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

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

**Sixth Meeting
Paris, UNESCO Headquarters, Room XII
14 – 16 December 2011**

**Item 4 of the Provisional Agenda:
Enhanced Protection**

Introduction

1. The fifth Meeting of the Committee (22 – 24 November 2010, UNESCO Headquarters) took the following decisions with regard to the remaining eight requests for the granting of enhanced protection that were submitted to it:

- A. Adjournment of debates

The debates on the requests for the granting of enhanced protection for the Walled City of Baku, including the Shirvanshahs' Palace and Maiden Tower (Azerbaijan) and Gobustan Rock Art Cultural Landscape (Azerbaijan) were adjourned until the Committee's sixth Meeting.

- B. Referral back to the Party submitting the request (Paragraph 71 of the Guidelines for the Implementation of the Second Protocol)

- A. Azerbaijan (4)

1. Atashgah Fire-worshippers Temple
 2. Sheki Khan Sarayi (The Palace of the Sheki Khan)
 3. Momina-khatun Turbasi (The Mausoleum of Momina-khatun)
 4. The Mausoleum of Yusuf ibn Kuseyir (Yusuf son of Kuseyir)

- B. Lithuania (1)

1. Kernavé Archeological Site (Cultural Reserve of Kernavé)

- C. The meeting noted the withdrawal by the Dominican Republic of the request for the granting of enhanced protection to the Colonial City of Santo Domingo.

2. The fifth Meeting of the Committee also decided to amend paragraphs 45 and 46 of the Guidelines for the Implementation of the Second Protocol. The amended texts are as follows:

45. The request for the granting of enhanced protection is sent by the Permanent Delegation to UNESCO of the Party to the Committee through the Secretariat. Requests need to be received by the Secretariat by 1 March of each year at the latest in order to be considered at the upcoming meeting of the Committee. Requests received after this deadline will be considered during the next meeting of the Committee. The above mentioned date does not apply to requests for provisional enhanced protection.

46. The Secretariat acknowledges the receipt, checks for completeness and registers the request. The Secretariat requests any additional information from the Party, as appropriate, and all such information must be received, preferably, in a single submission of one complete file within two months of the date of the request from the Secretariat. The Secretariat forwards complete requests to the Bureau for *prima facie* consideration together with a review of completeness prepared by the Secretariat.

3. The Secretariat did not receive any new requests for the granting of enhanced protection.
4. However, additional information was submitted for the requests for enhanced protection for Kernavé Archeological Site (Cultural Reserve of Kernavé) (Lithuania), the Walled City of Baku, including the Shirvanshahs' Palace and Maiden Tower (Azerbaijan), and Gobustan Rock Art Cultural Landscape (Azerbaijan).
5. No additional information was submitted for the other four Azerbaijani requests presented to the fifth Meeting of the Committee: Atashgah Fire-worshippers Temple, Sheki Khan Sarayi (The

Palace of the Sheki Khan), Momina-khatun Turbasi (The Mausoleum of Momina-khatun), and The Mausoleum of Yusuf ibn Kuseyir (Yusuf son of Kuseyir). These requests for enhanced protection are not on the provisional agenda of the sixth Meeting of the Committee.

6. The Dominican Republic did not submit a new request for the Colonial City of Santo Domingo (World Heritage Site).

7. This document will analyze the requests for enhanced protection of Kernavé Archeological Site (Cultural Reserve of Kernavé) (Lithuania), the Walled City of Baku, including the Shirvanshahs' Palace and Maiden Tower (Azerbaijan), and Gobustan Rock Art Cultural Landscape (Azerbaijan).

8. The main documents supporting the requests for the granting of enhanced protection are marked in bold as part of the background of each cultural property and are included in the *prima facie* files which will be available online.

I. Kernavé Archeological Site (Cultural Reserve of Kernavé) (Lithuania)

A. Background

9. The following information was missing prior to the fifth Meeting of the Committee:

- Clarification of the notion of “general requirements” for protection against fire damage, structural collapse or other natural disasters, and provision of the text in English of these “general requirements” to the Secretariat.
- Confirmation of whether any other measures have been implemented to protect the cultural property, such as the implementation of the Action Plan for Implementing the Programme for the Protection of Cultural Heritage in the Event of Armed Conflict and other Circumstances of Extreme Urgency (approved by Resolution No. 845 of the Government on 5 September 2006) with regard to Kernavé Archeological Site (Cultural Reserve of Kernavé) by marking this cultural property on military maps published for the purposes of the armed forces.
- National legislation penalizing the use of the cultural property or its immediate surroundings in support of military action (Article 15(1)(b) of the Second Protocol).
- Actual UTM coordinates.

