

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

Procedure for granting enhanced protection

Written observations received from the Parties in 2016

1. Since the adoption of Decision 9.COM 6 by the Committee at its ninth meeting (December 2014), the Secretariat has gathered the views of the Parties to the Second Protocol in order to propose a methodology enabling the objective evaluation of the conditions for the granting of enhanced protection set forth by Article 10 of the Second Protocol.
2. In 2015, ten Parties to Second Protocol submitted their written observations (Armenia, Belgium, Canada, Cyprus, Germany, Greece, Japan, Mexico, Spain and The Netherlands)¹.
3. By its Decision 10.COM 3 (December 2015), the Committee requested the Chairperson with the support of the Bureau to continue holding the necessary consultations in order to assist the Secretariat in producing preliminary draft statutory modifications of the Guidelines.
4. On 10 March 2016, the Chairperson of the Committee, Ms Artemis Papathanassiou, sent a letter inviting the Parties to submit their views concerning the procedure for the granting of enhanced protection.
5. As of 1 August 2016, additional written submissions were submitted by four Parties to the Second Protocol (Czech Republic, Georgia, Mexico and Slovakia). These are presented below in their original format and in alphabetical order.

¹ These comments are available online at: <http://www.unesco.org/new/en/culture/themes/armed-conflict-and-heritage/meetings-and-conferences/>

Comments of the Czech Republic on the procedure for the granting of enhanced protection

The Ministry of Culture of the Czech Republic approached the ministries (the Ministry of Foreign Affairs, of Justice and of Defence) and the National Heritage Institute with a request for their opinions on this issue. On the basis of opinions received, the Ministry of Culture of the Czech Republic presents a summary thereof.

1) Greatest importance for Humanity, GIH – Art. 10 (a)

After careful study of the document CLT-15/10.COM/CONF.203/3 generated by the 10th meeting of the Committee for the Protection of Cultural Property in the Event of Armed Conflict, the Czech Republic believes the process of the granting of enhanced protection should be really inclusive and the interpretation of the concept of GIH should therefore be left to the country requesting the granting of enhanced protection. We agree with the opinion of the Netherlands which express the idea that the state itself should define which properties it considers as the most valuable. The fulfilment of the GIH criterion should then justify in practice why a particular property is valuable to the country.

2) Properties inscribed in the World Heritage List, the Memory of the World Register and other lists

Based on all documents relating to the GIH criterion known to us, our understanding is that GIH has a broader sense than the OUV, therefore, that OUV fulfils the GIH criterion. For this reason, we believe that compliance with the GIH criterion for properties inscribed in the World Heritage List will be evident. We have the same opinion in the case of the Memory of the World Register and properties inscribed in other international lists. However, we think that in spite of this, properties inscribed in World Heritage List should not be included in the List of Cultural Property under Enhanced Protection automatically but they should be assessed by the Committee, too. The question arises (on this point, we are in agreement with the opinion of Belgium) what procedure will be taken in the cases of transboundary cultural property, mixed heritage and cultural landscapes. We believe that this question should be answered by ICOMOS.

In this concept, however, it will be necessary to give major support and draw attention also to the entries in the List of Cultural Property under Enhanced Protection of such properties that are not on any other list.

3) Protection of property by adequate national and administrative measures (Art. 10 (b)) - Check List

The Czech Republic agrees with the proposals of the Secretariat on the preparation of a table summarizing the information that should be taken into account when assessing compliance with the conditions described in Article 10 (b).

4) Interpretation of the terms “control“ and “ jurisdiction“ applicable for the framework of the mechanism for granting enhanced protection to cultural property (1999 Second Protocol to the Hague Convention of 1954 for the Protection of Cultural Property in the Event of Armed Conflict)

Term “jurisdiction” is directly linked with term “sovereignty”. The internationally agreed definition of sovereignty provides: “*Sovereignty in the relations between States signifies independence. Independence in regard to a portion of the globe is the right to exercise therein, to the exclusion of any other State, the functions of a State*”.¹ Therefore, international law is based on principle of sovereign equality.

Sovereignty implies:

1. that a State is competent to control access to its territory
2. that a State has the exclusive right to exercise jurisdiction and authority on its territory.

