

Comments of Belgium related to the Observations of the Government of Japan concerning the 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) proposed by Belgium

As the Japanese Government's Observations concerning the 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) proposed by Belgium are systematically communicated together with the proposal, it is important for the Belgian Government to be able to answer some of the questions raised.

In order to make it easier to understand, the structure of this background paper includes the Japanese Government's Observations and provides some additional information (shown in *italics*).

1. Differences in time schedule of examination

A granting of enhanced protection under the Second Protocol is normally decided within a period not exceeding one year, in line with its present procedure.

- *Belgium: Theoretically, there is a maximum period of one year before the submission of the application (submitted before 1 March) and any granting of enhanced protection (Committee decision within the year of submission). However, the application is submitted to the Committee only if the Secretariat believes it to be complete enough, ("completeness of request" condition¹) to be placed on the Committee agenda. Some of the applications submitted to the Secretariat were never placed on the agenda, indeed were even postponed both by a decision by the Secretariat, the Bureau or the Committee. For example, the Republic of Azerbaijan's applications took three years to be completed².*

At the same time, it can take up to 1 year and a half to make the decision of inscription on the World Heritage List from the submission of their complete nominations under the normal timetable. Therefore, it would take more than about 2 years until the enhanced protection is granted under the proposed procedure (modifications to paragraph 122) whereby the World Heritage Committee shall decide first and notify the Committee for the Protection of Cultural Property in the Event of Armed Conflict of its decision. These differences in time schedule should be made clear to the States Parties which are eligible to submit such joint requests.

- *Belgium: Belgium agrees with the need for sound information about the impact such a joint request makes on the time schedules for granting enhanced protection. If the States want their enhanced protection requests to be completed more quickly, they are always at liberty to operate within the context of the normal procedure: submitting a request that is separate from the one addressed to the World Heritage Committee (see previous comment). However, in view of the previous comment about the time schedule issue, there is no guarantee that the enhanced protection procedure will be faster in practice. It should be stressed that in case*

¹ Article 46 of the Guidelines for the Implementation of the Second Protocol to the Hague Convention

² Presented for the first time in 2011, the Republic of Azerbaijan's requests for the granting of enhanced protection were postponed by the Committee in 2011 and 2012 to be adopted in 2013.

of an emergency, the Second Protocol's article 11.9 includes an emergency procedure. This option should be used even in the event of a joint submission.

2. Status of requests for enhanced protection at the submissions of draft nomination for inscription on the World Heritage List

In the process of nomination for inscription on the World Heritage List, States Parties may submit draft nominations so as to have completeness checks by the World Heritage Centre. However, the World Heritage Centre does not have the authority to carry out a completeness check on the requests for the granting of enhanced protection. Therefore, it should be made clear in the modified Operational Guidelines that the World Heritage Centre does not check the parts concerning the granting of enhanced protection and that the Secretariat of the Hague Convention should check them at an appropriate time.

- *Belgium: Belgium fully agrees with this observation. The role of the World Heritage Centre is confined to forwarding a copy of the request to the Secretariat of the 1954 Hague Convention. It is up to the Secretariat to the 1954 Hague Convention to make its own analysis in relation to items applicable to it. This clarification could be made in the Operational Guidelines but without creating by default an obstacle to a modification to the Format as proposed.*

3. The case of withdrawals of nominations for inscription on the World Heritage List

States Parties may withdraw their nominations for inclusion on the World Heritage List after the evaluation of the International Council on Monuments and Sites (ICOMOS), in particular when they are not recommended for inscription. We should make sure that this means that the simultaneous request for the granting of enhanced protection, if such nominations are submitted as a joint request, are then automatically cancelled.

***Belgium: It should be stressed that solely the submission of nominations is joint, while the applicable legal systems are still very separate.** World Heritage listing is only one factor facilitating the work of the Committee for the Protection of Cultural Property in the Event of Armed Conflict, pursuant to point 36 of the Guidelines specifying that “It is presumed that the Committee, subject to other relevant considerations, will consider that immovable cultural property inscribed on the World Heritage List satisfies the condition of greatest importance for humanity”. This gives rise to two principles:*

1. *If the nomination for World Heritage listing is withdrawn, indeed even if a nomination does not lead to recognition as a World Heritage cultural property, this should not automatically result in a request for the granting of enhanced protection being cancelled.*

According to the separation of procedures requirement, it is up to the Secretariat of the 1954 Convention to analyse the request, particularly on the basis of the first condition 10(a) (deciding if the property is of the greatest importance for humanity), without the convenience of just being able to refer to an inscription by the World Heritage Committee.

It on this basis that Belgium financed an ICOMOS study, presented at the 9th meeting of the Committee for the Protection of Cultural Property in the Event of Armed Conflict in 2014 – 9COM/6, concerning the analysis of this condition contained in article 10, a, and the methodology to be adopted for deciding what property is of the greatest importance for humanity, while not being World Heritage property.

