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Draft 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

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Draft 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

Comments are made on the substance of the text in so far as they affect cultural property. Comments on the legal aspects fall outside the expertise of the ICBS.

Fundamental comments

- 1 The proposals do not make provision for moveable cultural heritage. Separate systems with unique identifiers will be required for individual items such as paintings or archaeological objects and for objects which can be divided such as books or archives
- 2 The amount of work required both to generate documentation by State Parties and by UNESCO to verify the information submitted is significant. It is not clear where this additional resource, particularly at the checking/verification stage will come from. Such work is essential if the system is to be robust enough to be used in a court of law. If it is not done then there is a real danger in the system falling into disrepute.
- 3 There is no guidance as to what documentation is required for general protection and this was asked for at the first meeting of the committee.
- 4 There is no guidance in the documents as to what would constitute the type of information that would be required for cultural property damaged by armed conflict that could be used in post conflict proceedings
- 5 The guidelines should specifically mention ICBS and its constituent bodies

Specific Comments

Section 3 This section notes that these provisions relating to the Second Protocol and many other provisions will need to be implemented. It would be useful to have an indication of what the other provisions are and a timetable for implementation perhaps presented as a paper to the next committee.

Section 4

This section should make it clear that the methodology proposed here does not provide protection for moveable cultural property.

- 4.2 A fundamental difference between the 1972 World Heritage Convention and the Hague Convention is the element of

selection; decisions have been made by the World Heritage Committee to limit numbers of particular types of property on the grounds that these types of property are overrepresented on the list of World Heritage Sites. This is not the case under the 1954 Hague Convention where any number of items of the same type can be identified for protection by State Parties eg the current World Heritage List is deemed to be over represented by medieval cathedrals and towns and applications for inscription as WHS are actively discouraged. This will not be the case for 1954 Hague proposals for general, special or enhanced protection.

There is no guidance as to what documentation needs to be provided for general protection and this also needs to be developed.

Section 5 Enhanced Protection

- 5.1 This will require considerable resources on the part of the committee to check and verify submissions by the State Parties. Presumably, given that the Committee is responsible for "granting, suspending or cancelling enhance protection for cultural property and for establishing, maintaining and promotion of the [Hague 1954] list" the Committee will have resources. This needs to be specified and the way in which these responsibilities will be exercised outlined.

It is not clear how the Committee will assess information it receives and this needs to be detailed. Will the Centre process applications or will it ask others to do so as it does with ICOMOS and IUCN? This will be an area where the ICBS could add value in assisting the Committee to discharge its obligations.

The last paragraphs could be clarified to make clearer the fact that it is the Committee that withdraws or grants protection rather than the State Parties

- 5.1.2 It is not clear how the Committee will monitor compliance with conditions b) and c). Is some sort of Periodic reporting exercise (as that done with World Heritage Sites) envisaged? A considerable capacity building exercise will be required to reach a basic common level of knowledge.

It is not clear how emergency meetings can be convened.

- 5.1.3 The creation of buffer zones, and specifying a size may create considerable challenges for those designated items or sites located in urban centres adjacent or close to railway stations, major roads which could comprise legitimate military targets. Obvious examples include the British Library (next to St

Pancras/Kings Cross Station), OTHER EXAMPLES REQUIRED HERE. It is recommended that this should not be mandatory requirement.

This section relates to only properties submitted for "enhanced protection", presumably a similar system should be used for properties submitted for general protection (see comment above) as the two systems should be mutually compatible

- 5.2.1 It should be noted that this system is likely to provide insufficient protection for moveable cultural property which by its definition can simply be moved from its original location. Name of property should also include other names property has been known by and address including post code. Details of ownership and management – private or state The geographic details should also include GPS data
- 5.2.2 Again this system does not really address the needs of moveable cultural property.
- For the documentation to be useful in a court of law then there needs to be an assessment of the state of condition of the property including photographs and this would need to be regularly (twice yearly/5 yearly ?) updated.
- Again to be robust in a court of law there presumably needs to be an identification of potential "eg area X is the location of a 3rd Millennium BC temple and over half of this remains unexcavated. A detailed survey is attached together with photographs. The part of the temple that has been excavated has been reburied/ consolidated and is open to the public and is in a fair state of repair". A precise terminology would need to be developed and there would need to be significant capacity building amongst State Parties to ensure consistency in use.
- 5.2.3 The comparative significance study is a new requirement and one that will require considerable work. It is not clear from the document whether this is also applicable to properties under general protection.
- 5.2.4 Some elements of this may be unworkable eg providing details of private owners particularly where there is a high level of change. Again this system does not adequately address the issue of moveable property. State Parties may not wish to see details of cultural property on a website and this should be voluntary not mandatory given the security implications.