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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

**Eighth meeting**  
**UNESCO Headquarters, Paris**  
**18 to 19 December 2013**

**Item 15 of the Provisional Agenda:**  
**Creation of a distinctive emblem**  
**for cultural property under enhanced protection**

## **I. Current status of the law**

1. The 1954 Hague Convention for the Protection of Cultural Property in the Event of Armed Conflict (“the Hague Convention”) creates a distinctive emblem to mark cultural property and protect it in the event of armed conflict.
2. Article 6 of the Hague Convention provides for the marking of cultural property in order to facilitate its recognition, with instructions for its use outlined in Article 16 of the Convention.
3. Article 16(1) of the Hague Convention describes the emblem, while Article 16(2) of the same Convention states that it shall be used either alone or repeated three times in a triangular formation to identify immovable cultural property under special protection (Article 17(1)(a)), the transport of cultural property under the conditions set out in Articles 12 and 13 (Article 17(1)(b)) and for improvised refuges (Article 17(1)(c)).
4. Article 17(2)(a) of the Hague Convention outlines that cultural property not under special protection may only be marked with a single distinctive emblem. This distinction allows High Contracting Parties engaged in armed conflict to distinguish between cultural property placed under special protection and cultural property under the general protection regime.
5. Article 10 of the Hague Convention provides that cultural property under special protection must be marked with the distinctive emblem during armed conflict. The ability to make the distinction between the different categories of marked cultural property is important, as Article 9 of the same Convention obliges High Contracting Parties to ensure immunity of cultural property under special protection by refraining from any act of hostility directed against such property and from any use of such property or its surroundings for military purposes.
6. The obligation to respect cultural property under general protection, pursuant to Article 4(1) of the Hague Convention by refraining from any act of hostility or by using it in a way that is likely to expose it to destruction or damage, may be waived ‘only in cases where military necessity imperatively requires such a waiver’. Therefore, the obligations of High Contracting Parties and their military personnel towards cultural property under special protection are greater than towards cultural property under general protection in times of armed conflict.
7. The Second Protocol to the Hague Convention strengthens the provisions relating to cultural property under general protection by placing greater limits on the circumstances in which a waiver on the grounds of imperative military necessity can be granted (Article 6). It also introduces a new category of cultural property under “enhanced protection” (Chapter 3 of the Second Protocol) in order to improve the system of special protection under the Hague Convention. As is the case for special protection, the status of cultural property under enhanced protection ensures an increased degree of protection than that guaranteed with general protection. Parties to a conflict are obliged to 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 (Article 12 of the Second Protocol). However, the enhanced protection status can be lost under certain circumstances (Article 13 of the Second Protocol).
8. For the same reasons explained above with reference to general and special protection, military personnel must be able to distinguish between cultural property under the different categories of general and enhanced protection when involved in armed conflict.
9. The Second Protocol does not adopt the marking of cultural property under enhanced protection with a distinctive emblem. The problem therefore exists when Parties wish to distinguish cultural property under enhanced protection from that under general or special protection. While it is theoretically possible to use the distinctive emblem repeated three times to mark cultural property both under special and enhanced protection (cf. Article 4 (b) of the Second Protocol), in practice it is unlikely to occur.

10. This issue is acknowledged in the Guidelines for the Implementation of the 1999 Second Protocol to the Hague Convention of 1954 for the Protection of Cultural Property in the Event of Armed Conflict ('the Guidelines') as set out below:

94. The provisions of the Convention define the use of the emblem to mark cultural property under general and special protection. The Second Protocol does not include any provisions on how to mark cultural property under enhanced protection with the emblem.

95. As cultural property under enhanced protection is, by definition, cultural property, Parties are entitled to mark such cultural property in accordance with Article 6 of the Convention.

11. These provisions, while accurately describing the situation, do not suggest a solution that would enable the creation of a distinctive marking of cultural property under enhanced protection with the emblem repeated three times or in any other distinct way.

## II. 1972, 2003 and 2005 Conventions

12. When considering a possible solution, it can be beneficial to turn to the relevant sections of the guidelines of other UNESCO Conventions for guidance. In this regard it should be recalled that the Hague Convention is the only UNESCO Convention to establish rules for its emblem within the Convention itself. Consequently, the provisions in the Guidelines (or Directives) of the 1972, 2003 and 2005 (currently in draft form) Conventions are considerably more detailed than those of the Second Protocol.

