada no sólo a aquellos de importancia universal, sino también a aquellos de significación nacional y regional y conforme a ello establecer una definición de "gran importancia para la humanidad" fundamentada con una lista de elementos evaluadores que deberían tener aquellos bienes a los que se les aplica la protección reforzada.(21.2; 21.4)

En contrapartida y aunque se trate de buscar un método lo más "objetivo" posible para incluir o no los bienes en esa lista (25 y 26), hay que tener en cuenta la dificultad de encontrar unos criterios que sirvan para la diversidad cultural mundial y que se debe prever una actualización periódica de esos criterios (en función de cuales son los patrimonios que en cada momento se encuentren en mayor riesgo de desaparición y/o destrucción). Por último, no debe olvidarse que esta lista debería ser sobre todo práctica, de modo que el instrumento en sí no se convierta en algo tan amplio y de aplicación tan compleja que no sirva para el fin para el que se crea.

Hecha esta salvedad parece que la propuesta de hacer lo más amplia posible la categoría de "gran importancia para la Humanidad" es claramente positiva y se apoya desde esta Subdirección.

Art.10.B: "El nivel más alto de protección"

Tanto ICOMOS (punto 35) como la Secretaría (38 y 39) proponen:

- Una lista de medidas previas que cada bien debe adoptar antes de ser incluido en la categoría de "protección reforzada" y con el que se asegure que se cumple "el más alto nivel de protección"
- Revisar que se mantiene el estado de conservación de los bienes que cuentan con protección reforzada una vez se ha incluido en esa categoría.

Parece que lo que se busca en ambos casos es una fórmula de simplificación documental al modo de una "checklist" que garantice unos documentos verdaderamente prácticos y relativamente sencillos de rellenar.

En este sentido, nuevamente no queda más que apoyar las propuestas que se hacen desde la Secretaría ya que se trata de procurar una protección lo más ágil y eficaz posible.

Art.10.C: "Propuestas para bienes de uso no militar"

Entendemos que la postura de la Secretaría es perfectamente lógica y razonable, sin que proceda un comentario más amplio, destacando tan solo nuestro acuerdo con los puntos 43 y 49.

Art.10.A: "Greatest importance for humanity"

The ICOMOS study (21) that the Secretariat endorses in this point, and its suggestion that the list be as "inclusive" as possible, seems very sound and cogent.

ICOMOS proposes that not only assets of universal importance be included in the list of assets afforded enhanced protection, but also those of national and regional significance, and accordingly that a definition of "greatest importance for humanity" ought to be established along with a list of evaluation criteria that those assets to which enhanced protection applies ought to possess. (21.2; 21.4)

On the other hand, although the most "objective" method possible must be found of deciding whether or not to include assets in this list (25 and 26), we must take into account how difficult it is to identify criteria that promote global cultural diversity and these criteria should be periodically updated (depending on the nature of the heritage that at any given point in time is most at risk of being destroyed or of disappearing). Lastly, we must remember that above all the list needs to be practical to prevent the instrument itself from becoming so broad and so complex in its application that it fails to serve the purposes for which it was created.

With this caveat, the proposal that the category of "greatest importance for Humanity" should be as broad as possible clearly seems to be a positive one and one that this Sub-directorate supports.

Art.10.B: "The highest level of protection"

Both ICOMOS (point 35) and the Secretariat (38 and 39) propose:

- A list of prior measures that each asset should adopt before being included in the "enhanced protection category" to ensure that "the highest level of protection" is afforded
- Checking that the level of preservation of the assets afforded enhanced protection is maintained once they have been included in this category

In both cases, it appears that what is required is a simplified document formula like a "check list" to ensure that documents are genuinely practical and fairly simple to fill out.

Here too, we can only support the proposals made by the Secretariat since the goal is to afford the most flexible and effective protection possible.

Art.10.C: "Proposals for non-use for military purposes"

We take the view that the position of the Secretariat is completely logical and reasonable, and no further comment is needed, other than to emphasise our support for points 43 and 49.