10. The Secretariat has received the following information concerning this cultural property (since 29 April 2010):

a. **Article 10(a)**: Kernavé Archeological Site (Cultural Reserve of Kernavé) was entered on the World Heritage List during the 28th session of the World Heritage Committee in 2004 (Decision 28 COM 14B.44).

b. **Article 10(b)/Para. 39 of the Guidelines**: Identification of the cultural property, preparatory and safeguarding measures

- **Original Application, Annexes I and II and supporting documents**
- **UTM coordinates and a military map marked with said UTM coordinates;**
- **Law of the Republic of Lithuania on the Protected Areas, No. IX-628, 4 December 2001;**

- **Law on Protection of Immovable Cultural Heritage, No. I-733, 22 December 1994;**
 - Article 21(1): “The immovable cultural heritage situated in a reserve ... shall be protected pursuant to the requirements of this Law and the Law on Protected Areas.”
- Law on Territorial Planning, No. I-1120, 12 December 1995;
- Resolution regarding the Approval of Regulations of the Kernavé State Cultural Reserve, No. 1745, 5 November 2002;
 - Complies with Item 3 of Article 7, Item 6 of Article 27 and Item 4 of Article 31 of the Law on Protected Areas.
- Order Concerning the Implementation of Resolution No. 1745, No. 461, 11 Dec 2002;
 - Complies with Items 6 and 8 of Article 27 of the Law on Protected Areas
- Order on the Approval of the Rules for the Use of and Admission to the State Cultural Reserve of Kernavé, No. IV-119, 11 April 2005 (unofficial English translation);
 - General Provision 3: The Reserve shall be ... used in the manner prescribed by the Law on Territorial Planning.
 - General Provision 6: Visitors to the Reserve shall comply with the requirements of the Law on Protected Areas.
- Amendment of the Order No. 27 of 7 July 1999 of the Director of the State Department of Geodesy and Cartography under the Government of the Republic of Lithuania on the Approval of Regulations of Technical Requirements to Topographic Maps M 1:10 000, Order No. 1P-141, 4 November 2008 (Unofficial English translation);
- On the Amendment of the Order No. 28 of 22 July 1999 of the Director of the State Department of Geodesy and Cartography under the Government of the Republic of Lithuania on the Approval of Regulations of Technical Requirements GKTR 2.03.01:1999, GKTR 2.04.01:1999, GKTR 2.05.01:1999, 2.06.01:1999:GKTR, Order No. 1P-140, 4 November 2008 (Unofficial English translation);
- Resolution Concerning the Status Change of the State Museum-Reserve of Archeology and History of Kernavé, Ratification of Change of Buffer Protection Zone Boundaries and Plan of Borders in the State Cultural Reserve of Kernavé, No. IX-982, 20 June 2002;
 - Complies with Article 6, Item 2, Paragraph 2 and Article 28, Item 6 of the Law on the Protected Areas
- **Letter of 25 October 2010, responding to Bureau’s request for further information;**
- Law on Fire Safety, No. IX-1225, 5 December 2002;
- **Fire Safety Rules of the State Cultural Reserve of Kernavé, approved by Order No. IV-15, 23 June 2011.**

c. **Articles 10(b)/ Para. 39 of the Guidelines:** Military planning and military training programs

- **Lithuanian National Report on the Implementation of the 1954 Hague Convention and its two Protocols;**
- **The Action Plan for Implementing the Programme for the Protection of Cultural Heritage in the Event of Armed Conflict and other Circumstances of Extreme Urgency (the “Plan”), approved by Resolution No. 845 of the Government, 5 September 2006;**

Measures implementing the Plan:

- Resolution on the Approval of the Lists of Immovable Cultural Heritage Objects and Buildings and Premises Intended for the Preservation and Exhibition of Movable Cultural Property, No. 193, 7 February 2007;

- Instructions for Protection and Evacuation of Movable Cultural Property kept in Museums, Libraries, Archives and Cult Buildings, approved by the Order No. IV-500 of the Minister of Culture, 18 July 2007;
- **The Instruction for Participation of the Armed Forces in Performing Preservation Works for Immovable Cultural Heritage Objects' in the Event of Armed Conflict and other Circumstances of Extreme Urgency, approved by Order No. V-540 of the Minister of National Defence, 24 May 2007;**
- List of Itineraries for Vehicles Transporting Hazardous Cargo by State Roads to bypass Objects included in the List of Immovable Cultural Heritage Objects of Outstanding Cultural Significance, approved by Order No. 3-398 of the Minister of Transport, 6 December 2007;
- Article 79 of the Disciplinary Statute of the Armed Forces of the Republic of Lithuania (Lithuanian National Report on the Implementation of the 1954 Hague Convention and its two Protocols, pg. 14).

d. **Article 10(b)/Para. 39 of the Guidelines**: Criminal legislation in accordance with Chapter 4 of the Second Protocol

- **Lithuanian National Report on the Implementation of the 1954 Hague Convention and its two Protocols;**
- **Law No. XI/1299, 22 March 2011, amending Articles 10 and 12 of the Criminal Code.**

e. **Article 10(c): Non-military use declaration issued by the Minister of National Defence** (signed on 18 May 2010):

Kernavé Archeological Site (Cultural Reserve of Kernavé) is not and will not be used for military purposes or to shield military sites.

B. Secretariat's Analysis

11. The status of compliance with the information requested may be summarized as follows:

a. **Article 10(a)**: According to paragraph 36 of the Guidelines for the Implementation of the Second Protocol, the Committee may consider that the condition of "greatest importance for humanity" has been satisfied as this cultural property has been a World Heritage Site since 2004.

b. **Article 10(b)**:

i. **Identification of the cultural property; preparatory and safeguarding measures:**

Maps, photos, and detailed descriptive information of this cultural property were submitted as part of the original application. The World Heritage Convention website also was consulted, and, in fact, the full texts of many of the safeguarding measures are available online as part of the World Heritage Site nomination file. A military map marked with UTM coordinates, and a list of UTM coordinates, were also submitted. Further, the current boundary and buffer zone were established by the Resolution Concerning the Status Change of the State Museum-Reserve of Archeology and History of Kernavé, Ratification of Change of Buffer Protection Zone Boundaries and Plan of Borders in the State Cultural Reserve of Kernavé.

