

**ICOMOS - International Scientific Committee on Legal, Administrative and Financial Issues**

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## World Heritage Protection in Australia

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### ICOMOS Australia

#### World Heritage Sites in Australian

There are 18 World Heritage properties in Australia nominated by the Commonwealth government and protected under its *Environment Protection and Biodiversity Conservation Act, 1999*.

Year of inscription	World Heritage Sites	Category
1981	Great Barrier Reef, Queensland Kakadu National Park (Stage 2, 1987; Stage 3, 1992) Northern Territory Willandra Lakes Region New South Wales	Natural Natural and Cultural Natural
1982	Tasmanian Wilderness (Extended 1989) Lord Howe Island Group	Natural Natural
1986	Gondwana Rainforests of Australia New South Wales (extended in 1994)	Natural
1987	Uluru-Kata Tjuta National Park, Northern Territory (extended in 1994)	Natural and Cultural
1988	Wet Tropics of Queensland	Natural
1991	Shark Bay, Western Australia	Natural
1992	Fraser Island, Queensland	Natural

1994	Australian Fossil Mammal Sites – Naracoorte, South Australia, and Riversleigh, Queensland.	Natural
1997	Heard and McDonald Islands Macquarie Island	Natural Natural
2000	The Greater Blue Mountains, New South Wales	Natural
2003	Purnululu National Park, Western Australia	Natural
2004	Royal Exhibition Building and Carlton Gardens, Victoria	Cultural
2009	Sydney Opera House, New South Wales	Cultural
2010	Australian Convict Sites – 11 sites across the Continent, Tasmania, New South Wales, Western Australia.	Cultural

### ***Legal instruments used to protect World Heritage Sites in Australia***

Australia is a federation of six former British colonies that are now jurisdictions that constitute States of the Commonwealth of Australia. In addition there are two federal territories that have reached a high degree of legislative competency.

The Australian constitution purports to allocate responsibility for areas of legislative and administrative competence within the federation but applies a nineteenth century model, which predates the modern concept of World Heritage. Pressing modern issues, such as responsibility for environmental matters and heritage are largely twentieth century concepts and are not adequately covered. The constitution is very difficult to amend.

The result is that legislative and administrative responsibility for heritage is divided between nine Parliaments in the two tiers of government. The national entity is the Commonwealth of Australia. The second tier is occupied by the six original colonies, now the States of Queensland, New South Wales, South Australia, Tasmania, Western Australia and Victoria. Joining them are two largely self-governing federal Territories, the Australian Capital Territory, seat of the national capital, and the very large Northern Territory. The States have also introduced a network of local government within their areas.

Governments of the two tiers meet together as the Council of Australian Governments (COAG). COAG in 1997 reached a consensus on the division of responsibility for heritage matters, which stressed co-operation and the need to retain joint responsibility.

***General Act on the protection of monuments and instruments resulting from it and applied for all monuments in the country.***

Rather than a general Act there is national legislation and State and Territory legislation.<sup>1</sup> The national legislation is the *Environment Protection and Biodiversity Conservation Act, 1999* and regulations. Each State and the two Territories has a “Heritage Act”, which could be used to supplement the national provisions. The legislation is:

**Australian Heritage legislation:**

National legislation - *Environment Protection and Biodiversity Conservation Act 1999* (Cw).

*Territory*

Australian Capital Territory - *Heritage Act 2004* (ACT),

Northern Territory - *Heritage Conservation Act* (NT),

*States*

New South Wales - *Heritage Act 1977* (NSW),

Queensland - *Queensland Heritage Act 1992* (Qld),

South Australia - *Heritage Act 1993* (SA),

Tasmania - *Historic Cultural Heritage Act 1995* (Tas),

Victoria - *Heritage Act 1995* (Vic) and

Western Australia - *Heritage of Western Australia Act 1990* (WA)<sup>2</sup>.

Local and use planning laws are also used to regulate development affecting historic buildings and sites. These can be used to supplement protection for curtilage and to strengthen buffer zones for world heritage sites.

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<sup>1</sup> All Australian legislation is conveniently collected at [www.Austlii.edu.au](http://www.Austlii.edu.au) follow the link to “Consolidated Acts” under each of the jurisdictions.

<sup>2</sup> See generally Boer, Ben and Graeme Wiffen **Heritage Law in Australia** OUP (Melbourne 2006).

## **General policy on heritage**

World heritage listing has been very contentious as it introduces Federal responsibility into the area of land use and planning, which has been traditionally seen as an area of competence of the Australian States. The friction has diminished since the signing of the COAG Agreement referred to above. It would be difficult to identify a national policy of, say, a wish to inscribe as many monuments and places as possible. Each proposed listing is debated as an individual case.

## **Proposer of inscription in the list**

The national government proposes inscription on the World Heritage List as an exercise of its responsibility for foreign affairs under the Australian Constitution. The national legislation, the Environment Protection and Biodiversity Conservation Act, envisages that this function will be exercised after consultation with the relevant State or Territory.

## **Responsibility for management and protection**

The majority of World Heritage sites in Australia are in public ownership. The large sites inscribed for natural values of both natural and cultural values are national parks, which in the States are managed by the States and in the Territories are managed by the Federal Government. Here the cultural values are the values of the indigenous population. A smaller number of World Heritage sites are inscribed for their cultural values alone, being the cultural values of a European derived tradition. These are also owned and managed by State governments. The exceptions are Old Government House in Parramatta near Sydney in the State of New South Wales, and Norfolk Island, an island of the East coast of Australia, which are included in the Australian Convict Sites newly inscribed as a serial listing on the World heritage list (11 sites across the Continent in Tasmania, New South Wales and Western Australia). Old Government House is managed by the National Trust of Australia (NSW) a long-standing ngo based on the British model. Norfolk Island is small Commonwealth or national Territory.

All Australian heritage legislation is based on a listing model with obligatory requirements for minimum maintenance.

## **Limiting of property rights**

Theoretically, all Australian heritage legislation constitutes a limitation on usual property rights in that there are strict requirements for seeking approval for changes to the property that might affect its heritage values.

## **Tax or other financial incentives**

Income tax is levied by the national government. Tax incentives for maintenance on listed heritage properties were tried in Australia in the 1990s but have not been maintained by subsequent governments. All governments in Australia provide grants and loans for heritage purposes.

## **Special bodies responsible for the protection and control**

Each Australian jurisdiction has a heritage council or other body. The Australian Heritage Council is a national body, which advises the national Government. The national department charged with World Heritage and national heritage is currently named the Australian Department of Sustainability, Environment, Water, Population and Communities ([www.environment.gov.au](http://www.environment.gov.au)). Similarly each State and

the two major Territories have Heritage Councils and specialist government bureaus. Funds for the maintenance of heritage are included in the usual annual government budgets.