In simply terms the notion of “**jurisdiction**” denominates who has the authority to prescribe, enforce, and adjudicate a matter of concern (issue).

Jurisdiction is principally territorial, that means that states may exercise jurisdiction over persons (physical or legal) or objects within its territory. Territorial jurisdiction therefore involves application of the law of the State exercising jurisdiction.

In addition to territorial jurisdiction a state may exercise its authority over persons and objects located on aircrafts, ships or other platforms. This is based upon the “principle of flag” (ships) or “principle of registration” (airplanes). In cases of persons and objects present on the platform there can be found cases where jurisdiction of the state of flag or registration is not exclusion but concurrent. But for cases of cultural property this would be an exceptional case.

The principle of sovereign equality entails an obligation of all states to respect the territorial sovereignty of other states. Principle of territorial sovereignty is one of the core principles of international law. This obligation however implies that a state may not allow knowingly its territory to be used for acts contrary to the rights of other States. Therefore, states are required under international law to proactively take any necessary steps in order to protect such rights. Basically it means either to prevent or to punish any unlawful acts. The notion of “**control**” in this respect means that state shall not knowingly allow the use of their territory for acts that adversely and unlawfully affect other States.

5) Furnishings

For future nominations of properties on the List of cultural property under enhanced protection we also believe that it will be necessary to clarify whether the newly

¹ Island of Palmas, Permanent Court of Arbitration, 1928.

registered properties will have to include lists of furnishings and, as the case may be, prepared plans for internal equipment evacuation.

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Comments to the Guidelines - Georgia

The Georgian side agrees with the comments according to which new definitions should not create additional obstacles for requesting state. We share the view that the definitions given in the Convention and its Second Protocol regard only the immovable cultural heritage and do not define the criteria of granting the Enhanced Protection to the movable heritage.

The fact that the property is enlisted in the World Heritage List is already a forcible argument, so, there is no need to present any additional proof for inscription of the property in the list of the properties under Enhanced Protection.

As for those properties that are not on the World Heritage List, the definition of their universal value should be done according to very precise criteria that give the possibilities to state parties to inscribe as more as possible cultural values in the list of the properties under Enhanced Protection. The recognition and protection of the property by the national legislation and its internal mechanisms imply the outstanding value of this property. Hence, it is to determine to what extent the loss of the concrete property will be irretrievable for humanity.

It is clear that each and every property protected by the national legislation is not in line with the 10th Article of the Second Protocol. At the same time, the property may not be on the World Heritage List but has the outstanding value for the country. Hence, the criteria defining to what extent the destruction of such property is “irretrievable for humanity” should be clear and concrete.

We think that despite the fact that the proposed definitions envisage the concretization and clarity of the issue, they are still very general and vague and depend on the personal point of view of particular experts and specialists.

Herewith, we would like to underline that proposed methodology is more adjusted to particular property and does not sufficiently reflect the mechanisms for granting the status of Enhanced Protection to museums, archives as to the main storages for cultural property.

Museums keep the items or collections that represent the invaluable source for studies and researches on national, regional or even international levels. Generally, the museums keeping most important items for the country are given the status of national museums. It would be rather important to define the mechanisms for granting the Enhanced Protection not only to the separate valuable objects but to the repositories keeping these objects (museums, archives, libraries).



MISIÓN PERMANENTE DE MÉXICO
ANTE LA UNESCO

OBSERVACIONES DEL GOBIERNO DE MÉXICO

El artículo 10 del Segundo Protocolo de la Convención de la Haya de 1954 establece que:

“Un bien cultural podrá ponerse bajo protección reforzada siempre que cumpla las tres condiciones siguientes:

- a. que sea un patrimonio cultural de la mayor importancia para la humanidad;
- b. que esté protegido por medidas nacionales adecuadas, jurídicas y administrativas, que reconozcan su valor cultural e histórico excepcional y garanticen su protección en el más alto grado; y
- c. que no sea utilizado con fines militares o para proteger instalaciones militares, y que haya sido objeto de una declaración de la Parte que lo controla, en la que se confirme que no se utilizará para esos fines”.

Adicionalmente, en el Artículo 12 (Inmunidad de los bienes culturales bajo protección reforzada) del Segundo 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 su parte el punto 59 de las Directrices 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. [...]”.