This cultural property is protected by a legislative scheme aimed at cultural sites in general, as well as by orders and resolutions that are particular to regulating activities within, and access to, it. Notable among the list of legislation above is the synergy between the Law on Protection of Immovable Cultural Heritage and the Law on Protected Areas, as well as several measures implementing the Law on Protected Areas.

Also noteworthy is the Resolution regarding the Approval of Regulations of the Kernavé State Cultural Reserve, which preserves a territorial complex of cultural heritage objects in Kernavé together with movable and immovable cultural properties in the area. The Order Concerning the Implementation of Resolution No. 1745, No. 461, implements this resolution.

There is also a complete fire-safety scheme that includes national laws and a set of regulations particular to Kernavé. The main document is the Fire Safety Rules of the State Cultural Reserve of Kernavé, approved by Order No. IV-15, 23 June 2011, a set of general regulations proscribing the use of fire extinguishers, vehicles, and visitor behavior within Kernavé. Further, as stated in these Rules, "... other legal acts regulating fire safety should be abided as well (General Provisions I(4))." The Law on Fire Safety and the Order on the Approval of the Rules for the Use of and Admission to the State Cultural Reserve of Kernavé are presumably included in this set of legal acts; however, no plans or map were provided to indicate where fire hydrants or extinguishers might be available in Kernavé.

ii. Military planning and military training programs:

Lithuania has instituted the marking of cultural property with the emblem of the 1954 Hague Convention (Order Nos. 1P-140 and 1P-141 of the Director of the State Department of Geodesy and Cartography under the Government of the Republic of Lithuania), as well as comprehensive military planning for the protection of cultural property. In particular, the Plan provides, among other things, for the supplementing by the Ministry of National Defence of new and renewable databases of the topographical maps with information on the situation/condition of objects included in the lists of cultural heritage objects of outstanding cultural significance and to include those objects in the new maps published for purposes of the national defence system (Item 8 of the Plan). As mentioned above, this Plan is currently implemented by four orders and one resolution:

- The Resolution on the Approval of the Lists of Immovable Cultural Heritage Objects and Buildings and Premises Intended for the Preservation and Exhibition of Movable Cultural Property, No. 193, 7 February 2007, states that it is in accordance with Articles 1 and 3 of the 1954 Hague Convention and implements the first item of the Plan by establishing the said list. Kernavé is included as Item No. 37 as a Cultural Heritage Site / World Heritage Object.
- The Instructions for Protection and Evacuation of Movable Cultural Property kept in Museums, Libraries, Archives and Cult Buildings, approved by the Order No. IV-500 of the Minister of Culture on 18 July 2007, regulate actions to be taken by persons administering museums, libraries, archives and cult buildings in order to protect and evacuate movable cultural property kept in museums, libraries, archives and cult buildings in the event of armed conflict and other extreme situations. These apply to Kernavé and implement the fifth item of the Plan.
- The Instructions on Participation of the Armed Forces during Immovable Cultural Heritage Objects' Preservation Works in the Event of Armed Conflict or other Extreme Situations were approved by Order No. V-540 of the Minister of National Defence on 24 May 2007, and define actions, duties and responsibilities of the Armed Forces to protect or safeguard

cultural heritage objects in the event of armed conflict or other extreme situations within the territory of the Republic of Lithuania. These apply to Kernavé and implement the fourth item of the Plan.

- The List of Itineraries for Vehicles Transporting Hazardous Cargo by State Roads to bypass Objects included in the List of Immovable Cultural Heritage Objects of Outstanding Cultural Significance, approved by Order No. 3-398 of the Minister of Transport on 6 December 2007, implements the tenth action under the Plan.

The Commission on Implementation of the International Humanitarian Law, which was established in 2001 as an advisory body to the Minister of National Defence and consists of representatives of various institutions (National Defence System, Ministries of Justice, Foreign Affairs, Health, Culture, Education and Science, Interior, European Law Department, National Red Cross Society, leading universities, etc). Moreover, the Commission, among other activities, also organizes national and international seminars, courses and workshops on international humanitarian law and other related topics for members of the Commission, Lithuanian and foreign civil servants and military officers (Lithuanian National Report on the Implementation of the 1954 Hague Convention and its two Protocols, pgs. 9-10).

The subject of international humanitarian law is included in educational programmes of all levels of military personnel, as well as in the curriculum of education of police personnel, secondary schools etc. Also, international humanitarian law is optional course in the Law faculties of the leading universities as well as in the Institute of International Relations and Political Science (Lithuanian National Report on the Implementation of the 1954 Hague Convention and its two Protocols, pg. 10).

