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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 - Finland

The Second Protocol to the Hague Convention requires guidelines for implementation because in part it operates at a fairly general level. The draft Guidelines clarify the provisions of the Protocol and also contain fundamental principles in line with the Vienna Convention on the Law of Treaties (1980). When adopted, the Guidelines will promote efficient implementation of the contractual obligations.

Although the Guidelines have been expertly drafted, we think they might benefit from development in some points.

The draft examines quite comprehensively the nature of the relationship between the Convention and the Second Protocol, but this remains partly theoretical and lacks concrete instructions guiding the action of the Contracting Parties. The Guidelines should be formulated clearly as a document guiding the practices of the parties.

Section 4 analyses how the protection concepts of the 1954 Convention, the Second Protocol and the 1972 World Heritage Convention relate to each other, and section 5 deals with the conditions for enhanced protection and procedures for granting this status. These sections are crucial in specifying the conditions of selection of sites, in clarifying the details of the protection process, and in issuing general recommendations for application of the criteria.

In particular, the implementation guidelines should outline the practical application of the different degrees of protection. This also concerns possible listing of the World Heritage sites under enhanced protection. The Committee should seek to specify how special protection relates to enhanced protection. The point of departure could be that the countries which are parties both to the 1954 Convention and to the Second Protocol would only present sites for enhanced protection. The inclusion of the World Heritage sites in enhanced protection would also be justified, but this should not be an automatic procedure, and the sites should naturally fulfil all the criteria for enhanced protection.

Since the definition of "cultural heritage of the greatest importance for humanity" is exceedingly open to interpretation, it is essential to examine this point exhaustively in the Guidelines. The ground work done for the World Heritage Convention helps with regard to immovable cultural property but gives no support to the definition of movable property. Since the determination of the criteria demands extensive consensus, it might be useful to convene a separate expert meeting to discuss the matter. In this respect the international expert organisations, such as ICOMOS, ICOM, IFLA, ICA and ICBS, are of the utmost importance. The international Committee of the Red Cross might also have valuable information.

The observation about a buffer zone in the draft Guidelines is good but, instead of a fixed minimum distance, the buffer should be considered case by case according to the nature and location of the site or object and expected military threats to it. The possibility to set a buffer zone should exist but its breadth should be ultimately decided by the Committee after hearing the necessary experts. The model for the delimitation of the sites could be the Operational Guidelines for the World Heritage Convention (II.F, 99 – 102).

The request for enhanced protection has been modelled after the one used in the World Heritage system and is suitable as such for the implementation of the Hague Convention.

The Operational Guidelines for the World Heritage Convention give a detailed timetable for the submission and handling of applications. It could be worthwhile to consider setting a corresponding annual timetable for the Second Protocol Committee. This would also help in establishing the timetable and the rules of procedure for the Committee.

Since the Committee would hardly have competence to assess the quality of all the suggested protection sites, it would be justifiable to require that the applicant submit a statement from an international expert organisation. The Committee could identify the appropriate organisation(s).

The recommendation concerning the emblem for protected sites in Section 5.6.2. is not very explicit. Sites under general protection use the emblem once, without repetition. The Committee should discuss the possibility of indicating both general and enhanced protection by the emblem three times repeated. As regards these two forms of protection, an identical emblem would not necessarily be a problem since the number of protected sites in both categories is limited and the sites are not used for military purposes.

Nearly half of the draft Guidelines deal with "enhanced protection" referred to in Article 10 of the Protocol. Property not under enhanced protection has been given less attention. We think that the Guidelines could also include a general recommendation calling upon the Contracting Parties to take necessary preparatory steps to protect all cultural property, including property not covered by enhanced protection, in the event of armed conflict.

The point of departure in the protocol is that it is in the interest of each country to safeguard cultural property located on its territory and to identify cultural property worth protecting. However, the premise for protection can be biased and selective unintentionally or intentionally, for instance giving less attention to the protection of cultural property relating to the identity of minority cultures. The Guidelines should seek to instruct how the selection of the sites should be made with sufficiently broad-based expertise and after comprehensive survey of potential sites.

With a view to enhancing the visibility of the Hague Convention and making it widely known, it is important to disseminate widely the list of sites under enhanced protection. In view of this, the Guidelines could include a recommendation that the list be kept up-to-date in real time by means of modern information technology.

The Guidelines quite justifiably draw attention to the fact that the obligations relating to reporting under the Hague Convention of 1954 and its Second Protocol overlap, suggesting the possibility that both reports be submitted at the same time. The suggestion is very reasonable. The Second Protocol Committee could, within its competence, also consider other ways to streamline the reporting .