De lo anterior se desprende que en las directrices se establece un elemento adicional que no está previsto en el Segundo Protocolo, a saber “su entorno inmediato...no se utilice con fines militares”, por lo que, sin el ánimo de menoscabar la importancia del entorno inmediato de aquellos bienes culturales que gocen de esta protección especial, se considera oportuno reformar las citadas disposiciones, a fin de crear una congruencia en las obligaciones de los Estados en la materia”.

SECRETARIA DE CULTURA

Propuesta de enmiendas al Artículo 10 del Segundo Protocolo (1999) de la Convención de La Haya de 1954 para la protección de los Bienes Culturales en caso de Conflicto Armado

El Instituto Nacional de Antropología e Historia (INAH) manifiesta que, en virtud de las acciones que ha tomado México para revisar y perfeccionar los planes de emergencia de las zonas arqueológicas, reconocidas en la Lista de Patrimonio Mundial en el Registro Internacional de Bienes Culturales bajo Protección Especial, propone que el Artículo 10 integre las siguientes consideraciones:

1. Debe ser enfático en la protección del patrimonio mundial, cultural y natural ya inscrito, o por inscribir en la Lista de Patrimonio Mundial.
2. Impulsar el fortalecimiento de la implementación conjunta de las Convenciones para la Protección de los Bienes Culturales en caso de Conflicto Armado (1954 y sus dos protocolos).

Asimismo, la Secretaría de Cultura expresa su interés por seguir colaborando en estos temas.



PERMANENT
DELEGATION OF
MEXICO
TO UNESCO

COMMENTS FROM THE GOVERNMENT OF MEXICO

Article 10 of the Second Protocol of the Hague Convention (1954) states that:

“Cultural property may be placed under enhanced protection provided that it meets the following three conditions:

- a. it is cultural heritage of the greatest importance for humanity;
- b. it is protected by adequate domestic legal and administrative measures recognizing its exceptional cultural and historic value and ensuring the highest level of protection;
- 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.”

In addition, Article 12 (Immunity of cultural property under enhanced protection) requires 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.”

According to the above, paragraph (c) of Article 10 establishes one of the conditions that must be satisfied for property to be granted enhanced protection, and Article 12 refers to the condition that, once granted, protection endures (i.e. it is not suspended or annulled).

Meanwhile, paragraph 59 of the Guidelines states that:

“59. The Party describes the use of the cultural property. [...] In addition, a declaration, issued by the national authority which has been authorized by the State concerned as competent for this matter, confirms that the cultural property and its immediate surroundings will not be used for military purposes or to shield military sites is attached to the request. [...]”

On the basis of the foregoing, it is clear that the Guidelines state an additional element that is not provided for in the Second Protocol, namely “its immediate surroundings will not be used for military purposes”. Therefore, without wishing to diminish the importance of the immediate surroundings of cultural properties that enjoy special protection, it is considered appropriate to amend the quoted provisions to create consistency in the obligations of States Parties in that connection.

MINISTRY OF CULTURE

Proposed amendments to Article 10 of the 1999 Second Protocol to the Hague Convention of 1954 for the Protection of Cultural Property in the Event of Armed Conflict

The National Institute of Anthropology and History (INAH) states that, pursuant to the action taken by Mexico to review and improve the emergency plans for archaeological sites recognized in the World Heritage List and the International Register of Cultural Property under Special Protection, it proposes that Article 10 integrate the following considerations:

1. Emphasis on the protection of world cultural and natural heritage that is already inscribed or proposed for inscription on the World Heritage List.
2. Promotion of the strengthening of joint implementation of the Convention for the Protection of Cultural Property in the Event of Armed Conflict (1954) and its two Protocols (1954 and 1999).

The Ministry of Culture expresses its interest in continuing to collaborate on these issues.

Madame Chairperson,

I have the honor of informing you about the position of the Slovak Republic concerning the procedure for the granting of enhanced protection.

The enhanced protection regime established by the Second Protocol is not used to mark Slovak cultural property.

With regard to the adoption of Decision 10.COM 3 by the Committee for the Protection of Cultural Property in the Event of Armed Conflict, Slovakia does not have any point of order.