

FAQ Related to the Creation of a Distinctive Emblem for Cultural Property under Enhanced Protection

1. What is the status of enhanced protection?

The Second Protocol of 1999 to the Hague Convention of 1954 for the protection of cultural property in the event of armed conflict (hereinafter "the Second Protocol") introduced a new category of protection compared to those set out by the aforementioned Hague Convention of 1954 (general protection and special protection): "Enhanced Protection" (chapter 3 of the Second Protocol).

Enhanced protection allows cultural property to benefit from a higher degree of protection than that guaranteed by general protection. It has been agreed by the Committee for the Protection of Cultural Property in the Event of Armed Conflict (hereinafter "the Committee"), on the basis of a dossier submitted by a Party to the Second Protocol.

A cultural property can be placed under enhanced protection if it satisfies the following three conditions:¹

- (a) It is a cultural heritage that carries the highest importance for humanity;
- (b) It is protected by adequate internal, legal and administrative measures that recognise its exceptional cultural and historic value and that guarantee it the highest level of protection; and,
- (c) It is not used for military ends or to protect military sites, and the Party under whose control it falls has confirmed in a declaration that it will not be used in this way.

Parties of a conflict aim to ensure the immunity of cultural property under advanced protection and forbid it from becoming an object of attack, or that it or its immediate surroundings are used in support of a military action.² Nevertheless, the status of enhanced protection could be lost through suspension or annulment by the Committee or if the cultural property, through use, becomes a military objective. In these two cases, some specific conditions are clearly defined.³

2. Why create a distinctive emblem to mark cultural property under enhanced protection?

Unlike cultural property covered by other protection regimes set out by the Hague Convention, the Second Protocol does not set out the marking of cultural property under advanced protection with a distinctive emblem. Given that it is cultural property that is of the highest importance for humanity, it is desirable to identify it in a visible way so that it is protected effectively against the effects of hostilities.

¹ Article 10 of the Second Protocol of 1999 to the Hague Convention of 1954 for the Protection of Cultural Property in the Event of Armed Conflict.

² Article 12 of the aforementioned Second Protocol.

³ Article 13 of the aforementioned Second Protocol.

3. What is the proposal for the new distinctive emblem?



This proposal was selected by the Committee for the Protection of Cultural Property in the Event of Armed Conflict for the following reasons:

- The distinctive emblem is based on the Blue Shield, an emblem that has been recognised since 1954 as a sign of protection of cultural property, and internationally protected by the Hague Convention;
- The Blue Shield indicates as a minimum the benefit of general protection; the red outline detached from the Blue Shield means that the latter exists as such;
- The supplementary red outline indicates, at least intuitively, that it is necessary to give it particular attention;
- The emblem as a whole is very visible over short, medium or long distances; and,
- Military officers (at the heart of national or international forces) who have been informally consulted have all expressed a clear preference for a distinctive emblem, notably because:
 - The red outline fits the shape of the Blue Shield, which makes it immediately understandable; and,
 - The basis is the Blue Shield, which makes it easy to train soldiers who already know about the Blue Shield, and to circulate it widely both in the armed forces and in the population at large.

4. Who is going to benefit from this distinctive emblem?

The first direct beneficiary is the cultural property itself, as once it has this distinctive emblem attached to it, the property benefits from the immunity provided by the status of enhanced protection. Failing that, this marking allows a fight against the impunity of those that damage it, as the perpetrators cannot claim to not know about the specific status of the cultural property that is victim of their actions.

The second direct beneficiary is military personnel, who need to be able to identify cultural property under enhanced protection when engaged in an armed conflict. In effect, not respecting the immunity of cultural property under enhanced protection is considered as a serious violation of international humanitarian law and can result in criminal proceedings.

5. What legal means can be used to create a distinctive emblem, and why?

It has been demonstrated that the distinctive emblem marking cultural property under enhanced protection could be created simply by amendments to the Guidelines for the application of the Second Protocol.

The main objective of these Guidelines is to offer a concise and practical tool that facilitates the implementation of the Second Protocol by the Parties, as well as providing some direction to the Committee and to the UNESCO Secretariat in order to exercise their functions such as they are defined by the Second Protocol.⁴

This proposal has two big advantages:

- a. Once the Meeting of the Parties has approved the amendment(s) to the Guidelines, the new arrangements regarding the signalling of cultural property under enhanced protection guarantees legal stability and security;
- b. The Guidelines aim to direct all the Parties to the Second Protocol, including the States that will join at a later stage.

Finally, acting this way ensures control by the Parties. Some improvements in the modus operandi, or suppression in the event of serious unexpected difficulties, can always be achieved through the Meeting of the Parties.