**Reaction of the Netherlands on the
Draft document on the 'Procedure for Granting enhanced Protection'**

The Hague, 31 August 2015

In a letter dated 3 July 2015 we were requested as a Party to the Second Protocol to react on a draft document on the 'Procedure for Granting enhanced Protection'. This document is an elaboration of a Committee decision of December 2014. It is a follow up to an ICOMOS study on this subject. This subject and a next version of this document will be discussed at the next Committee meeting of the Second Protocol in December 2015.

The present reaction includes input from different governmental sides, the National UNESCO Commission and Blue Shield Netherlands.

The first and main reaction is of disappointment and despair, seeing very important heritage being destroyed in e.g. Syria, without any international instrument or international mechanism being able to stop it. The clarification of the existing Second Protocol will unfortunately not help to stop this terrible violence. There is a cry to go back to the object and purpose of the Second Protocol: effective protection of cultural heritage in times of armed conflict. Awareness is needed as well as an international community working together to protect and to prevent destruction on the ground and implementing relevant sanctions.

At the same time, we urgently need the present clarification of art. 10 of the Second Protocol to the Hague Convention to be able to make the rather new Second Protocol, and its Guidelines relevant for e.g. movable heritage. With a further clarification it will be possible to protect more *cultural property* under the regime of enhanced protection. Lacking this clarification the Second Protocol has at this point no further possibility than to protect World Heritage or documentary heritage in the Memory of the World register.

Reaction on the Draft Document CLT-15/10.COM/CONF.203/....

We thank the Secretariat for preparing this document. It has a clear structure and helps the reader in a rather complex matter, through an introduction and a discussion per paragraph of Article 10 of the Second Protocol, and corresponding paragraphs of the Guidelines.

Chapter III, Regarding Article 10, paragraph A, 'greatest importance for humanity':

In general

We support the secretariat's observation (par. 22) that the purpose of the list of enhanced protection should be inclusive. It is up to a Party to decide what is important for its society and what cultural property has the 'greatest importance for humanity'.

In detail

Could it be further clarified why an objective evaluation by the Committee is not possible on the basis of the criteria (guidelines par 33,34), as stated in paragraph 16?

In paragraph 17 the present situation is described.

In paragraph 24-26 it is described how the possibilities of nominating under enhanced protection could be supported by a definition.

In this regard it should be noted that Parties already use for movable heritage several methods to determine significance and make 'great importance' and 'cultural value' explicit. Examples are 'Significance 2.0' (Australia), 'Assessing Museum Collections' (The Netherlands), 'Conservation Principles' (English Heritage, UK), 'Reviewing Significance' (Collections Trust, UK). They all share the same principles, which are no different from built heritage.

A definition should therefore in our opinion include the possibility that Parties use their own methods if available or Parties can refer to methods which are available elsewhere to underpin the

significance of their heritage. Although the basis of national cultural property protection might be a legal text, the specific object for which enhanced protection will be demanded might not specifically be protected under national or local legislation.

The purpose is to be able to explain to others why heritage has such an exceptional importance for humanity. Also in situations where there is no legal framework to consolidate that. (we do not know of any country that legally require museums to have statements of significance for their collections).

Moveable heritage is either publically or privately owned. Publically owned is kept by museums and similar institutions that should already have identified the (national) treasures within their collections. They only have to draw up statements of significance. Privately owned may already be recognized through non-export legislation with related description of significance. In EU Directive 2014/60 on the return of cultural objects unlawfully removed from the territory of a Member State the cultural objects that are protected are the ones protected by the EU Member State. This could be taken as an example when developing a definition or a description of what could be eligible for enhanced protection (see <http://eur-lex.europa.eu/legal-content/NL/TXT/?uri=CELEX:32014L0060>)

Other lists than the World Heritage and the Memory of the World, could be relevant including those of NGO's and Committee's as ICOM and ICA, as you slightly refer to in par. 28. It could be that all collections in museums and archives being a member of ICOM or ICA also fulfill a criteria in line with par. 34 and 35 of the guidelines.