2. In keeping with the separation of legal systems requirement, a State that so wishes, irrespective of whether its nomination for World Heritage listing is making good progress or otherwise, may proceed at any time to withdraw its request for the granting of enhanced protection but it has to formally notify the Secretariat thereof.

If States Parties do not withdraw such nominations and the World Heritage Committee makes a decision other than inscription (i.e. decision not to inscribe, referral or deferral), paragraph 36 of the Guidelines for the implementation of the Second Protocol (hereinafter referred to as “the Guidelines”) cannot be applied in this case. Furthermore, the fact that these properties had not been inscribed on the World Heritage List could have negative influence on the considerations about the granting of enhanced protection. Therefore, we should be careful not to produce negative results contrary to the main purpose of Belgium’s proposal, which is to promote the requests for the granting of enhanced protection.

- Belgium: As explained above, there is in fact no link to be made between a decision by the World Heritage Committee other than the inscription and a decision by the Committee for the Protection of Cultural Property in the Event of Armed Conflict. They are two independent Committees. It should, however, be specified that a State may seek the analysis of its request by the Committee for the Protection of Cultural Property in the Event of Armed Conflict without necessarily waiting for a positive decision by the World Heritage Committee. Moreover, for the purpose of strengthening the synergies with the World Heritage Centre, the latter could reveal for information purposes the reasons for a decision other than the inscription, such as the opinion of the advisory bodies.

4. Mixed Heritage and Cultural landscapes

In the light of article 1 of the 1954 Hague Convention and article 1 (b) of the Second Protocol, the Committee for the Protection of Cultural Property in the Event of Armed Conflict should discuss whether the joint request would be applicable to the nomination for Mixed Cultural and Natural Heritage and Cultural landscapes. It is possible that these categories of heritage may not be suited to the procedures of joint requests. It would be better to wait for the result of ICOMOS’s ongoing study on article 10 of the Second Protocol; therefore, it is not appropriate to prejudice the status of these categories of heritage by stipulating in the Operational Guidelines at this stage.

- Belgium: Since the Japanese Government submitted its Observations, the ICOMOS study has been finalised and released (see above). It actually raises a question about this type of property. The Committee for the Protection of Cultural Property in the Event of Armed Conflict should eventually rule on the admissibility of this type of request and create its own case-law in this area. However, as this issue is entirely a matter for the Committee for the Protection of Cultural Property in the Event of Armed Conflict, it does not create an obstacle to any modification of the format for the nomination of properties for inscription on the World Heritage List, as it is no concern of the World Heritage Committee.

5. Serial properties nominations

(1) Requests for the granting of enhanced protection for all of the serial properties nominated for inscription on the World Heritage List

It should be specified in the modified Operational Guidelines that, when a nomination consists of serial properties within the territory of different States Parties, all of these countries must be States Parties to the Second Protocol to submit the joint request.

- Belgium: Belgium supports this point of view. However, according to the separation of legal systems requirement, there is nothing to prevent one of these States, which has ratified the Second Protocol, from separately submitting at any time a request for the granting of

enhanced protection for cultural property included in the series nominated for inscription on the World Heritage List.

Furthermore, it is necessary to discuss whether the suspension or cancellation of enhanced protection of serial properties could be decided on (an) individual component part(s) of the properties, or if such decision, even if it is based on the situation concerning only (a) part(s) of the properties, should be taken for the entire serial properties.

Belgium: In this case, mention should be made of the case-law acquired by the Committee for the Protection of Cultural Property in the Event of Armed Conflict subsequent to its decision 8.COM 8.3. for granting enhanced protection to the House and Workshop of Victor Horta (Belgium) in December 2013. Victor Horta's House and Workshop was not inscribed solely on the World Heritage List but within the context of a set (the Major Town Houses of the architect Victor Horta), along with other buildings. The Committee for the Protection of Cultural Property in the Event of Armed Conflict did not ask for the Major Town Houses set to be presented to it. On the contrary, it approved the granting for just one of these Major Town Houses. Owing to its independence from the World Heritage Committee, the Committee for the Protection of Cultural Property in the Event of Armed Conflict therefore operated on an autonomous basis. And in the light of this precedent, in the case of a hypothesis raised by the Japanese Government, if enhanced protection may be granted for a cultural property considered in isolation in a set or a series, the same applies for the loss or suspension of this protection.

(2) Requests for the granting of enhanced protection for (a) part(s) of the serial properties nominated for inscription on the World Heritage List

The serial properties inscribed on the World Heritage List do not necessarily mean that each property, as a single component part, has outstanding universal value on a stand-alone basis. Thus, it is necessary to discuss how paragraph 36 of the Guidelines for the Implementation of the Second Protocol can be applied or interpreted in such cases. In addition, it may be desirable to further revise the format to accommodate this type of joint requests.

