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Preliminary Comments by the Argentine Republic on the document "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"

Delegation of Argentina

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**Preliminary comments
by the Argentine Republic
on the document**

**"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"**

1. Generally, Argentina is prepared to consider the draft Guidelines included in the document as a starting point for discussion on the task to be carried out by the Committee for the Protection of Cultural Property in the Event of Armed Conflict during its next meeting, namely consideration and submission of the Guidelines to the Meeting of the Parties, for their subsequent adoption.
2. This notwithstanding, Argentina wishes to cite the following points, which it believes must be considered in relation to the draft:
 - (a) The terminology used throughout the draft should be simplified and the text made more operational. In this sense, the experience acquired through drafting the similar Operational Guidelines, starting in 1976, within the World Heritage Committee should be taken advantage of, since the abstract and declaratory nature of those Guidelines was one of the factors that led to their comprehensive revision in 2003. In this case, the need for clarity and simplicity is all the more important because of the following factors: (1) the difficulty of raising awareness of the 1999 Protocol, which recently entered into force; and (2) the principal recipients of the Guidelines – those responsible for military personnel who have to take snap and often sensitive decisions (confrontation between the value of life and the value of protecting cultural property) in the changing and generally unpredictable context of an armed conflict;
 - (b) Along the same lines, and also drawing on the experience of the World Heritage Convention, efforts should be made to avoid reiterating or directly transcribing the provisions of the 1999 Protocol into the text of the Guidelines (cf., for example, point 1.1, page 3). Not only does this cause confusion, but it also creates a dangerous tendency to substitute a legally binding standard-setting instrument – the 1999 Protocol – with a non-binding text for guidance purposes – the Guidelines –, which should only serve to develop aspects regulated by the Protocol in order to facilitate its implementation;
 - (c) The restrictions in the Introduction (page 3), concerning what the Guidelines do and do not cover, are considered unnecessary and confusing. It is clear – and, therefore, pointless to expressly state – that the Guidelines cannot take the place of the responsibilities assumed by the States Parties to the 1999 Protocol therein;
 - (d) For the reasons given in paragraph 2(b), point 1.1 (page 3) of the draft should be correspondingly deleted;
 - (e) Also for the reasons given in paragraph 2(b), the need to retain point 2 (pages 4 to 8) of the draft – at least in the form explaining and interpreting the content of the 1999 Protocol – should be queried;
 - (f) The inclusion of point 3 (pages 8 and 9), citing with no discernable objective rules of international law which are known to States, is considered irrelevant;
 - (g) We recommend deleting point 4.1.1 (page 10), in its current form;

- (h) In point 4.1.2, we do not share the conclusion – at least in its current form, without clarification – that the 1954 Convention and 1999 Protocol represent “an autonomous set of rules” (page 10). Strictly speaking, the 1999 Protocol was conceived to update and clarify the protection regime of the 1954 Convention, in the expectation that in the medium to long term, the 1954 Convention would be tacitly repealed by the Protocol;
- (i) In point 4.2 (pages 12 and 13), we consider that the link between the 1999 Protocol and the 1972 Convention should be presented in a more optimistic light. Specifically, there is nothing to impede States Parties to both conventions confirming in a “common position”, “association protocol” or similar instrument, that the notion of “cultural heritage of the greatest importance for humanity” – subject to enhanced protection under the 1999 Protocol – is equivalent to the World Cultural Heritage governed by the 1972 Convention. This would be of benefit for the protection of World Heritage sites, both in peacetime and during armed conflict. It must be asked, moreover, why in this point no mention is made of the UNESCO Declaration concerning the Intentional Destruction of Cultural Heritage (2003), which is of undeniable relevance to the objectives of the 1999 Protocol.
- (j) Points 5 (pages 13 to 27) and 8 (pages 33 to 36) continue to be the subject of consultations between the competent Argentine authorities, for which reason our country reserves its position on the content, limiting itself at this time to saying that: (1) both points address the type of questions which the future Operational Guidelines for the 1999 Protocol should concentrate on; and (2) owing to their close links, these points should immediately follow one another and not be separated, as they currently are, by institutional and financial provisions;
- (k) Logically, point 6 (International Assistance; pages 27 to 29) should be included after point 7 (The Fund). Among other things, this would make it clearer that a Voluntary Fund, as correctly envisaged under point 7, is not sufficient to sustain operation of the ambitious financial assistance system proposed under point 6 – based on the model of the 1972 Convention, which has a Compulsory Fund. Consequently, provision would have to be made for the Voluntary Fund to be complemented by an association scheme with non-governmental and private organizations able to provide extrabudgetary funds;
- (l) It is regrettable that the draft has not considered aspects of the 1999 Protocol that are, nevertheless, of special interest to our country and the other countries of our region, as shown by the March 2005 Buenos Aires Declaration. These include measures that can be adopted in peacetime, the possibility of using the Protocol’s provisions to prevent natural disasters, the dissemination of the Protocol and awareness-raising about its objectives and the possibility of the protection regime of the 1999 Protocol forming part of the mandate of United Nations peace operations; and
- (m) Lastly, it would be worthwhile providing a Spanish translation of the draft Guidelines, particularly given the significant proportion of Spanish-speaking countries that have acceded to the 1999 Protocol.