To paragraph 18 could be added under the first bullet, that also Memory of the World documents could benefit from presumption, although no proposal has been made by a Party so far.

In relation to the third bullet on World Heritage and discussions on the exact boundaries and inscribed elements: A World Heritage property may be part of a larger heritage area, of which only specific parts are placed on the List. It should become possible if we have defined art. 10A further that a Party can inscribe a World Heritage site, including parts which are not protected under that Convention, be it additional immovable heritage, be it movable objects, including archaeological artefacts.

To paragraph 19 the archaeological sites could be mentioned alongside museums as these sites are very vulnerable during conflicts. Attention should also be paid to archive and libraries.

In paragraph 26 of the text, the importance of the involvement of local communities/societies could be added attesting to the exceptional cultural significance and/or unique character of the cultural property. This is already included in some way in Guidelines, par. 34.c .

In our consultation it was mentioned that also a reference could be made to NGOs and committees (ICOMOS, ICOM, IFLA, ICA, National Commissions for UNESCO, etc.) including its documents. Perhaps this could be done in an additional paragraph after par. 26.

Chapter IV, Regarding Article 10, paragraph b, 'the highest level of protection':

Exact location information: for movable property receiving enhanced protection the data on its whereabouts should be adequate, especially when there is a (threat of) conflict. This needs attention, possibly elsewhere in the guidelines. Adequate information is of utmost importance to the Ministries of Defense taking part in a conflict.

Monitoring of enhanced protected cultural property should need more thought. The present national reports do not seem sufficient for it. We agree that this should be a subject to the review of national reports. (par 39).

Chapter V , Regarding Article 10, paragraph c, ‘non-use for military purposes’:

We agree with the Secretariat that further modifications to the Guidelines regarding the non-use for military purposes provisions, is not necessary. (para 49)

Other remarks

- Checklists for preventive measures on site or object level are needed for protected sites, be it enhanced protected, nationally or locally protected sites. Existing material (ICMS) could have a wider distribution.
- Guideline 34: Criteria which a cultural property should fulfill: this guideline should be specified (or replaced by a table). The question is whether this Guideline helps to give a description of a cultural property, or that the property should indeed fulfill criteria. If so, how many, or which is obligatory, and which ‘voluntary’?
- More awareness raising is needed on enhanced protection in the heritage field and in the army. They need to have knowledge and should be enabled to take certain measures.

The International Committee of the Red Cross (ICRC) would like to thank the Committee for the Protection of Cultural Property in the Event of Armed Conflict for its invitation to comment on the draft document prepared by the Secretariat of the Committee ("**PROCEDURE FOR GRANTING ENHANCED PROTECTION**").

Overall, the draft appears to be well thought out and likely to facilitate the future debates of the Committee regarding the scope, content and methodology with which to analyse Article 10 of the 1999 Second Protocol in the most appropriate manner.

In the interests of clarity, we felt it would be wise to divide our comments into two separate sections. In the first section, we will make several comments relating to style and form, before addressing several more substantial questions.

I. Comments on the form

To facilitate the understanding of the comments, we refer directly (in blue) to the relevant paragraphs of the aforementioned draft document.

1) *para 6*: "All cultural property, as it is defined in Article 1 of the Hague Convention of 1954, may be submitted for inscription on the List. Requests for enhanced protection can therefore be submitted both for movable or immovable cultural property and for buildings whose primary and actual ("effective" in the French version - this precision would appear important and is an integral part of the general definition of cultural property) purpose is to preserve or exhibit movable cultural property (e.g. museums or refuges) and centres containing monuments."

2) *para 24*: the concept of "property under general law" should be further clarified.