- *Belgium: As explained above, a precedent has been set. It should be stressed that paragraph 36 of the Guidelines for the Implementation of the Second Protocol, establishes only one assumption, "subject to other relevant considerations". There is therefore no automatic link between the inscription on the World Heritage List and compliance with the article 10,a condition. It is still up to the Committee for the Protection of Cultural Property in the Event of Armed Conflict to assess not if the property submitted to the Committee has an outstanding universal value but if it is of the greatest importance for humanity. The purpose of the aforementioned ICOMOS study was precisely to help the Committee for the Protection of Cultural Property in the Event of Armed Conflict to be able process requests concerning cultural property not included on the World Heritage List and therefore not regarded as having an outstanding universal value, as this does not mean these cultural assets are not of the greatest importance for humanity.*

6. Nominations to be processed on an emergency basis

There are differences in the conditions to apply for the nominations to be processed on an emergency basis. While paragraph 161 of the Operational Guidelines stipulates that emergency nominations can be submitted “ ... in the case of properties which would be in danger, as a result of having suffered damage or facing serious and specific dangers from natural events or human activities...”, article 11.9 of the Second Protocol provides that “ Upon the outbreak of hostilities, a Party to the

conflict may request, on an emergency basis, enhanced protection of cultural property...". Therefore, the Operational Guidelines could be more elaborate to the effect that, in the case of joint requests for the granting of enhanced protection within the emergency nominations for the World Heritage List based on paragraph 161 of the Operational Guidelines, the granting of enhanced protection would be examined as follows;

1. In case of outbreak of hostilities, Article 11.9 of the Second Protocol would be applied (emergency process);
 2. In all other cases (such as natural disasters or environmental pollutions), Article 11.5 of the Second Protocol would be applied (ordinary process).
- Belgium: *This observation requires three clarifications:*
1. *This issue concerns solely the Committee for the Protection of Cultural Property in the Event of Armed Conflict. It does not therefore create an obstacle to the modification of the format for the nomination of properties for inscription on the World Heritage List, because this is of no concern to the World Heritage Committee.*
 2. *Owing to the independence of the procedures, the Committee for the Protection of Cultural Property in the Event of Armed Conflict is not bound by the provisions specific to the World Heritage Committee, such as those relating to emergencies. It is required to examine the nomination only in the light of its own applicable regulations.*
 3. *If the Committee for the Protection of Cultural Property in the Event of Armed Conflict believes this is necessary, this clarification should be made in the Guidelines for the Implementation of the Second Protocol.*

7. The granting of enhanced protection to the World Heritage properties which are already inscribed on the List

While it is of great importance and additional value to facilitate the granting of enhanced protection to cultural properties which will be nominated in the future for inscription on the World Heritage List, it is also necessary and more practical to promote the granting of enhanced protection to those properties already on the World Heritage List, given their large number. Therefore, in addition to Belgium's proposal which concerns future nominations, we think that it may be equally worthwhile for the World Heritage Committee to discuss ways to encourage State Parties to both the World Heritage Convention and the Second Protocol to submit a request for the granting of enhanced protection for their properties already on the World Heritage List. We should henceforth further reflect on the modalities of this issue, including such measures as proposed in paragraph 7 of Decision 9.COM.13.

- *Belgium: Belgium fully supports this point of view. It is an approach that must be adopted and considered in a complementary way with the modification of the format for the nomination of properties for inscription on the World Heritage List. The World Heritage Committee shares this opinion and has repeated it in its Decision 39 COM 11, in point 9: "Welcomes the reflections on the interaction between the World Heritage Convention and the 1954 Hague Convention and its Second Protocol (1999) and further requests the World Heritage Centre and the Advisory Bodies, in consultation with the Secretariat of the Hague Convention (1954), to consider options for further developing concrete synergies and coordinating reporting mechanisms between the World Heritage Convention and the Second Protocol (1999) of the Hague Convention (1954) for the next revision of the Operational Guidelines in 2017 and while revising the Periodic Reporting Format during the Reflection Period towards the Third Cycle of Periodic Reporting;"*

Belgium's general comments:

- 1. Apart from the clarification that could be made to the Guidelines (see point 2 above), all the Observations made by the Japanese Government concern the procedure for granting enhanced protection before the Committee for the Protection of Cultural Property in the Event of Armed Conflict. Consequently, they do not create an obstacle for the World Heritage Committee to the modification of its format for the nomination of properties for inscription on the World Heritage List with a view to granting enhanced protection;*
- 2. Subsequent to the World Heritage Committee meeting in Bonn in 2015, Belgium proceeded, in the light of the Observations of the Japanese Government, the reactions of the World Heritage Centre and several States, to review and simplify its proposal, and has made it available to the interested States Parties.*