Further, upon the initiative of the Commission on the Implementation of the International Humanitarian Law, a position of a Chief Specialist of Cultural Heritage protection was established in the Lithuanian Armed Forces in 2004. The main task for the specialist is to coordinate and ensure implementation of the Hague Convention in the National Defence System. She/he provides recommendations on the implementation of the 1954 Hague Convention and its protocols to the Chief of Defence, and suggests solutions on how to protect cultural valuables by establishing proper procedures, and, within his/her competence, ensuring protection of cultural valuables both in case of an armed conflict and in peacetime (Letter of 25 October 2010).

This specialist is also responsible for the pre-mission training of all military personnel to be deployed for international operations and missions on the protection of cultural heritage in the areas of armed conflict. During this training, the provisions of the 1954 Hague Convention and its two Protocols are explained and analysed. Moreover, the specialist is responsible for educational articles in military publications (Lithuanian National Report on the Implementation of the 1954 Hague Convention and its two Protocols, pg. 9).

Finally, “military planning and military training programmes clearly indicate that Kernavé is provided with enhanced protection in accordance with the 1954 Hague Convention (Letter of 25 October 2010)”.

iii. Criminal legislation (Chapter 4 of the Second Protocol):

Law No. XI/1299, 22 March 2011, amends several articles of the Criminal Code; however, Articles 10 and 12 are the most relevant. Article 10 amends Article 106 of the Criminal Code, Destruction of Protected Objects, Plunder, Destruction of or Causing Damage to National Valuable Properties, such that “issuing an order to destroy or destroying historic monuments ...

or using such objects or their environment for military actions (emphasis added) shall be punished by imprisonment for 3 to 12 years.” Similarly, Article 12 amends paragraph 1 of Article 111 of the Criminal Code (no title was given) such that “ordering or carrying out a military attack prohibited under international humanitarian law ... (or) against a protected cultural valuable property (emphasis added) ... shall be punished by imprisonment for 5-15 years.” For crimes against humanity and war crimes, Lithuania applies “universal jurisdiction” (Lithuanian National Report on the Implementation of the 1954 Hague Convention and its two Protocols, pg. 13).

Sanctions concerning any illegal export or shipment of cultural property or transfer of property from occupied territory, violating the Convention and the Second Protocol, are provided for in Part 2 of Article 189 of the Criminal Code, Purchase or Realization of Property Gained Illegally: “Person, who gains, uses or realizes property of high monetary value, or cultural property of great scientific, historical or cultural significance, and knows that the property is gained illegally, is fined or arrested, or is punished by the deprivation of liberty for up to four years” (Lithuanian National Report on the Implementation of the 1954 Hague Convention and its two Protocols, pg. 14).

In addition, Part 1 of Article 199 of the Criminal Code, Smuggling, states: “Person, who, crossing the border of the Republic of Lithuania, carries goods, the value of which extends the sum of 250 MSL (minimal subsistence level), and does not declare them to the customs control or has avoided this control in another way or carries movable cultural property or antiquarian goods across the border of the Republic of Lithuania without a special clearance, is fined or punished by the deprivation of liberty for up to eight years” (Lithuanian National Report on the Implementation of the 1954 Hague Convention and its two Protocols, pg. 14-15).

Although it is not part of the Criminal Code, Article 79 of the Disciplinary Statute of the Armed Forces of the Republic of Lithuania provides grounds for disciplinary measures for violations of the rules of international humanitarian law (Lithuanian National Report on the Implementation of the 1954 Hague Convention and its two Protocols, pg. 14):

1. For violation of international humanitarian law, servicemen of the compulsory military service are reprimanded or given additional service tasks, or are not permitted to leave their service place, or their military rank is reduced, servicemen of the professional military service are reprimanded, or their wage is diminished, or their military rank is reduced.
2. For the same acts, committed under aggravating circumstances, servicemen of professional military service are dismissed from the service, cadets are dismissed from military education institutions.

The Secretariat submits that the requirements of Article 15(1)(a-e) have been fulfilled.

c. **Article 10(c): Non-military use declaration**

According to Article 10(c) of the Second Protocol, the Committee may consider that this condition has been satisfied.

C. Conclusion

12. The Secretariat respectfully submits that the request for the granting of enhanced protection to Kernavė Archeological Site (Cultural Reserve of Kernavė) submitted by Lithuania is complete.

II. The Walled City of Baku, including the Shirvanshahs' Palace and Maiden Tower (Azerbaijan)

A. Background

13. Though the Committee adjourned the debate on this cultural property and Gobustan Rock Art Cultural Landscape until its sixth Meeting, and for this reason, did not proceed to the substantive analysis, it was expressed by the Secretariat that the following information was missing from the requests for enhanced protection for both cultural properties:

- Any other information regarding the implementation of Paragraph 39 of the Guidelines for the Implementation of the Second Protocol:
 - (Second bullet point) national measures intended for “due consideration of the protection of the cultural property proposed for enhanced protection in military planning and military training programs”; and,
 - (Third bullet point) “appropriate criminal legislation providing for the repression of, and jurisdiction over, offenses committed against cultural property under enhanced protection within the meaning of, and in accordance with, Chapter 4 of the Second Protocol” (See *also*, Article 15(1)(b) of the Second Protocol).