### A. *The World Heritage Emblem under the 1972 Convention*

13. The World Heritage Emblem was adopted by the World Heritage Committee at its second session (Washington, 1978).<sup>1</sup>
14. In 1998, at its 22<sup>nd</sup> session (Kyoto, 1998) the World Heritage Committee adopted 'Guidelines and Principles for the Use of the World Heritage Emblem'. Those Guidelines and Principles were integrated in the Operational Guidelines for the Implementation of the World Heritage (the equivalent of the Guidelines for the Implementation of the Second Protocol).<sup>2</sup>
15. The Guidelines and Principles provided in paragraphs 261 and 262 state the following:
- '261. Although there is no mention of the Emblem in the *Convention*, its use has been promoted by the Committee to identify properties protected by the *Convention* and inscribed on the World Heritage List since its adoption in 1978.
262. The World Heritage Committee is responsible for determining the use of the World Heritage Emblem and for making policy prescriptions regarding how it may be used.'

### B. *The 2003 Convention for the Safeguarding of the Intangible Cultural Heritage*

16. The emblem of the 2003 Convention and the rules applicable to its use are addressed in Chapter IV.2 of the Operational Directives for the Implementation of the Convention for the Safeguarding of the Intangible Cultural Heritage.
17. The specific feature of this emblem is that it 'shall be accompanied by UNESCO's logo and may not be used in isolation, it being understood that each of them is governed by a separate set of rules and that any use must have been authorized in accordance with each of the respective sets of rules' (IV.2, paragraph 125).
18. The rules related to the logo of UNESCO are included in the Directives concerning the Use of the Name, Acronym, Logo and Internet Domain Names of UNESCO.<sup>3</sup>

<sup>1</sup> Operational Guidelines for the Implementation of the World Heritage Convention, paragraph 258.

<sup>2</sup> *Ibid*, paragraph 260.

<sup>3</sup> [http://www.unesco.org/bpi/pdf/directives\\_logo\\_c34\\_86\\_en.pdf](http://www.unesco.org/bpi/pdf/directives_logo_c34_86_en.pdf).

**C. *The 2005 Convention on the Protection and Promotion of the Diversity of Cultural Expressions***

19. The emblem of the 2005 Convention and the Operational Guidelines on its use were adopted by the fourth session of the Conference of Parties to the Convention held in June 2013. The adopted resolution can be found at:

<http://unesdoc.unesco.org/images/0022/002217/221795e.pdf>.

The Operational Guidelines provide that the emblem of the 2005 Convention can be used independently as a stand-alone emblem or linked together with the UNESCO logo.

20. While the request for the use of the linked logo must be addressed to the Director-General of UNESCO in accordance with the Directives concerning the Use of the Name, Acronym, Logo and Internet Domain Names of UNESCO, the granting of the use of the stand-alone emblem of the 2005 Convention is delegated to the Secretariat of the 2005 Convention as described under Section V of the Operational Guidelines on the Use of the Emblem.

**III. Possible solution: Amendment to the Guidelines for the Implementation of the Second Protocol**

21. It may be submitted, that the situation of the distinctive emblem for cultural property under enhanced protection under the Second Protocol is similar to that of the 1972 World Heritage Convention.

22. In both cases, neither instrument provides for a distinctive emblem. The situation has been remedied by their respective Committees, in the framework of their guidelines (cf. paragraphs 94 and 95 of the Guidelines and paragraph 258 and the following of the Operational Guidelines for the Implementation of the World Heritage Convention).

23. As stated in paragraph 10 of this document, paragraph 95 of the Guidelines provides the Parties with the possibility of marking cultural property with a single emblem of the Hague Convention. This option causes difficulties as there is no distinction in the marking of cultural property under general and enhanced protection, despite the difference in the protective regimes.

24. It may be submitted on the basis of the practice of the 1972 and 2003 Conventions that the distinctive emblem to mark cultural property under enhanced protection may be defined in the Guidelines.

25. This proposal has two main advantages:

- a. Once the Meeting of the Parties has endorsed the amendment(s) to the Guidelines, the new provision(s) on the marking of cultural property under enhanced protection will provide for legal stability and security; and
- b. The Guidelines are aimed at guiding all Parties, including those which will become party to the Second Protocol in the future.

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

**DRAFT DECISION 8.COM 12**

The Committee,

1. Having examined document CLT-13/8.COM/CONF.203/12,
2. Decides that there is a need to create a specific distinctive emblem to mark properties under enhanced protection of the Second Protocol;
3. Invites the Bureau to submit to the Committee's Ninth Meeting a proposal to create a specific distinctive emblem to mark cultural property under enhanced protection, as well as the modalities of its use, with a view to obtaining its adoption by the Sixth Meeting of the Parties in 2015.