### **What is your country's experience?**

Australia has had a very complicated approach to World Heritage because the early listing on the World Heritage list were of very large areas of State owned land and involved disputes as to legislative competence between the national and State governments. Australia has two main political parties and disputes were exacerbated if, at the time, the national and State governments were from different political parties. Constitutional disputes in Australia are litigated before the High Court, so Australia claims to have an unusually well developed system of jurisprudence on world heritage matters.

The early sites in Australia included areas with very long standing indigenous populations and highlighted a culture which even in Australia is not well known nor appreciated. This aspect of world heritage listing has been very positive for the country. The management of these sites has involved the evolution of a system of joint management between government agencies and the indigenous peoples.

Recent listing have included sites with cultural heritage values which have given Australians a recognition of the culture of their country usually perhaps at risk of being discounted because of the short period of European based settlement.

# THE WORLD HERITAGE CONVENTION. THE BELGIAN IMPLEMENTATION.

Hasselt, 12 September 2010

Prof.dr. Anne Mie Draye

## ***1. Introduction***

Whereas the Convention concerning the Protection of the World Cultural and Natural Heritage was opened for signature on the 16<sup>th</sup> of November 1972, the final ratification of this convention by the Belgian State only took place on the 24<sup>th</sup> of October 1996. The deposit of the ratification instrument was preceded by decrees adopted by the parliamentary assemblies of the three Belgian Regions and the German Community, approving the text.

Belgium was the 147<sup>th</sup> State becoming a party to the World Heritage Convention.

The important state reform, ongoing in Belgium since 1970 and not yet finished, is generally considered as the main reason for this important delay between the opening for signature and the ratification.

## ***2. Listed goods***

### 2.1. Goods inscribed in the World Heritage List

At the moment, 10 inscriptions on the World Heritage List have been completed, other goods are part of the Tentative List. Until yet, no goods were transferred to the World Heritage List in danger.

The first inscriptions date from 1998: they concern the Flemish beguinages, the four lifts on the Canal du Centre and their surroundings (Walloon Region) and the Brussels Central Market Place.

The Flemish beguinages<sup>3</sup> are a good example of a serial inscription: known as “Begijnhof” in Dutch, most of the beguinages were founded in the 13th century by Roman Catholic women dedicating their lives to religion and charity, without retiring from the world.

Originally, 26 beguinages were proposed for inscription in the World heritage List, finally 13 of them were accepted, offering a good example of the various types.

The four hydraulic boat-lifts on the historic Canal du Centre are industrial monuments of high quality. Together with the canal itself and its associated structures, they constitute a remarkably well-preserved and complete example of a late 19th-century industrial landscape. Of the eight hydraulic boat-lifts built at the end of the 19th and beginning of the 20th century, the only ones in the world which still exist in their original working condition are these four lifts on the Canal du Centre.

The Grand-Place in Brussels is a remarkably homogeneous ensemble of public and private buildings, dating mainly from the late 17th century. The architecture provides a good illustration of social and cultural life of the period in this important political and commercial centre.

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<sup>3</sup> For this descriptions, inspiration was found in the World Heritage List, published at [www.unesco.org](http://www.unesco.org)

In 1999, 32 belfries located in the Flemish and Walloon Region, were inscribed as a group on the World Heritage List. Built between the 11th and 17th century, they illustrate the Roman, Gothic, Renaissance and Baroque styles of architecture, and figure as significant tokens of the winning of civil liberties. While Italian, German and English towns mainly opted to build town halls, in part of north-western Europe, the building of belfries was more common. Compared with the keep (symbol of the seigneurs) and the bell-tower (symbol of the Church), the belfry, the third tower in the urban landscape, symbolizes the power of the aldermen.

The inscription of this group of belfries was extended with one more belfry (Gembloux) in 2005, together with the inscription of another group of belfries in the northern part of France.

In 2000, four new inscriptions on the List were realized: some houses of Victor Horta, the flint mines of Spiennes, the cathedral of Tournai and the historical centre of Bruges.

Four major town houses - Hôtel Tassel, Hôtel Solvay, Hôtel van Eetvelde, and Maison & Atelier Horta, all located in Brussels, were designed by the architect Victor Horta, one of the initiators of Art Nouveau. They are remarkable pioneering works of architecture of the end of the 19th century. The stylistic revolution represented by these works is characterized by their open plan, the diffusion of light, and the beautiful joining of the curved lines of decoration with the structure of the building.

The Neolithic flint mines at Spiennes, Walloon Region, cover more than 100 ha. They are the largest and earliest concentration of ancient mines in Europe. They are also remarkable for the diversity of technological solutions used for extraction and for the fact that they are directly linked to a settlement of the same period.

The Cathedral of Notre-Dame in Tournai was built in the first half of the 12th century. It is especially distinguished by a Romanesque nave of extraordinary dimensions, rich sculptures on its capitals and a transept topped by five towers, all precursors of the Gothic style. The choir, rebuilt in the 13th century, is in pure Gothic style.

Bruges is an outstanding example of a medieval historic settlement, which has maintained its historic fabric as this has evolved over the centuries, and where original Gothic constructions form part of the town's identity. As one of the commercial and cultural capitals of Europe, Bruges developed cultural links to different parts of the world. It is closely associated with the school of Flemish Primitive painting.

In 2005 the Plantin Moretus House was inscribed on the World Heritage List.

This house, actually converted into a museum, is a printing plant and publishing house dating from the Renaissance and Baroque periods. Situated in Antwerp, it is associated with the history of the invention and spread of typography. Its name refers to the greatest printer-publisher of the second half of the 16th century: Christophe Plantin (c. 1520–89). The monument is of outstanding architectural value. The building of the enterprise, which remained in activity until 1867, contains a large collection of old printing equipment, an extensive library, invaluable archives and works of art, among them a painting by Rubens.

A, for the time being, last inscription dated 2009, concerns the Stoclet House, situated in Brussels.

Banker and art collector Adolphe Stoclet commissioned this house from one of the leading architects of the Wiener Secession movement, Josef Hoffmann, in 1905. He imposed neither aesthetic nor financial

restrictions on the project. The house and garden were completed in 1911 and their severe geometry marked a turning point in Art Nouveau, announcing Art Deco and the Modern Movement in architecture. Stoclet House is one of the most accomplished and homogenous buildings of the Wiener Secession, and hosts works by Moser and Klimt, expressing the aspiration of creating a “Gesamtkunstwerk”.

## 2.2. Goods inscribed on the tentative list

“In the future, consistent with Article 11, the tentative lists of cultural and natural sites should be used, as a planning tool to reduce the imbalances in the World Heritage List”<sup>4</sup>.