14. The Secretariat has received the following information concerning this cultural property (since 5 May 2010):

a. **Article 10(a):** The Walled City of Baku, including the Shirvanshahs' Palace and Maiden Tower, was inscribed on the World Heritage List during the 24th session of the World Heritage Committee in 2000 (Decision 24COM X.C.1).

b. **Article 10(b)/ Para. 39 of the Guidelines:** Identification of the cultural property, preparatory and safeguarding measures

- **Original application, Attachments 1-6;**
- **Letter of 7 August 2010 responding to request for information** after the June 2010 Informal Bureau Meeting including Article 5 measures, inventory and emergency measures, military planning and training, criminal legislation, clarification of boundaries, and UTM coordinates (responses imbedded in original letter from the Secretariat);
- **Map of “Icherisheher” and its Buffer Zone with UTM coordinates;**
- PowerPoint presentation during the fifth Meeting of the Committee, and information note providing further descriptive information of the cultural property;
- **Law on the Preservation of Historical and Cultural Monuments (1998)** (unofficial translation provided by the Secretariat).

c. **Articles 10(b)/ Para. 39 of the Guidelines:** Military planning and military training programs

- **Letter submitted on 26 August 2010** from the Ministry of Defence of the Republic of Azerbaijan detailing military planning and training measures and proposed legislation;
- **Annex II to the letter e-mailed to the Secretariat on 10 May 2011:** Extracts from Instructions on the Application of the Law of Armed Conflict in the Armed Forces of the Republic of Azerbaijan, dated December 2009;

- Order No. 637 of the Minister of Defence of the Republic of Azerbaijan on the application of International Humanitarian Law norms within the Armed Forces of Azerbaijan¹ (available on the ICRC website; the text was not submitted to the Secretariat in support of this request for the granting of enhanced protection): military training measures.

d. **Article 10(b)/ Para. 39 of the Guidelines:** Criminal legislation in accordance with Chapter 4 of the Second Protocol

- **Letter of 7 August 2010 responding to request for information** attaching an unofficial English translation of Article 116.08 of the Criminal Code of the Republic of Azerbaijan, which penalizes attacks of the objects detailed therein;

- **Annex I to the letter e-mailed to the Secretariat on 10 May 2011:** Extracts from appropriate legislation regarding the adequate protection of the cultural property (for this cultural property) proposed for enhanced protection:

- Extracts of the Constitution of the Republic of Azerbaijan (Articles 22, 23, 40, 77 and 94);
- Extracts of the Criminal Code (Articles 117, 183, 206, 209, 246, and 261) and Code of Criminal Procedure (Article 209);
- Article 74 of the Code of Administrative Offences of the Republic of Azerbaijan;
- Articles 22, 23 and 94 of the Constitutional Law of the Republic of Azerbaijan on Normative-Legal Acts;
- Extracts from Instructions on the Application of the Law of Armed Conflict in the Armed Forces of the Republic of Azerbaijan (military training and planning).

e. **Article 10(c)/ Para. 42 of the Guidelines:** Non-military use declaration

A non-military use declaration was issued by the Deputy Minister of Defense stating that the Walled City of Baku, including the Shirvanshahs' Palace and Maiden Tower and its immediate surroundings (buffer zone) is not and will not be used for military purposes or to shield military sites.

ii. Secretariat's Analysis

15. The status of compliance with the information requested may be summarized as follows:

a. **Article 10(a):** According to paragraph 36 of the Guidelines for the Implementation of the Second Protocol, the Committee may consider that the condition of "greatest importance for humanity" has been satisfied as this site has been a World Heritage Site since 2000.

b. **Article 10(b):**

i. Identification of the cultural property; preparatory and safeguarding measures:

Several photos, a map, and descriptive information of this cultural property were submitted as part of the original application, and in a letter dated 7 August 2010 (responding to the Bureau's information request). Information available on the World Heritage Centre website² also was

¹ <http://www.icrc.org/ihl-nat.nsf/WebLAW!OpenView&Start=1&Count=300&Expand=11.6#11.6> (last visited on 16 August 2011).

² <http://whc.unesco.org/en>

consulted. Another map with UTM coordinates was submitted on 15 November 2010, and further descriptive information was offered on 23 November 2010. Further, as stated in the original application, this cultural property is protected by the Decision of the Cabinet of Ministers of the Republic of Azerbaijan, No. 132, 2001. Decision No. 132 implements the Law on the Preservation of Historical and Cultural Monuments (1998), and it was provided to the Secretariat as part of the request for the granting of enhanced protection to Gobustan Rock Art Cultural Landscape. Further, a buffer zone around the cultural property was established by Decision of the Cabinet of Ministers of the Republic of Azerbaijan, No. 85, 2009.

Information regarding additional preparatory and safeguarding measures is sparse, and it was included in the original application and the 7 August 2010 letter. Although the Order of the President of the Republic of Azerbaijan, No. 629, 2005, establishes the Administration as the body responsible for the general protection, conservation and improvement of this cultural property, all additional information concerned future projects: developing research and hiring McKinsey & Company for consulting work. Further, the “Rule on enjoyment and protection of historical buildings” and “Agreement on protection of historical monuments” were mentioned but not provided.