3) *para 41*: "Given the wording of paragraph (c), the declaration appears to cover two aspects, namely (...)": "relever" or rather "revêtir" in the French version for "cover"?

4) *para 42*: "The declaration made in virtue of paragraph (c) of Article 10 is effective prior to the conflict in times of peace" the French and English versions differ and do not exactly correspond to paragraph 42 of the Guidelines. Emphasis must at least be placed on the fact that the declaration made under paragraph c) shall have effect "**également/also**" in times of peace.

II. Comments on the content

1) *para 16*: "(...) Although the list is useful in its illustrative capacity, it does not permit an objective evaluation." No one can of course dispute this statement. However we feel it would be helpful for the Committee to consider two related questions: a) that of the *feasibility* of such an "objective evaluation" and b) that of the *appropriateness* of such an evaluation. Despite the quality of the studies conducted by ICOMOS, it must be recognized that the proposed definition (see *para 21*) does not provide substantive clarifications to facilitate the

Committee's work. Furthermore, for any definition having *ipso facto* restrictive effects, we may question whether it is truly in the interest of the Committee to be bound by a definition that could prevent it (for purely formal reasons) granting enhanced protection to property that it nevertheless judges worthy of such protection.

2) In this regard, it would be interesting for the Secretariat to determine, based on all of the requests received in recent years, the number of cases in which enhanced protection had to be refused (solely) on the grounds of Art 10 para a), and for this analysis to be shared with the members of the Committee.

3) *para 19*: "(...) [the Secretariat is obliged \(our emphasis\) to first encourage \(...\)](#)" It would be worth explaining in more detail the reasons that led the Secretariat to so limit its power of consideration, despite the potentially harmful consequences fully described in the final section of *para 19*.

4) *para 21*: "[\(...\) unlike the World Heritage List, which is considered to be particularly selective, the List of Cultural Property under Enhanced Protection is inclusive. In other words, the List, owing to the spirit of "protection" that underpins The Hague Convention of 1954 and its two Protocols, is designed to cover as much cultural property as possible \(our emphasis\) \(paragraph 1.13 of the study\);](#)" We can but share these two comments concerning the scope and aim of the List of Cultural Property under Enhanced Protection. Both lead us to think that a strict definition is neither desirable nor appropriate (assuming one is possible) and that the approach adopted in the Guidelines (which "provide a list of factual elements" as recalled in *para 16*) should be pursued (and enriched thanks to the entirely appropriate suggestions made by ICOMOS in its first study).

5) *para 25*: "[Therefore, the Secretariat advocates adding a definition to the Guidelines that would be as broad as possible while still emphasizing the importance of the legal qualification used by the submitting State. In this regard, the proposition made by ICOMOS constitutes a useful basis for the work.](#)" For the aforementioned reasons, we are not convinced of the appropriateness of establishing such a definition. Furthermore, the definition proposed by ICOMOS (paragraph 2.2 of the study) appears more restrictive than that given by the combination of the Guidelines. In the proposed definition, the destruction of cultural property must constitute "an irretrievable loss for humanity" in order to be considered as being "of the greatest importance for humanity". However, in the Guidelines (paragraph 32), this is merely one of three non-cumulative criteria that the Committee must assess to determine if cultural property is of the greatest importance for humanity. It would ultimately be desirable that, in order to facilitate the Committee's debates, the Secretariat specify in which way it will complete/modify what it confines itself to presenting as "a useful basis for the work".

6) *para 26 and 37*: Provided they maintain a non-exhaustive purpose, the tables proposed herein would effectively facilitate the Committee's task. Their development should therefore be encouraged.

7) [ICOMOS First Study, Suggested revision to the text of the enhanced protection list guidelines, paragraph 6.5 \(point 33\), p. 19](#): in order to avoid reaching a more restrictive definition than that given by the Guidelines in their current form, the word "national, regional

or universal" should be maintained in the "introduction" to paragraph 33.