6. Why not choose to negotiate an amendment to the Second Protocol?

In practice, proposing an amendment to the Second Protocol would undoubtedly mean embarking upon a long and winding road to an uncertain result. By virtue of the Law of Treaties⁵, the amendment to the Second Protocol would only apply to reciprocal relationships between the State Parties that had accepted it. Consequently, the implementation of such an option would turn out to be difficult to put into practice in the field, and the effectiveness of the enhanced protection of cultural property would prove to be extremely uncertain, especially in the event of armed conflict between

⁴ The Guidelines for the application of the the Second Protocol of 1999 related to the Hague Convention of 1954 for the protection of cultural property in the event of armed conflict, Introduction, IA, 1.

⁵ Vienna Convention on the Law of Treaties of 1969, art. 40.

States that had not all accepted the amendment and thus recognised the distinctive emblem.

Furthermore, the Committee has already inscribed ten cultural properties on the List of Cultural Property under Enhanced Protection, and this list is likely to be considerably developed in the coming years, in view of the numerous demands that are currently being looked at by the UNESCO Secretariat. Amending the Second Protocol would start a time-consuming process that would be difficult to reconcile with the evolutions that will occur to the list of cultural property under enhanced protection, as the intention is to add more and more cultural property, and so give this property a sign. Yet, military personnel need to be able to identify cultural property under enhanced protection when they are engaged in an armed conflict. In the absence of a marking adapted for cultural property that is recognised as potentially benefitting from enhanced protection, such property would not be shielded from all possible attacks if a military conflict broke out today. Furthermore, members of military personnel are at risk of taking decisions that make them personally liable to criminal prosecution. Therefore, the amendment to the Guidelines of the Second Protocol is a solution that will contribute to quick and effective protection both for the cultural property under enhanced protection and for the armed forces.

7. Is this an extraordinary legal route?

No, this legal route was followed to establish the distinctive emblem of several other UNESCO Cultural Conventions: 1972, 2003 and 2005.

A. 1972 World Heritage Convention

The World Heritage Emblem was adopted by the World Heritage Committee at its 2nd session (Washington, 1978).

In 1998, at its 22nd session (Kyoto, 1998), the World Heritage Committee adopted the "Guidelines and Principles for the Use of the World Heritage Emblem." These guidelines and principles were integrated in the Guidelines for the Implementation of the World Heritage Convention (the equivalent of the Guidelines for the application of the Second Protocol).

B. 2003 Convention for the Safeguarding of Intangible Cultural Heritage

The emblem of the Convention for the Safeguarding of the Intangible Cultural Heritage, as well as the rules governing its use, is dealt with in Chapter IV.2 of the Operational Guidelines for the Implementation of the Convention for the Safeguarding of Intangible Cultural Heritage.

C. 2005 Convention on the Protection and Promotion of Diversity of Cultural Expressions

The emblem of the 2005 Convention and the Operational Guidelines concerning its use were adopted at the 4th session of the Conference of Parties to the Convention, which was held in June 2013. The adopted resolution is available at the following website <http://unesdoc.unesco.org/images/0022/002217/221795f.pdf>.

8. Will the new distinctive emblem be legally protected?

The new distinctive emblem proposed does not need legal protection in addition to that already set out by the Hague Convention, and this Convention is applicable. The new distinctive emblem proposed, in effect, constitutes the addition of a red outline, separate and distinct from the Blue Shield, to be used in an isolated manner. Therefore, it benefits wholly from the protection of the Blue Shield already set out by Article 17, §3 of the Hague Convention, which limits the use of the Blue Shield essentially to marking cultural property.

9. Does this distinctive emblem have legal consequences?

It must be reiterated that the new distinctive emblem has no legal effect other than that already set out by the Hague Convention and its Second Protocol: it is exclusively a sign. In effect, the proposal for a new distinctive emblem only aims to help the Committee for the Protection of Cultural Property in the Event of Armed Conflict with one of its remits set out by the Second Protocol, namely "promoting identification of cultural property under enhanced protection" (Second Protocol to the Hague Convention, art. 27, §1, c). This means insisting on the fact that enhanced protection stems from a decision by the Committee for the Protection of Cultural Property in the Event of Armed Conflict by virtue of Articles 11, §10 and 27, §1, b), from the Second Protocol, and not from marking. If a State places the new distinctive emblem on cultural property that is not part of the remit of enhanced protection for the aforementioned Committee, the only effect of this marking would be to identify the property as a cultural property that could benefit from simple protection.

10. Must Parties protect this distinctive emblem in their domestic law?

It is not obligatory, but it is desirable that States integrate measures in their legislation aiming to ensure the protection of the Distinctive Emblem, once approved by the Meeting of the Parties, against all misuse.

Therefore, conforming to the obligations set out by the Second Protocol in regards to dissemination, it is crucial that the Parties circulate the new distinctive emblem, along with its modalities of use, among both its civilian population and military authorities.