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**SECOND PROTOCOL TO THE HAGUE CONVENTION OF 1954
FOR THE PROTECTION OF CULTURAL PROPERTY
IN THE EVENT OF ARMED CONFLICT**

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

Tenth meeting
UNESCO Headquarters, Paris
10 to 11 December 2015

Item 11 of the Provisional Agenda:
Protected cultural zones

The information document aims to provide the Committee with elements related to the concept of “cultural protected zones” by exploring its possible legal basis

INTRODUCTION

1. At its 196th session, in May 2015, the Executive Board adopted Decision 196 EX/29 entitled “Culture in conflict areas: a humanitarian concern and a safety issue. UNESCO’s role and responsibilities”, by which, among others, it took note of the proposal made at the December 2014 Paris conference on “Heritage and Cultural Diversity at Risk in Iraq and the Syrian Arab Republic”, and requested the Director-General:

“to report on the matter [i.e. the possible establishment of protected cultural zones around heritage sites of recognized and shared cultural significance] after an appropriate dialogue with Member States, concerned stakeholders and the relevant United Nations agencies.”

Decision 196 EX/29 was adopted in response to unprecedented targeting, destruction and looting of heritage in Iraq and the Syrian Arab Republic and the need to consider innovative ways and tools to protect cultural heritage in times of conflict.

2. The safeguarding of cultural heritage as a symbol of identity and an element of social cohesion for populations, especially in conflict zones, and the fight against the looting and trafficking of cultural property as a source of funding for terrorist activities are issues at the heart of UNESCO’s mandate. The Organization has a rich and diverse body of standard-setting instruments to do this, including the 1954 Convention for the Protection of Cultural Property in the Event of Armed Conflict and its two (1954 and 1999) Protocols, the 1970 Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property and the cultural conventions of 1972, 2003 and 2005. Nonetheless, the gravity of this situation requires an innovative approach.
3. The High-Level International Conference, “Heritage and Cultural Diversity at Risk in Iraq and Syria” (UNESCO, 3 December 2014), highlighted the need to include more prominently and constantly the cultural dimension in security and development policies. During this meeting the Director-General called for the creation of “protected cultural zones” around heritage sites in Syria and Iraq.
4. In addition to this, more recently, the General Conference at its 38th session adopted the Strategy for the Reinforcement of UNESCO’s Action for the Protection of Culture and the Promotion of Cultural Pluralism in the Event of Armed Conflict.¹ The overall goal of this strategy is to “reduce the vulnerability of cultural heritage and diversity before, during and in the aftermath of conflict in a context where destruction and threats are unprecedented” by using and further expanding UNESCO’s standards, technical expertise and operational experience within this field. Furthermore, the strategy aims to “enhance UNESCO’s capacity to act during crisis in the context of increasingly complex conflicts, when and where cultural heritage and diversity come under direct threat”. The strategy also states that further establishment and operationalization of ‘protected cultural zones’ will be explored, when and as appropriate, in the context of the legal framework established by the 1954 Hague Convention for the Protection of Cultural Property in the Event of Armed Conflict and its two (1954 and 1999) Protocols.

I. Definition and legal basis of the notion of “protected cultural zones”

5. Neither the 1954 Hague Convention and its 1999 Second Protocol nor any other UNESCO standard-setting instrument defines “protected cultural zones”. Moreover, this notion does not appear to exist in international humanitarian law.²
6. The establishment of cultural protected zones, however, falls squarely within the objectives of the 1954 Hague Convention, notably as provided for in the provisions of Article 19, concerning armed conflicts of non-international character, as well as Article 24, referring to

¹ Available at: <http://unesdoc.unesco.org/images/0023/002351/235186e.pdf>.

² For natural heritage, protected areas have been defined as follows: “A protected area is a clearly defined geographical space, recognised, dedicated and managed, through legal or other effective means, to achieve the long term conservation of nature with associated ecosystem services and cultural values.” (IUCN Definition, 2008).

the possibility of concluding special agreements among the High Contracting Parties for all matters concerning which they deem it suitable to make separate provision (see ANNEX I). Such special agreements may relate, among others, to the establishment of cultural protected zones.

7. The protected cultural zones would be aimed at ensuring, through agreements between parties to the conflict (including non-State actors), the immunity of cultural property situated in this area, whose perimeter would also need to be negotiated between the parties. This would entail two commitments, or obligations: 1) a prohibition on intentional attacks against cultural property; and 2) a corresponding obligation to abstain from using this cultural property, its immediate surroundings and appliances in use for its protection for military purposes or to shield military sites. Spontaneous examples of such agreements have been witnessed recently in Syria, for example around the World Heritage site of Bosra and at the Idlib Museum.
8. Regarding the possible role of UNESCO in the context of the establishment of protected cultural zones, and in line with the provisions laid out in Articles 19 and 24 of the 1954 Hague Convention, this would be limited to non-international armed conflicts in which the territorial State is party to the 1954 Hague Convention or those international armed conflicts in which all parties are bound by the 1954 Hague Convention. UNESCO may offer its services to the parties to the conflict, both in facilitating a negotiation for an agreement and in monitoring the compliance of its terms.
9. In this regard, paragraph 4 of Article 19 provides that the application of Article 19 shall not affect the legal status of the parties to the conflict.
10. In cases of armed conflicts where the territorial State is not party to the 1954 Hague Convention (which is not the case of Iraq or Syria), UNESCO can assume such a role under Article I(2)(c) of its Constitution.
11. It should be stressed that the notion of protected cultural zones may relate to all cultural property and not only to immovable cultural property inscribed on the World Heritage List, the national Tentative Lists within the framework of the 1972 Convention, the List of Cultural Property under Enhanced Protection under the Second Protocol, the International Register of Cultural Property under Special Protection in virtue of the 1954 Hague Convention or any other register or list maintained by an intergovernmental organization, including Museums and other cultural repositories.

II. Recommendation to the Director-General on Protected Cultural Zones produced during the Experts Meeting on the Responsibility to Protect and the Protection of Cultural Heritage

12. On 26-27 November 2015, UNESCO organized, at the request of the Director-General, an Expert Meeting on the Responsibility to Protect and the Protection of Cultural Heritage. As an outcome of the meeting, a series of recommendations for action steps to be taken by the international community, under the auspices of UNESCO, was produced.
13. Paragraph 4 of the Recommendations requested that UNESCO Member States and the UNESCO Secretariat “give due consideration to the idea of ‘cultural protected zones’, in accordance with Article 24 of the 1954 Hague Convention for the Protection of Cultural Property in the Event of Armed Conflict, Articles 59 and 60 of the 1977 Protocol Additional to the Geneva Conventions of 12 August 1949 and relating to the Protection of Victims of International Armed Conflicts, and the Charter of the United Nations”.

Annex I

Article 19 of the 1954 Hague Convention (“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.*
4. *The application of the preceding provisions shall not affect the legal status of the parties to the conflict.”*

Article 24 of the 1954 Hague Convention (“Special agreements”)

1. *“The High Contracting Parties may conclude special agreements for all matters concerning which they deem it suitable to make special provision.*
2. *No special agreement may be concluded which would diminish the protection afforded by the present Convention to cultural property and to the personnel engaged in its protection.”*