At this moment, 16 items are inscribed on the Tentative List; they concern cultural and (less) natural heritage, located in the three Belgian regions.

Some proposals were already made in 2002: part of the historic centre of the City of Ghent, including two abbeys; the Westhoek as a souvenir of the Great War; part of the historic city of Antwerp; the most important buildings belonging to the Louvain University.

In 2005, the house of architect Guiette was inscribed on the tentative list.

All other inscriptions date from 2008: the Royal Galleries Saint-Hubert in Brussels, architectural work of Henry van de Velde (Brussels), the Brussels Palace of Justice by architect Poelaert, the (cultural) landscape of the Hautes-Fagnes, part of the Roman Road Boulogne- Köln located on the territory of the Walloon Region; the Health Resort of the city of Spa; the palace of the Prince Bishop of Liège; the battle field of Waterloo and the rotunda with its panorama, some major mines located in the Walloon Region, and some citadels above the river Meuse.

## ***3. Legal instruments in order to protect World Heritage***

### 3.1. Introduction

Although the idea of international protection was embodied in the World Heritage Lists and the mutual international assistance including the creation of the World Heritage Fund, the World Heritage Convention fully recognizes the national sovereignty of the states on whose territory the cultural and natural heritage is situated. National states bare the first responsibility for the safeguarding, maintenance and protection of their “own” World Heritage.

This national responsibility appears clearly from the text of the articles 4 and 5 of the World Heritage Convention. Due to article 5, states parties to the convention must ensure effective and active measures for the protection, conservation and presentation of their cultural and natural heritage. As a minimal obligation they must work out a protection policy, set up services, encourage research and adopt appropriate legal, scientific, technical administrative and financial measures.

Article 5 (a) deals with the adoption of “a general policy which aims to give the cultural and natural heritage a function in the life of the community *and to integrate the protection of that heritage into comprehensive planning programmes*”.

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<sup>4</sup> Report of the World Heritage Committee, Twenty-fourth session, Cairns, 27 November- 2 December 2005, p.9. See also Operational Guidelines for the Implementation of the World Heritage Convention, nrs 62-76.

This idea was taken over in the Recommendation concerning the Protection, at National Level, of the Cultural and Natural Heritage, adopted together with the World Heritage Convention in 1972<sup>5</sup>: “ The protection, conservation and effective presentation of the cultural and natural heritage should be considered as one of the essential aspects of regional development plans, and planning in general, at the national, regional or local level”(article 8).

In Belgium, specific legal instruments were developed for heritage protection including the delimitation of buffer zones; besides this, instruments developed within the framework of planning law play an important role.

### 3.2.Direct tools for protection inscribed in heritage legislation

First of all, one should mention the specific protection procedures inscribed in several decrees, into force in the three Regions and in the German Community.

None of those authorities worked out a specific protection system or a specific legal status for world heritage .

Within the *Flemish Region*, the protection of immovable heritage is organized by several decrees:

- the decree of March 3, 1976 on the protection of monuments and urban or rural sites, as amended;
- the decree of June 30, 1993 on the protection of archaeological heritage, as amended;
- the decree of April 16, 1996 on the protection of landscapes as amended.

About three years ago, the competent minister presented a first proposal for a one and single decree on the protection of all categories of immovable heritage; this proposal however, was never approved. At this very moment a new initiative has been taken: a first note on a unique legal instrument for immovable heritage was adopted by the Flemish Government in July 2010 .

In the *Walloon Region*, a unique decree on heritage protection was already adopted in 1991, in the *Region of Brussels Capital* such a decree was voted in 1993. An important characteristic of those decrees consists of the insertion of the rules on heritage protection in the code on Planning law.

The *German Community* adopted an own decree on the protection of immovable heritage in 2008.

Legislation into force in all Regions and in the German Community foresees protection of individual monuments, larger built ensembles, archaeological sites and landscapes. All those tools can be used, many times in a combined system, for protecting good (to be) inscribed on the World Heritage List.

In practice, goods proposed for inscription on the World Heritage List or even on the Tentative List get first “ internal” protection, at the latest at the moment of proposal.

In the Code Wallon de l’Aménagement du Territoire, de l’Urbanisme et du Patrimoine (CWATUP) - the legislation into force in the Walloon Region -, a special kind of protection is foreseen: besides the

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<sup>5</sup> The text of this recommendation can be found on: [www.unesco.org](http://www.unesco.org)

protection as such, a protection of “patrimoine exceptionnel”, heritage presenting an outstanding value was established (art 187,12°).

To owners of goods inscribed in this category of about 160 monuments, (archaeological)sites an landscapes can be given certain financial advantages.

Proposals for inscription on the World Heritage List are only made for goods already inscribed in the list of patrimoine exceptionnel.

### 3.3. Buffer zones

The idea of possible buffer zones around World Heritage, is not inscribed as such in the text of the World Heritage Convention, The “Operational guidelines for the implementation of the World Heritage Convention”, however mention the idea in an explicit way<sup>6</sup>. Under section II.F of the text, the numbers 103-107 are dedicated to the subject and contain a quite complete set of rules.

Number 103 contains the idea of providing an adequate buffer zone, wherever necessary for an appropriate conservation of the property.

In number 104, a description of a buffer zone is given: “ An area surrounding the nominated property which has complementary legal and/or customary restrictions placed on its use and development to give an added layer of protection to the property. This should include the immediate setting of the nominated property, important views and other areas or attributes that are functionally important as a support to the property and its protection”.

The delimitation of a buffer zone must be decided on by a case by case approach, but details on the size, characteristics and authorized uses of the buffer zone, as well as a map indicating the precise boundaries of the zone, should be mentioned already in the nomination for inscription. In this same nomination, a clear explanation of the protective effect of the buffer zone on the proposed World Heritage property must be provided (Numbers 104 and 105 of the Operational Guidelines ).

The World Heritage Committee considers the delimitation of a buffer zone as a general obligation, a must: according to number 106, in cases where no buffer zone is proposed, the nomination should include a statement as to why such a zone is not required.

Finally, number 107 of the Operational Guidelines deals with monitoring and control on buffer zones: even if these zones are not part of the nominated property, any modifications subsequent to inscription of a property on the World Heritage List, should be approved by the World Heritage Committee.

Proposing a good of outstanding value for inscription on the World Heritage List without buffer zone remains possible, but only with a due motivation, showing that in practice the effect of the buffer zone has already been reached by other means, most of the time linked to urban development rules.

When we look at the Belgian situation, we notice that all internal legislations foresee the creation of buffer zones, but not in the same way.

In the Flemish Region, buffer zones can be delimited around protected monuments and landscapes. They can not be used around protected archaeological monuments or around rural and urban sites. In the

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<sup>6</sup> The latest version of this Guidelines dates from January 2008.