The 7 August 2010 letter also mentioned that there are 39 fire hydrants, service lines are being replaced and telephone lines have been placed underground. Further, “most of the buildings” are equipped with modern fire alarms that are connected to a rapid response system. It also was stated in two sentences that the Administration created the Housing-Communal Service for repairs, construction, and preparing inventories, equipment and other techniques. No plans, diagrams, or other supportive information was submitted.

ii. Military planning and military training programs:

The aim of the Instructions on the Application of the Law of Armed Conflict in the Armed Forces of the Republic of Azerbaijan is to “achieve the study and application of legal norms on armed conflicts by all military personnel of Armed Forces of Azerbaijan during the planning and conducting of hostilities”. In particular, the Armed Forces are taught that “cultural properties shouldn’t be used for military purposes (1.25 Notions)”, and serious violations of the Law of Armed Conflict include “assign(ing) as a target and therefore to expose large-scale attacks to the historical monuments, fine-art works or temples which are specially protected (12.3.4.)”. Further, “depending upon the committed violation actions against the norms of the Law of Armed Conflicts, the accused persons are charged with arrest, discipline or material amenabilities (13)”.

Moreover, International Humanitarian Law is taught at specially created educational institutions of the Ministry of Defence, and attorneys serving in the Armed Forces of Azerbaijan are instructed on these norms so that they can serve as legal advisors in time of armed conflict (Letter from the Ministry of Defence, 26 Aug. 2010).

iii. Criminal legislation (Chapter 4 of the Second Protocol):

No legislation was submitted to the Secretariat that would establish criminal offenses under the domestic law of Azerbaijan, and make such offenses punishable by appropriate penalties, for the use of cultural property under enhanced protection or its immediate surroundings in support of military action (see Article 15(1)(b) of the Second Protocol).

Article 116.0.8 of the Criminal Code of the Republic of Azerbaijan punishes by imprisonment attacks without “military necessity on objects ... or locations of patients and wounded persons

which are not in military purpose, clearly seen and distinctive.” It may be argued that this law complies with the requirement of Articles 15(1)(a) and (d)).

However, Article 246 of the Criminal Code (punishment by monetary fine or a maximum two years’ imprisonment), and Article 74 of the Code of Administrative Offences (imposition of an administrative fine) cannot be deemed as fully satisfying the requirements of Article 15(2) of the Second Protocol.

Although several other laws were submitted that provide a general framework with regard to international humanitarian law, they do not fully respond to the stated requirements of Chapter 4 of the Second Protocol, in particular Article 15.

c. **Article 10(c):** Non-military use declaration

According to Article 10(c) of the Second Protocol, the Committee may consider that this condition has been satisfied.

C. Conclusion

16. The Secretariat respectfully submits that the request for the granting of enhanced protection for the Walled City of Baku, including the Shirvanshahs’ Palace and Maiden Tower submitted by Azerbaijan is incomplete with regard to Article 10(b), essentially due to:

1. The absence of national legislation implementing Article 15(1)(b) of the Second Protocol, as well as
2. The need for further information regarding safeguarding measures, such as general protection, conservation and improvement of this cultural property, inventories and fire safety measures.

III. Gobustan Rock Art Cultural Landscape (Azerbaijan)

A. Background

17. The information missing from the request for the granting of enhanced protection for this cultural property prior to the fifth Meeting of the Committee is listed in paragraph 13, above.

18. The Secretariat has received the following information concerning this cultural property (since 29 April 2010):

Article 10(a): Gobustan Rock Art Cultural Landscape was entered on the World Heritage List during the 28th session of the World Heritage Committee in 2007 (Decision 31COM 8B.49).

Article 10(b)/ Para. 39 of the Guidelines: Identification of the cultural property, preparatory and safeguarding measures

- **Original application;**
- **Letter of 10 May 2011 responding to the Secretariat’s request for missing information:** UTM coordinates, Article 7 of Chapter II of the Law on Museums (2000), an extract of the Land Codex of the Republic of Azerbaijan (1999), and an extract of the Law on Specially Protected Natural Territories and Objects (2000);
- **Decision No. 132 of the Cabinet of Ministers of the Republic of Azerbaijan of 2 August 2001,** List of state protected immovable historic and cultural monuments on the

territory of the Republic of Azerbaijan in accordance with their levels of importance. According to this decree, "Gobustan Rock Art Cultural Landscape Preserve" is subject to the Law on Protection on Historical and Cultural Monuments (1998);

- **Decree No. 172 of the Cabinet of Ministers of the Republic of Azerbaijan of 6 November 2007**, Awarding a status of National reserve to the Gobustan Rock Art Cultural Landscape Preserve;
- **Order No. 2213 of the President of the Republic of Azerbaijan of 2 June 2007**, About the protection of historic and cultural values situated in the territory of the Gobustan Rock Art Cultural Landscape Preserve;
- **Law on the Preservation of Historical and Cultural Monuments (1998)** (unofficial translation provided by the Secretariat).

Articles 10(b)/ Para. 39 of the Guidelines: Military planning and military training programs

- **Letter submitted on 27 August 2010** from the Ministry of Defence of the Republic of Azerbaijan detailing military planning and training measures and proposed legislation (English translation provided);
- **Letter of 10 May 2011 responding to the Secretariat's request for missing information:** Extracts of legislation including Article 74 of the Code of Administrative Offences of the Republic of Azerbaijan, Articles 22, 23 and 94 of the Constitutional Law of the Republic of Azerbaijan on Normative-Legal Acts, and Extracts from Instructions on the Application of the Law of Armed Conflict in the Armed Forces of the Republic of Azerbaijan;
- **Annex II to the letter of 10 May 2011 responding to the Secretariat's request for missing information:** Extracts from Instructions on the Application of the Law of Armed Conflict in the Armed Forces of the Republic of Azerbaijan, dated December 2009;
- Order No. 637 of the Minister of Defence of the Republic of Azerbaijan on the application of International Humanitarian Law norms within the Armed Forces of Azerbaijan (located on the ICRC website; the text was not submitted to the Secretariat in support of this request for the granting of enhanced protection): military training measures.

