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Government of Japan

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Comments made by the Government of Japan on the Draft Guidelines for the implementation of the 1999 Second Protocol of the Hague Convention of 1954 for the Protection of Cultural Property in the Event of Armed Conflict

The Government of Japan would like to make the following comments concerning major issues and the overall structure of the Draft Guidelines in order to ensure the effective implementation of the second protocol. The Japanese Government will make further comments on individual or detailed points in question as the discussion on this matter progresses.

1. More detailed and practical procedures should be provided for the request for enhanced protection stipulated in paragraph 5.2. "How to Submit a Request and Information Required" and the request for international assistance mentioned in paragraph 6. "International Assistance", in view of fact that this Guidelines will be consulted by officers of each State Party dealing with the implementation of the 1954 Hague Convention and its Second Protocol. Further and more appropriate modifications of the Draft Guidelines are necessary from this point of view. For example, it is useful to prepare a registration form to list a series of documents related to the registration and to describe the timetable (roadmap) concerning the procedure for the granting of enhanced protection. In making

modifications, it is highly recommended to refer to the Operational Guidelines for the implementation of the World Heritage Convention and the draft Operational Directives for the implementation of the Intangible Heritage Convention, both drafted by UNESCO.

2. In the Draft Guidelines, paragraph 5.1.3., “Does Condition c) Imply a Minimum Distance or even a ‘Buffer Zone’”, UNESCO proposes to the States Parties the introduction of “a minimum distance” or “a buffer zone” as an appropriate additional element besides three conditions for enhanced protection stipulated by Article 10 of the second protocol. The Japanese Government opposes this introduction for the following reasons.

a) The Draft Guidelines state that a minimum distance, or even a buffer zone would be an appropriate additional element, in other words an “informal” requirement, and that it would not operate as an additional formal requirement beyond the three conditions under Article 10 of the second protocol. However, it should be pointed out that, in fact, this is nothing but to add an additional requirement to the conditions for granting enhanced protection and that adding such a requirement would be considered as a *de facto* amendment of the second protocol, even if it is recognized as an “informal” requirement. In addition, Article 27 stipulates that the Guidelines should be developed for the “implementation” of the second protocol. Therefore, the introduction of “a minimum distance” or “a buffer zone” is beyond the objective to be achieved by the Guidelines and it

is not acceptable for Japan.

b) The Government of Japan does not understand the reason why introducing “a minimum distance” or “a buffer zone” is necessary when Article 10 already stipulates conditions. Therefore, the Japanese Government does not believe that the introduction of “a minimum distance” or “a buffer zone” is indispensable in realizing the purpose of the second protocol which aims at protecting cultural property in the event of armed conflict.

c) Furthermore, in order to ensure an effective implementation of the second protocol, the lessons learned from past experiences of the 1954 Hague Convention should be remembered. The condition of “an adequate distance” between cultural property placed under special protection and “military objective” was one of the obstacles to promoting the special protection stipulated in the 1954 Hague Convention and, as a result, the notion of distance was excluded from the requirement for the granting of enhanced protection in order to ensure effective implementation. Therefore, Japan does not believe that it is appropriate to consider “a minimum distance” or “a buffer zone” as a *de facto* condition or requirement for granting enhanced protection.

d) The Draft Guidelines do not give any detailed definition of “military objective” related to the argument raised in paragraph 5.1.3. In case the definition of “military objective” under

the Draft Guidelines appears identical to the definition prescribed by Article 8 of the 1954 Hague Convention, it should be noted that "military objective" constitutes a vulnerable point such as an aerodrome, railway station or a main line of communication. In that case, it brings most cultural properties located in Japan into a difficult situation - to be protected under enhanced protection - because Japan has many cultural properties in its narrow territory and it is not easy for Japan to establish "a minimum distance" or "a buffer zone" between a cultural property and a military objective.

3. Concerning paragraph 5.6.2. "Should a Distinctive Emblem be used", the Government of Japan supports the proposal made by UNESCO on which cultural property under enhanced protection would be identified with a distinctive emblem, repeated four times, and cultural property under general protection (the second protocol) would be identified with a distinctive emblem repeated two times. On the other hand, detailed procedures should be provided for how to use a distinctive emblem.