Walloon Region they can be combined with the protection of all protected goods, also e.g. with larger built ensembles. The same situation exists in the Region of Brussels Capital and in the German Community, only here the indication of a buffer zone is obligatory in case of protection.

When we look at the situation of World Heritage on the Belgian territory, we notice that in some cases no buffer zone was proposed to the World Heritage Committee at the moment of the nomination, especially for goods located in Flanders.

In each case an appropriate motivation was given, most of the time referring at planning law offering already a sufficient protection to the surroundings of a protected item.

### 3.4. Zoning and planning law as a tool for protecting World Heritage

As mentioned before, the protection of World Heritage and its surroundings, can be supported by town planning law.

Many beguinages and belfries, protected as such as monuments and very often as urban sites and e.g. also the Plantin Moretus House, are located in zones of cultural, historic and aesthetic interest. Such a zoning, overlay on a regional plan and part of urban development legislation, implies a quite strict control on every alteration that is proposed and for which a previous authorisation is needed. This kind of extra protection was proposed to the World Heritage Committee as a valuable alternative for the lack of buffer zone.

In 1999, a new decree on planning for the Flemish Region was adopted. Amended in a quite considerable way in 2009, it foresees in new plans, having a more flexible and dynamic character. With this kind of plans, at least the same protection as the one offered by the delimitation of zones of cultural, historic and aesthetic interest can be offered. The more flexible character is supposed to lead to even more specific rules and easements in order to give heritage a better protection.

In the Walloon Region and in the Region of Brussels Capital, rules on town planning and on heritage protection are part of the same code: the integration of both subjects leads in a more evident way to an enhanced attention in drawing plans and granting permits for World Heritage and heritage more in general.

## ***4. General policy concerning World Heritage***

As announced in the introduction, the protection of immovable heritage belongs to the competence of the three Regions; By special collaboration agreement, the German Community regained competence for the subject.

The Belgian state reform departed from the idea of exclusive competences, which means that a competence is exercised either by the federal authorities, either by the Regions/Communities.

In practice, the Governments of the Regions and the German Community determine their own heritage policy, including the recognition and management of World Heritage Sites. In every administration, specific officers were appointed in order to take care of the World Heritage.

Proposals for inscriptions on the Tentative Lists or the World Heritage List are made by the competent Minister and supported by their administrations.

Management is controlled by the regional authorities<sup>7</sup>. Many sites inscribed in the World Heritage List belong to public owners, like local authorities. All owners are invited to work out management plans. The practical situation in this regard differs from site to site.

Educational initiatives are taken most of the time by the managers of a site, in some cases supported by the regional authorities. No coordinated initiatives on all World Heritage are undertaken.

All Legal protection systems foresee restrictions to property rights, maintenance obligations, premiums and tax deductions for maintenance and restoration works, a possibility for compulsory purchase, administrative and criminal sanctions.

Those systems are entirely applicable to World Heritage Site, according to the type of protection that was given to the item concerned: monument, landscape.... and to the location in a specific Region.

For the Walloon Region, the rules into force for heritage presenting an outstanding value are applied to World Heritage.

### ***5. Number and nature of inscriptions***

The 10 goods inscribed on the World Heritage List represent indeed a very small part of all protected goods in Belgium. In January 2009, over 12.000 items were protected in the Flemish Region, in the Walloon Region about 3000 and in the Region of Brussels Capital almost 1000. In the German Community about 180 goods received legal protection.

Most inscriptions on the World Heritage List concern monuments or larger built entities. This situation is also representative for the “national protection”. Taking into account the fact that Belgium is a densely built country, this seems quite obvious.

The proposals for the tentative list are the result of a very severe selection by all the Regions. Attention was given to natural heritage with the proposal of the Hautes Fagnes, located on the territory of the Walloon Region and the German Community.

In general, the proposals deal with items that are quite specific and not yet inscribed in many other countries, seeking for valuable complements to the World Heritage List.

### ***6. A specific case: the management of the historic Centre of Bruges***

During the month of March 2010, a monitoring mission was sent by the World Heritage Committee to Bruges in order to control the state of conservation of the historical city centre inscribed on the World heritage List in 2000.

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<sup>7</sup> Likewise most countries, Belgium has got a Permanent Delegation to Unesco; this Delegation works closely together with the representatives of the regions, in charge of heritage protection, and also with the two Unesco Committees.

This mission was at least partially inspired by a number of letters sent by local associations to the World Heritage Centre in which concerns about several new projects - under consideration or being executed - affecting the historic centre, were raised.

In the experts report<sup>8</sup> presented at the reunion In Brasilia, the problems were formulated as follows:” The core of the concerns about the potential impact of new constructions on the authenticity and integrity of the World Heritage property is in the field of integration of contemporary architecture into the historic ensemble. However, the main threat is manifested in a number of development projects comprising demolition of architecture of perceived “minor value” often contextual within the historic environment, and construction of new buildings. In such case the new design allows transformation of the urban fabric with impact on scale and urban organisation of historic blocks. Transformation also impacts on the diversity of urban typology and the continuity of public, social and religious institutions. The insertion of new buildings with contemporary design brings a new quality to the place; some examples with destructive impact on the urban integrity can be found in the historic core of Brugge.

Great numbers of tourists visit the city and are channelled to a limited area where, as a result, former urban functions are transformed. Furthermore, new planned major real estate development projects in close vicinity of the World Heritage property will provide serious competition to the maintenance of public, social and commercial urban functions in the historic areas”.

Whereas the Flemish Government is responsible for the protected monuments and urban sites, the city of Bruges plays an important role in spatial planning and delivering building permits. The World Heritage Committee addressed some recommendations to both authorities, at this moment they are subject of a huge controversy.

The recommendations concern a possible protection of the entire historic centre as an urban landscape; the creation of a better framework preliminary to the granting permits for development projects; a better incorporation of heritage preservation concerns into planning documents; the elaboration of visual assessment plans for important views from and towards the World Heritage property, the working out of a management plan and the creation of an expert panel<sup>9</sup>.

By the first of February 2011, the Government must handle a detailed report on the state of conservation of the historic city centre of Bruges, and of the progress made in the implementation of the World Heritage Committee’s recommendations. This report will be examined during the next session of the Committee.

## **EXECUTIVE SUMMARY AND LIST OF RECOMMENDATIONS (WHC 2010)**

1. While in the city of Brugge considerable resources are allocated in the long-term to restoration projects, the improvement of public space and the revitalisation of cultural life, disquieting signs of gradual erosion of the outstanding universal values of the World Heritage property “Historic Centre of Brugge” emerge. The following threats affect the property: the ambiguous legal status of the World Heritage property within the system of national legislation; the local policy towards buildings of perceived “minor value”; a liberal approach to the transformation of urban typology; spatial and economic developments in close vicinity to the property, and the visual impact of major projects involving industrial installations in the surrounding landscape.