Article 10(b)/ Para. 39 of the Guidelines: Criminal legislation in accordance with Chapter 4 of the Second Protocol

Please see the analysis for the Walled City of Baku, including the Shirvanshahs' Palace and Maiden Tower, above. The legislation for this cultural property was provided in the text of the letter of 10 May 2011 rather than in an annex.

Article 10(c)/ Para. 42 of the Guidelines: Non-military use declaration

A non-military use declaration was issued by the Deputy Minister of Defense stating that the Gobustan Rock Art Cultural Landscape is not and will not be used for military purposes or to shield military sites.

B. Secretariat's Analysis

19. The status of compliance with the information requested may be summarized as follows:

Article 10(a): According to paragraph 36 of the Guidelines for the Implementation of the Second Protocol, the Committee may consider that the condition of "greatest importance for humanity" has been satisfied as this cultural property has been a World Heritage Site since 2007.

Article 10(b):i. Identification of the cultural property: preparatory and safeguarding measures:

Similar to the analysis for the Walled City of Baku, including the Shirvanshahs' Palace and Maiden Tower, above, photos, a map, and descriptive information of this cultural property were submitted as part of the original application, and in a letter dated 26 August 2010 (responding to the Bureau's information request). Information available on the World Heritage Convention website also was consulted. Further, this cultural property is protected by the Decision of the Cabinet of Ministers of the Republic of Azerbaijan, No. 132, 2001, and, therefore, the Law on the Preservation of Historical and Cultural Monuments (1998).

Unique to this cultural property are Decree No. 172 of the Cabinet of Ministers of the Republic of Azerbaijan of 6 November 2007, which awards the status of National Reserve to the Gobustan Rock Art Cultural Landscape Preserve, and Order No. 2213 of the President of the Republic of Azerbaijan of 2 June 2007, About the protection of historic and cultural values situated in the territory of the Gobustan Rock Art Cultural Landscape Preserve. No further information as to what it means to be awarded the status of a National Reserve was given, nor was any other clarifying information submitted. The decree is less than one-half page long. The order, however, stipulates actions that will take place in the future to protect the cultural property, including the creation of maps and a boundary, and notably, relocating a nearby prison that diminishes the esthetic value of the preserve (Article 3). No additional information regarding the implementation of this order was provided.

Information was not sufficiently provided for this cultural property regarding inventories, fire and emergency planning, and other protection.

ii. Military planning and military training programs

The analysis for the Walled City of Baku, including the Shirvanshahs' Palace and Maiden Tower (above) concerning military planning and military training programs also applies to this cultural property.

iii. Criminal legislation (Chapter 4 of the Second Protocol)

The analysis for the Walled City of Baku, including the Shirvanshahs' Palace and Maiden Tower (above) concerning criminal legislation in accordance with Chapter 4 of the Second Protocol also applies to this cultural property.

Article 10(c): Non-military use declaration

According to Article 10(c) of the Second Protocol, the Committee may consider that this condition has been satisfied.

C. Conclusion

20. The Secretariat respectfully submits that the request for enhanced protection for Gobustan Rock Art Cultural Landscape submitted by Azerbaijan is incomplete with regard to Article 10(b), essentially due to:

1. The absence of national legislation implementing Article 15(1)(b) of the Second Protocol, as well as
2. The need for further information regarding safeguarding measures, such as general protection, conservation and improvement of this cultural property, inventories and fire safety measures.

DRAFT DECISIONS 6.COM 2

1. Kernavé Archeological Site (Cultural Reserve of Kernavé) (Republic of Lithuania)

The Committee:

Recalling that the Republic of Lithuania submitted a request for the granting of enhanced protection for the cultural property of Kernavé Archeological Site (Cultural Reserve of Kernavé) (Republic of Lithuania) on 27 April 2010,

Recalling that, during its Fifth Meeting in November 2010, the Committee decided to refer said request back to the Republic of Lithuania to submit additional information, with regard to paragraphs 39, 56 and 58 of the Guidelines for the Implementation of the Second Protocol to the Hague Convention;

Acknowledging with appreciation that the Republic of Lithuania resubmitted said request in 2011 along with additional information;

Having considered the request for enhanced protection for Kernavé Archeological Site (Cultural Reserve of Kernavé), including the additional information submitted in 2011;

1. *Decides* that the request is complete;
2. *Further decides* to grant enhanced protection to Kernavé Archeological Site (Cultural Reserve of Kernavé);
3. *Adopts* the following Statement of Inclusion of the said property on the List of Cultural Property under Enhanced Protection:

The cultural property of Kernavé Archeological Site (Cultural Reserve of Kernavé) complies with the three conditions of Article 10 of the Second Protocol in the following ways:

- By virtue of its inscription on the World Heritage List on the basis of criteria (iii) and (iv), and in light of paragraph 36 of the Guidelines for the Implementation of the Second Protocol to the Hague Convention, Kernavé Archeological Site (Cultural Reserve of Kernavé) is deemed to comply with the condition of the greatest importance for humanity;
- By being protected by the relevant provisions of the Law of the Republic of Lithuania on the Protected Areas, No. IX-628, 4 December 2001, and the Law on Protection of Immovable Cultural Heritage, No. I-733, 22 December 1994; Fire Safety Rules of the State Cultural Reserve of Kernavé, approved by Order No. IV-15, 23 June 2011; the Action Plan for Implementing the Programme for the Protection of Cultural Heritage in the Event of Armed Conflict and other Circumstances of Extreme Urgency, approved by Resolution No. 845 of the Government, 5 September 2006, and its implementing measures, particularly the Instructions on Participation of the Armed Forces during Immovable Cultural Heritage Objects' Preservation Works in the Event of Armed Conflict or other Extreme Situations, approved by Order No. V-540 of the Minister of National Defence, 24 May 2007; Kernavé Archeological Site (Cultural Reserve of Kernavé) complies with the condition of being protected by adequate domestic legal and administrative measures recognizing its exceptional cultural and historic value and ensuring the highest level of protection. Further, the Commission on the Implementation of the International Humanitarian Law and the appointed Chief Specialist of Cultural Heritage protection ensure that military training and planning are in line with the tenets of

the 1954 Hague Convention and its Second Protocol. Finally, the Republic of Lithuania implemented the provisions of Chapter 4 of the Second Protocol in its Law No. XI/1299, 22 March 2011.

- By a non-military use declaration issued by the Minister of National Defence on 18 May 2010 stating that Kernavé Archeological Site (Cultural Reserve of Kernavé) is not and will not be used for military purposes or to shield military sites, Kernavé Archeological Site (Cultural Reserve of Kernavé) is deemed to comply with the condition of a declaration being made by the Party which has control over the cultural property confirming that the cultural property is not and will not be used for military purposes or to shield military sites.

2. The Walled City of Baku, including the Shirvanshahs' Palace and Maiden Tower (Azerbaijan)

The Committee:

1. *Recalling* Articles 10 and 11 of the Second Protocol to the Hague Convention of 1954 for the Protection of Cultural Property in the Event of Armed Conflict, as well as parts III.A and III.B of the Guidelines for the Implementation of the Second Protocol to the Hague Convention of 1954 for the Protection of Cultural Property in the Event of Armed Conflict;
2. *Recalling* that the Fifth Meeting of the Committee adjourned the debates until its sixth Meeting regarding the request for enhanced protection of Azerbaijan for the cultural property of the Walled City of Baku, including Shirvanshahs' Palace and Maiden Tower;
3. *Having considered* the request for enhanced protection for the Walled City of Baku, including the Shirvanshahs' Palace and Maiden Tower;
4. *Recalling* paragraph 71 of the Guidelines for the Implementation of the Second Protocol to the Hague Convention;
5. *Thanking* the Azerbaijani authorities for having provided certain additional information and *appreciating* the efforts of Azerbaijan to submit the required additional information in 2011;
6. *Encourages* Azerbaijan to continue its efforts to submit the required information;
7. *Decides* to refer said request back to Azerbaijan to submit additional information with regard to paragraph 39 of the Guidelines for the Implementation of the Second Protocol to the Hague Convention.
8. *Requests* the Secretariat to provide expert advice to and enhance cooperation with the Azerbaijani authorities in order to facilitate the adoption of the relevant criminal legislation and the submission of the required additional information with regard to paragraph 39 of the Guidelines for the Implementation of the Second Protocol to the Hague Convention.

3. Gobustan Rock Art Cultural Landscape (Azerbaijan)

The Committee:

1. *Recalling* Articles 10 and 11 of the Second Protocol to the Hague Convention of 1954 for the Protection of Cultural Property in the Event of Armed Conflict, as well as parts III.A and III.B

of the Guidelines for the Implementation of the Second Protocol to the Hague Convention of 1954 for the Protection of Cultural Property in the Event of Armed Conflict;

2. *Recalling* that the Fifth Meeting of the Committee adjourned the debates until its sixth Meeting regarding the request for enhanced protection of Azerbaijan for the cultural property of Gobustan Rock Art Cultural Landscape;

3. *Having considered* the request for enhanced protection for Gobustan Rock Art Cultural Landscape;

4. *Recalling* paragraph 71 of the Guidelines for the Implementation of the Second Protocol to the Hague Convention;

5. *Thanking* the Azerbaijani authorities for having provided certain additional information and *appreciating* the efforts of Azerbaijan to submit the required additional information in 2011;

6. *Encourages* Azerbaijan to continue its efforts to submit the required information;

7. *Decides* to refer said request back to Azerbaijan to submit additional information with regard to paragraph 39 of the Guidelines for the Implementation of the Second Protocol to the Hague Convention.

8. *Requests* the Secretariat to provide expert advice to and enhance cooperation with the Azerbaijani authorities in order to facilitate the adoption of the relevant criminal legislation and the submission of the required additional information with regard to paragraph 39 of the Guidelines for the Implementation of the Second Protocol to the Hague Convention.