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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. Italian comments

Ministero degli Affari Esteri

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ITALY



Ministero degli Affari Esteri

DIREZIONE GENERALE PER LA PROMOZIONE E LA
COOPERAZIONE CULTURALE
Ufficio III

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. Italian comments

Italy fully agrees with the approach embodied in the *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* prepared by the UNESCO Secretariat, which will contribute to a better understanding of the content of the II Protocol and a smoother implementation of this important legal instrument, both internally and internationally. At the same time, Italy desires to attract the attention of the Secretariat on the following particularly important question, examined in paragraph 5.1.3 of the proposed document:

“Does Condition ex art. 10. c) imply a Minimum Distance or even a “Buffer Zone” as an appropriate additional element, though it would not operate as an additional formal requirement (beyond the three conditions under Article 10)?

Even though we believe that the introduction of a *minimum distance* (i) and, above all, of a *buffer zone* (ii) will represent an effective instrument for the protection of cultural goods in case of armed conflict, also constituting a way for a more precise definition of the legal condition for a military action during an armed conflict, the introduction of these additional elements, though they would not operate as additional formal requirements, risks assimilating the criteria envisaged for the request of enhanced protection under article 10 of the II Protocol to those demanded by article 8.1.a) of the Aja Convention of 1954 for the granting of the special protection regime, and could bring to the consequence of a limited possibility to apply the Protocol.

As a consequence, it is necessary to clearly state that the mentioned elements (minimum distance and buffer zone) represent additional conditions, but not mandatory formal requirements. For the same reason, paragraph 5.1.3 could be so modified:

1. in subparagraph i), the sentence “If this minimum distance fails in a given case, a request for enhanced protection remains possible under Article 10” should be replaced by the following: *if the minimum distance fails in a given case, or cannot be respected, the enhanced protection can however be agreed, since a minimum distance is not an additional formal requirement, beyond the three conditions under Article 10*”.

2. in subparagraph ii), the sentence “The requesting State party must explain why the buffer zone is not required for effective protection of the cultural property concerned in the cases where it is not proposed”, should be replaced by the following: *“The requesting State Party clarifies why the buffer zone is not required or possible¹ for effective protection of the cultural property concerned in the cases where it was not proposed.*

¹ This integration is necessary in order to include also the situations where a buffer zone can not be established.