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<sup>8</sup> Report of the thirty-fourth session of the World Heritage Committee, Brasilia, 25 July - 3 August 2010.

<sup>9</sup> The text of the summary of the report is attached to this text.

The legal status of the World Heritage property in the framework of the national legislation is aimed at controlling the integrity of the property's ensemble through the designation of a 50 m protection zone around national listed monuments. In fact, heavy transformations and demolitions in such areas are permitted. Important buildings within the urban fabric and adjacent areas have no heritage preservation status despite their essential contribution to the integrity of the property.

**The Mission recommends that the proposals of the highly professional civic heritage advocacy associations to classify the World Heritage property within the national legislation as an “urban landscape” should be explored in detail and taken into consideration.**

2. The redevelopment of certain areas within the Brugge urban framework does not respect the urban morphology of closed urban plots limited by streets and laneways in the historic centre of Brugge. This urban morphology is intrinsic to the World Heritage property's declared value as testimony to significant stages in the commercial and cultural development of medieval Europe. It is important that new development respects the urban plot layout.

**The Mission recommends that preliminary urban development studies for specific areas should be elaborated with binding terms of reference in the field of urban morphology in order to set in advance firm conditions for possible future area development.**

3. New development in proximity to the World Heritage property represents a threat in two major aspects. The large-scale development of administrative and commercial capacities creates serious competition to essential urban functions provided by the public and social institutions which are closely related to the World Heritage status, and has the potential to divert activity away from the historic centre. Planned concentrated development introduces new dominant buildings within the neighbouring area with an expected negative impact on the integrity of the property in relation to the surrounding cultural landscape. Meanwhile existing buildings that contribute to the outstanding universal value of the World Heritage property may become redundant and dilapidated.

**The Mission recommends that effective links between the interests of the city of Brugge and the World Heritage property Historic Centre of Brugge, in relation to preservation and development, should be fostered. The city of Brugge and regional development planning authorities should consider the requirements of heritage preservation bodies as binding and incorporate them in their planning documents.**

4. Some realised and planned projects within and in the vicinity of the World Heritage property affect its visual quality.

**The Mission recommends that visual impact assessment studies should be elaborated for important views from and towards the World Heritage property, taking into account its historic and important view corridors, and further incorporate the results in urban planning documents as a tool to avoid adverse visual impact on the property.**

5. The mission noted that there is a considerable gap between the spatial and economic development of the city of Brugge and the World Heritage property's preservation and promotion of outstanding universal values, its integrity and authenticity.

There is no agreed management plan for the World Heritage property which would set out the Outstanding Universal Value of the property, how this relates to the built fabric, the definition of views out and towards the city and its overall skyline, and what measures are needed to protect the Outstanding Universal Value and how key stakeholders might collaborate to achieve this end.

**The mission recommends that the governance of the World Heritage property should be strengthened and made more proactive in order to foster appropriate development within agreed constraints. This needs to be set out in a Management Plan based on an agreed Statement of Outstanding Universal Value. The mission also considers that it would be beneficial to set up an**

**expert Advisory Panel, specifically for the World Heritage property, that would be consulted on major projects and offer advice on the appropriateness of schemes at an early stage.**

## **Legal protection of World Heritage in Republic of Bulgaria**

### **Bulgarian National Committee of ICOMOS**

#### **Svetoslav Georgiev**

- I. Monuments, inscribed in World Heritage List.** - see Table № 4 on the Attachment
- II. Legal instruments for protection of World heritage.**

The differentiated approach to legal protection and the preservation of these protected sites is regulated in a series of texts pertaining to cultural and natural heritage legislation: the Cultural Heritage Act, the Culture Development and Protection Act, Protected Areas Act, Environmental Protection Act, Bulgarian Black Sea Coast Territorial Development Act, Territorial Development Act and secondary regulations to these acts.

For every individual monument a comprehensive preservation program has been devised, which describes in detail the relevant activities and is updated in case of occurrence of any changes in the course of its implementation. An integral part of such programs are the specialized regimes of preservation, which include also specific instructions as to the public access regime for some of the monuments (the two Thracian tombs, the Boyana Church, the Rock Churches near Ivanovo village).

The stocktaking and preparation of inventory lists, and the documenting of the valuable sites of the cultural and landscape heritage of world importance, as well as the maintenance of a database about them, is carried out by the following authorized institutions:

#### **For the immovable cultural heritage properties:**

- The Ministry of Culture, which guides and supervises the search, study and documentation of the monuments of culture. It conducts this activity through its bodies, the local government authorities and the executive power authorities in the municipalities, as well as the other state and public bodies specified in the Monuments of Culture and Museums Act.
- The National Institute of Immovable Cultural Heritage (NIICH) as a body within the Minister of Culture performs the aforementioned activities through the Directorate for Studies and Registration, Documenting and Archiving of the Monuments of Culture, which maintains the National Documentary Scientific Archive for the immovable monuments of culture.
- The Archaeological Institute and Museum with the Bulgarian Academy of Sciences which keeps complements and maintains the Archaeological map.

Data and documents concerning all cultural heritage properties, including those inscribed on the World heritage list should and/or can be collected and kept by other judicial and physical persons at different levels, national, regional and local, but they have official value only if they originate or have been sanctioned by the relevant authorized institutions.

The statute of „Cultural value”, securing the protection of law, is given to sites, identified as immovable cultural heritage properties by the National Institute of Immovable Cultural Heritage (NIICH). The definitions of the type, category and territorial scope of the site, as well as the prescriptions for its protection constitute compulsory parameters of this statute.

By identifying a site as a cultural heritage property, the NIICH includes it in the lists of declared monuments of culture together with the preliminary definitions for the above parameters. The lists are approved by the Director of the NIICH and are sent to the municipal administrations. This procedure secures temporary protection for the declared monuments of culture.

This protection is in force, while the NIICH carries out a detailed survey and makes a complex assessment of the declared properties. Based on its results, the Institute submits proposals to the Minister of Culture for either classification of the properties as protected or cancellation of their temporary statute.

The proposals for classification of the properties, prepared by the NIICH, matched compulsorily with the opinion of the local authorities, are approved by the Minister of Culture; the proposals for the classification of a group of cultural heritage properties with very high cultural and historic value and special regime of preservation as a “reserve” have to be approved by a decree of the Council of Ministers. The lists of the approved sites are published in the State Gazette and thus, their statute of “Cultural value” and the specific parameters become permanent.

The register of the immovable cultural values is filled in and kept at the national level by the National Documentary Archives affiliated with the National Institute of Immovable Cultural Heritage. The register lists the classified and declared immovable cultural values.