In conclusion, any clarification of the rules on the protection of cultural property must be encouraged. The document you kindly brought to our attention will unquestionably contribute to this. In order to assume the heavy responsibilities entrusted to it the Committee for the Protection of Cultural Property in the Event of Armed Conflict requires the appropriate instruments and tools. It should nonetheless continue to benefit from a certain margin of appreciation, which would be threatened if too precise and binding definitions are imposed on it. We are confident that the Secretariat will be able to prevent such risks.

First of all, we would like to express our gratitude on behalf of our Blue Shield colleagues and partners for all the efforts of the Secretariat for preparing the draft document on the procedure for granting Enhanced Protection under the 1999 2nd Protocol to the 1954 Hague Convention, and also for sharing this document with the Blue Shield for comments and observations.

The draft document was circulated among all founding organisations of the Blue Shield.

In general, the Blue Shield welcomes this document as an important step to improve and clarify the Guidelines by developing methodologies to analyse the three criteria of Article 10 of the 2nd Protocol. Therefore, the Blue Shield supports this draft as a base for preparing the final document to be presented to the 10th meeting of the Committee in December 2015.

The Blue Shield and in particular International Council on Monuments and Sites (ICOMOS) would like to thank the Secretariat for considering the result of the study done by ICOMOS at the request of UNESCO on this issue in 2013/2014.

ICOMOS would like to offer following comments, followed by the observation of the International Federation of Library Associations and Institutions (IFLA).

1-ARTICLE 10, PARAGRAPH (A) – “GREATEST IMPORTANCE FOR HUMANITY”

In paragraph 26 of the draft document, the Secretariat has proposed the introduction of a table into the Guidelines that would allow for gathering all elements that justify the “greatest importance for the humanity”. The table could also mention any national, regional, or universal documents (i.e. intergovernmental organization document of a universal nature or any other decision of inscription on a register/list of a universal nature) attesting to the exceptional cultural significance and/or unique character of the cultural property.

Suggestion: ICOMOS would like to request in addition to “intergovernmental organisations” in this paragraph, also International Cultural Heritage NGOs, i.e. the Blue Shield, and each of the founding organisations of the Blue Shield (ICA, ICOM, ICOMOS, IFLA) be able to testify the “greatest importance for humanity” of such cultural property.

2- ARTICLE 10, PARAGRAPH (B) – “THE HIGHEST LEVEL OF PROTECTION

In paragraph 37 of the draft, the Secretariat has proposed to include a table into the Guidelines that can consolidate all the preparatory measures requiring adoption for each kind of cultural property. This table would be enhanced with the new elements proposed by ICOMOS in its study.

ICOMOS would suggest to further enhancing the table with the elements of the preparedness measures for each type of cultural heritage. These elements could be

introduced by each of the founding organisations of the Blue Shield for monuments and sites; libraries; museums; and archives.

In paragraph 39, the Secretariat has described the monitoring of cultural property under enhanced protection as an essential aspect and has suggested that the monitoring be through a reform of the national reports form.

Suggestion: ICOMOS would like to suggest a further study on the required elements of such a monitoring system. Perhaps a similar monitoring system that exists for World Heritage sites could be adapted for this purpose.

IFLA also agrees with ICOMOS comments on the draft, and has submitted the following general response:

The changes suggested seem relevant and based on the extensive study of ICOMOS. IFLA believes that they will help to improve and clarify the Guidelines. The main importance is to promote enhanced protection of cultural property more widely and to ensure that State Parties do submit cultural property to the List of Cultural Property under Enhanced Protection. For this it might be useful to work on the communications around the List and stress that this list is not just designed for cultural property in immediate danger but for cultural property of greatest importance to humanity in general. Furthermore, IFLA would like to stress the necessity to further include documentary heritage, kept in mainly libraries and archives, and the relevance these bear to humanity.

Once again, and on behalf of all our Blue Shield partners and colleagues, we would like to thank the Secretariat for preparing this draft and for considering the Blue Shield's observations and comments.