### **For the natural properties:**

Inventories over the state of conservation and biological diversity of the Bulgarian protected areas are being periodically held by the regional departments of the Ministry of Environment and Water. On the basis of the information compiled during these studies, data base of the protected areas has been established.

There is also a Register being held and maintained for all categories of protected areas in Bulgaria, designated according to the Protected Areas Act. In this Register each protected area has its own number, as well as information for the order of designation, subsequent changes concerning its size, category and corresponding regime of use.

The data base and the register of protected areas, on national level are being and maintained by the “National Nature Protection Service” Directorate under the Bulgarian Ministry of Environment and Water. This Directorate is responsible for the management and control over the protected areas on national level. Similar data base and registers are being held and maintained on regional level by the Regional Departments of the Ministry of Environment and Water that provide management and control over the protected areas that fall under their territorial range.

### **Tentative list of the cultural heritage properties**

Only immovable cultural values from the category of “national importance” are included in the Tentative List of cultural heritage properties that are intended to be considered for nomination.

The National Institute of Immovable Cultural Heritage prepares the proposals for inclusion of cultural heritage properties into the Tentative List at its discretion and on the initiative of the local authorities when monuments situated on the territory of the respective municipality are concerned.

The proposal of the National Institute of Immovable Cultural Heritage is discussed within a set working group, nominated by order of the Minister of Culture, which prepares the final proposal for

additions and revision of the Tentative List. The updated Tentative List is signed by the Minister of Culture and is submitted to the UNESCO World Heritage Centre through the National Commission for UNESCO.

### **Tentative list of the natural properties**

When the tentative list of Republic of Bulgaria was prepared, there were no special procedures, related to carrying out of public hearings which to ensure the public participation in the process of picking out of suitable natural sites for inclusion in this list. The sites which were then included in the tentative list were only discussed and considered between the scientific and state institutions.

At the time when the Bulgarian tentative list was proposed, namely 1984, the institution responsible for defining the sites to be included was the Research and Coordination Centre for preservation and Restoration of the Environment, under the Bulgarian Academy of Sciences.

At present, the Ministry of Environment and Water is the institution in charge of this activity.

### **Content of the Tentative list**

The first Tentative List of Bulgaria, submitted in 1984 included seven cultural heritage properties and five natural heritage properties./ see Table № 4 on the Attachment /

In 2004 the Ancient Plovdiv and the Thracian Tomb beside Alexandrovo village were added to the Tentative List, while in 2006 the Pirin National Reserve was added, due to the requested substantial modification of the limits of the natural heritage property.

### **General acts on the protection of Cultural heritage properties, World heritage**

At the central level, instances dealing with cultural heritage protection have been created. The protection of cultural and natural heritage is coordinated between the Ministry of Culture and the Ministry of the Environment and Water.

At the local level, the municipal councils, mayors of municipalities, districts and mayoralities, in line with the Cultural Heritage Act, and with the growing role of NGO's, effect the management and supervision of the protection and promotion of world heritage properties and sites.

All cultural heritage properties inscribed on the List of World Heritage have delineated boundaries, buffer zones and protective prescriptions; protection related scientific and technical research has been conducted, programmes and projects for conservation and restoration were prepared, territorial development plans were devised. These documents as well as all the initiated treatments within their limits and within the contiguous (buffer) zones are approved following a preliminary positive opinion on the part of the National Institute of Immovable Cultural Heritage.

### **General acts on the protection of Natural properties on the List of World Heritage**

The State policy in the field of natural heritage protection is implemented by the Ministry of the Environment and Water and its central and local departments. The State puts in place and secures the functioning of a system of protected areas as part of the regional and world network of similar areas, in line with the international treaties for protection of the environment, for which the Republic of Bulgaria

is a Party. For all protected areas, specialized services for protection are set up and management plans are being prepared.

The services aiming at the protection, conservation and presentation of the cultural and natural heritage inscribed on the List of World Heritage are the following:

- Ministry of Culture and Ministry of the Environment and Water and their branches;
- The bodies of the local authorities and the local government, on whose territory the properties are located.

### **III. International collaboration and Financial funds allocated for the maintaining and protection of World Monuments.**

All the nine Bulgarian cultural and natural heritage properties inscribed on the List of World Heritage have received financial support from UNESCO and from other international organizations. In view of protecting these properties more and more recourse is made to joint funding by the State, by different international funding sources and by local NGO's.

The attached tables №№ 2 and 3 provide information about foreign assistance and partnerships with local and foreign organizations for the protection of the cultural and natural heritage properties inscribed on the World Heritage List.

### **IV. Educational, information or/and marketing programs relating to monuments and sites on the World List Heritage**

#### **Information activity of the municipalities**

The municipalities on whose territory the cultural and natural heritage properties inscribed on the World Heritage List are located, organize different promotional actions i.e. presentation of world heritage properties on their official sites, publication of special albums, brochures, leaflets as well as organize awareness-raising events. The municipal and regional museums are contributing much to these activities. All the sites are signed in compliance with the set standards of UNESCO.

#### **Information activity within public-private partnerships**

A great number of different information materials were produced for each cultural or natural Bulgarian heritage property on the World Heritage List – scientific books, albums, films, virtual models, CD's, permanent and temporary exhibitions, tourist information and tourist guide books etc. In most cases, the initiators for the creation of these materials are linked in some forms of public-private partnerships at the national and international level. Together with representatives of the State and of its specialized bodies, participants in these partnerships are representatives of the NGO's and of the business.

#### **Boyana church**

This monument is accessible to the public under a regime, which takes into account the requirements for maintaining the microclimate within the specified range of parameters. Multi-media and tourist presentations exist for visitors and a selling booth for books, brochures and souvenirs. Museum of the Boyana church is set very close to the church and displays fragments of some of the later

mural paintings that were removed with a view of revealing the original mural paintings dating from the 13 c. With the assistance of the Sofia office of GTZ (The German Society for Technical Co-operation) with the Ministry of Economic Development and co-operation of Germany, a virtual hi tech 3D model of the Boyana church was created within the scope of the bi-lateral agreements for transfer of know-how.

### **Madara Rider**

A project for the creation of an eco-path “Madara Rider” was implemented on the territory of the National historic and archaeological reserve “Madara” and the elements of the reserve infrastructure were rehabilitated. The museum in the reserve is again open after having been closed for years.

### **Thracian Tomb near Kazanlak**

A museum building is erected in the neighborhood with a permanent exhibition containing materials from the excavations, the survey history, conservation and display, and a model of the Tomb in scale 1:1. Periodic, temporary exhibitions and scientific conferences on the Thracian Tombs in the Kazanlak valley are organized

### **Ivanovo Rock Hewn Churches**

The Regional Historic Museum Ruse and the municipality Ivanovo celebrated in 2004 the 25-th anniversary of the inscription of the property on the World Heritage List. The development strategy of the Regional Museum, Ruse dwells specifically on the growth and management of the tourist flow, on the training of the personnel, expanding the scope of visitor services as well as on the presentation of the property in the context of the other stone churches and sanctuaries in the valley of Rusenski Lom river and their inclusion in tourist itineraries.

In partnership with the administration of the Nature Reserve Rusenski Lom, a 3D model with animation, which will allow viewing the site without visiting it, is at present in development.

### **Rila Monastery**

The Rila Monastery has a historic museum, ethnographic collection, an icon exposition, art gallery, and an exposition on the theme of “Monastery economy”. They all contribute to the better presentation and understanding of the historic and cultural value of the monastery. About 250 manuscripts from XI-XIX c., 9000 old print editions, Revival period graphic stamps etc. are kept in the monastery library. The museum has a rich collection of 35 000 objects, collections of icons, applied art works, worship and ethnographic exhibits. Together with the permanent exhibitions also temporary ones are being organized.

The complex of the Monastery is located on the territory of the Natural Reserve “Rila Monastery” having its management plan. A couple of tourist itineraries start from the Rila Monastery.

### **Ancient Town of Nessebar**

On the occasion of the 20-th anniversary of the inscription of “Ancient Nessebar” on the World Heritage List in 2003, many concerts, exhibitions, international symposia and discussions were organized. The educational and promotional programme included the shooting of a film for the “Ancient Nessebar”, publications of books and albums promoting its cultural assets and the scientific studies on them.

With the slogan „Let us put world cultural heritage at the core of the political, economic, social and cultural obligations for the benefit of every citizen, for the benefit of the World” a round table was organized in 2005 aiming to boost the co-operation between the municipality of Nessebar and Ohrid, (Macedonia), Kotor (Montenegro), 18-th district of Budapest (Hungary) and Safranbolu (Turkey). The mayors signed a declaration for co-operation in the promotion and protection of the cultural heritage of the five towns, inscribed on the list of UNESCO.

The “Ancient Nessebar” Museum, as a municipal body, committed to the protection of the monuments of culture on the territory of this world heritage site maintains the exposition, provides guidance to tourists, acts as a publisher of promotional and other materials and organizes international conferences.

### **Thracian Tomb near the village of Sveshtari**

An information centre with exposition about the history of the survey is erected near the Tomb. There is a public hall for tourist information and video. The organizer of the permanent exhibition is the Historic Museum of Isperrich.

### **Nature Reserve Srebarna**

The management plan of the Nature Reserve Srebarna includes activities related to boosting the ecological education and associating the local community to the site protection. Affiliated to the Regional Inspectorate for Environmental Protection, Ruse, there is an information centre. Close to the administration building of the managed reserve, the Museum of the village of Srebarna is located providing information for visitors. The schools in the region organize visits to the reserve and participate in promotional campaigns for this world heritage site. With the assistance of a local NGO, a camera set in the pelican colony is connected to the Nature Reserve Museum, allowing the observation of the birds without disturbing them. Some local NGO’s contribute to producing many information materials.

### **Pirin National Reserve**

The Directorate of the Pirin National Reserve is in the town of Bansko. There is also a visitor information centre where tourists get information about the Reserve. The management plan of the Reserve includes activities related to the promotion of the site.

Every year the Days of Pirin take place including different events: plein-air for children, exhibitions, concerts, interpretative and informative itineraries, new eco-paths, video projections about the Reserve. The local population takes part actively in the Days of Pirin.

## **V. Conclusions and recommended action**

Based on the data can be made following analysis of strengths and weaknesses in policy for the protection of sites in Bulgaria included in the list of World Heritage:

<b>Strengths</b>	<b>Weaknesses</b>

The specialized legislation in the field of cultural heritage is a reliable base for sufficient protection of World Heritage Properties on the territory of the country; development of ecotourism and cultural tourism;	Lack of adequate legislation in the field of cultural heritage, being the main reason for the few new nominations for inscription on the List of World Heritage over the last years;
Creation of a data base for monitoring the biological diversity of protected areas;	Funds for carrying out monitoring studies of cultural heritage properties are insufficient;
Good co-operation between Ministries responsible for application of Convention concerning the Protection of World Cultural and Natural Heritage;	Lack of regulation for the certification of architects and executors of activities for cultural heritage protection; no regulation for selection/appointment of managers of World Heritage Properties and for elaboration of management plans for the inscribed sites;
Greater role of private sector and NGO's in the protection and promotion of heritage; greater knowledge and raised awareness of society to heritage and the issues related to its protection	State subsidies for promotion and presentation of the immovable cultural heritage are insufficient and the partnership between the Ministry of Culture and the Ministry of Education for the preparation of joint programmes is not developed to the required degree

With the drafting and adoption of new legal regulations on protection of cultural heritage are expected:

- Changes aimed at creating specialized management plans for properties inscribed on the List of World Heritage;
- Legal regulation of the certification of protection professionals;
- Regulation and specification of the rights and obligations of all the participants in the process of heritage preservation;
- Increasing the effectiveness of control by local authorities against the illegal interventions in the territories of the world's monuments.
- Provision of sufficient and permanent State budget support for the protection and promotion of the properties inscribed on the World Heritage List.
- Securing of staff for the protection of the World Cultural Heritage on the territory of the country.
- Securing training possibilities for conservation and restoration professionals.

## Attachment

**Table № 1****Bulgarian cultural and natural properties,  
inscribed on the World Heritage List**

№ on the List	Heritage property Type of heritage property	Location	Inscription announced by the World Heritage Committee (session, year)	Criteria
42	Boyana Church cultural heritage property	Sofia	III rd session – Cairo, 1979	II, III
43	Madara Rider cultural heritage property	Village of Madara, municipality Kaspichan, Varna region	III rd session – Cairo, 1979	I, III
44	Thracian Tomb of Kazanlak cultural heritage property	Town of Kazanlak	III rd session – Cairo, 1979	I, III, IV
45	Rock-Hewn Churches of Ivanovo cultural heritage property	Village of Ivanovo, municipality Ivanovo, Rousse region	III rd session Cairo, 1979	II, III
216	Rila Monastery cultural heritage property	Town of Rila, municipality Rila, Sofia region	VII th session – Florence, 1983	VI
217	Ancient City of Nessebar cultural heritage property	Town of Nessebar, Burgas Region	VII th session – Florence, 1983	III, IV
219	Srebarna Nature Reserve natural heritage property	Village of Srebarna, municipality Silistra	VII th session – Florence, 1983	IV
225	Pirin National Reserve natural heritage property	Pirin mountain	VII th session – Florence, 1983	I, II, III

359	Thracian Tomb of Sveshtari cultural heritage property	Village of Sveshtari, municipality Isperich, Rousse region	IX th session – Paris, 1985	I, III
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**Table № 2**

**International Aid**

**for the Bulgarian Cultural and Natural Properties**

**inscribed on the World Heritage List**

Monument/site	Organisation	Support for
Boyana Church	<ul style="list-style-type: none"> <li>• Japanese Government</li> <li>• Colorimetrical studies on the wall paintings</li> <li>• World Heritage Fund (WHF)</li> </ul>	Monitoring equipment
Madara Rider	UNESCO - WHF	Expert and financial aid
Ivanovo Rock Hewn Churches	<ul style="list-style-type: none"> <li>• UNESCO – WHF</li> <li>• WMF with Samuel Kress Foundation, Wilson Challenge and Headley Trust</li> <li>• EU PHARE Programme 2004</li> <li>• Service buildings and infrastructure</li> </ul>	<p>Technical and Expert aid</p> <p>Strengthening of the rock massif of the “St Mother of God” church</p> <p>Service buildings and infrastructure</p>
Rila Monastery	UNESCO- WHF	Seismic monitoring equipment
Ancient Nessebar	WMF and Leventis Foundation	Conservation and restoration of “St. Stefan Church” in Nessebar
Thracian Tomb of Kazanlak	Beautiful Bulgaria’ programme 2004 (EU and UNDP)	Infrastructure and contiguous setting
Thracian Tomb near the village of Sveshtari	<ul style="list-style-type: none"> <li>• Headley Trust</li> <li>• Beautiful Bulgaria’ programme 2004 (EU and UNDP)</li> </ul>	Opening of the monument to the public

		Infrastructure and contiguous setting
Pirin National Reserve	World Heritage Fund	Preparation of new nomination
Srebarna Nature Reserve	<ul style="list-style-type: none"> <li>• UNESCO - WHF</li> <li>• EU PHARE Programme</li> <li>• Ramsar Convention Office</li> <li>• French Government</li> <li>• Japanese Government</li> <li>• Swarovski optics</li> </ul>	<p>Preparation of new nomination</p> <p>Technical and financial aid for equipment Digging of a canal</p> <p>Preparation of the Reserve management plan, 1997</p> <p>National plan for the protection of the most significant humid zones</p> <p>Financial aid for equipment</p> <p>Financial aid for equipment</p>

**Table № 3**

**National Aid**

**for the Bulgarian Cultural and Natural Properties**

**Inscribed on the World Heritage List**

Monument/site	Organisation	Support for
Boyana Church	<ul style="list-style-type: none"> <li>• “Boyana” Foundation</li> <li>• The 1300 Years Bulgaria Fund</li> <li>• National Culture Fund</li> <li>• Municipal Culture Funds</li> </ul>	<ul style="list-style-type: none"> <li>• Conservation works</li> <li>• Conservation of artistic assets</li> <li>• Conservation of artistic assets</li> <li>• Conservation of artistic assets</li> </ul>
Madara Rider	<ul style="list-style-type: none"> <li>• Ministry of Culture</li> <li>• National outside grant sources</li> </ul>	<ul style="list-style-type: none"> <li>• Financial and logistic support to international experts for round table participation</li> </ul>

		<ul style="list-style-type: none"> <li>• Surveys</li> </ul>
Ivanovo Rock Hewn Churches	<ul style="list-style-type: none"> <li>• State Budget</li> </ul>	<ul style="list-style-type: none"> <li>• Climate measurements</li> <li>• Monitoring and photographic documentation</li> <li>• Conservation treatments and rehabilitation of contiguous setting</li> </ul>
Rila Monastery	<ul style="list-style-type: none"> <li>• Ministry of Culture</li> <li>• Directorate „Ecclesiastical Matters” with the Council of Ministers</li> </ul>	<ul style="list-style-type: none"> <li>• Repair works and conservation treatments</li> <li>• Photogrammetric documenting</li> <li>• Maintenance</li> <li>• Replacement of buildings in the buffer zone</li> </ul>
Ancient Nessebar	<ul style="list-style-type: none"> <li>• Ministry of Culture</li> <li>• Municipality Nessebar</li> </ul>	<ul style="list-style-type: none"> <li>• Conservation and restoration works</li> <li>• Infrastructure and setting of the „St Stefan” church</li> <li>• Conservation and restoration works</li> <li>• Information system</li> </ul>
Thracian Tomb of Kazanlak	<ul style="list-style-type: none"> <li>• Ministry of Culture</li> <li>• Municipality of Kazanlak</li> </ul>	<ul style="list-style-type: none"> <li>• Photogrammetric documenting</li> <li>• Maintenance</li> <li>• Organization of exhibitions</li> </ul>
Thracian Tomb near the village of Sveshtari	<ul style="list-style-type: none"> <li>• Ministry of Culture</li> <li>• Municipality of Ispereh</li> </ul>	<ul style="list-style-type: none"> <li>• Photogrammetric documenting</li> <li>• Maintenance</li> </ul>
Pirin National Reserve	<ul style="list-style-type: none"> <li>• State Budget</li> <li>• National Trust Eco-Fund</li> <li>• Bulgarian Biodiversity Foundation</li> </ul>	<ul style="list-style-type: none"> <li>• Management activities</li> <li>• Interpretation trail for disabled people</li> <li>• Elaboration of management plan</li> </ul>

Srebarna Nature Reserve	• Ministry of Environment and Water	• For activities foreseen in the management plan
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**Table № 4**

**Content of the Tentative list**

1. Central Balkan Reserve	01/10/1984
2. The ancient town of Nicopolis ad Istrum	01/10/1984
3. The Bachkovo Monastery	01/10/1984
4. The late ancient tomb of Silistra	01/10/1984
5. The Magoura cave with drawings from the bronze age	01/10/1984
6. The Pobiti Kamani - Natural Monument	01/10/1984
7. The Rocks of Belogradchik	01/10/1984
8. The Roussensky Lom National Reserve	01/10/1984
9. The town of Melnik and the Rozhen Monastery	01/10/1984
10. The Vratsa Karst Reserve	01/10/1984
11. Two neolithic dwellings with their interior and household furnishings and utensils completely preserved	01/10/1984
12. The Ancient Plovdiv	14/09/2004
13. Thracian Tomb with Wall Paintings beside Alexandrovo village	14/09/2004
14. Pirin National Reserve World Heritage Site	06/02/2006

## Legal and institutional framework for the protection of the World Heritage site of Angkor (Cambodia).

By Etienne Clement

Two sites in Cambodia are included in the World Heritage List: Angkor (on 14 December 1992) and Preah Vihear in 2008. This article will refer essentially to Angkor.

### 1. Angkor

The UNESCO World Heritage Centre is describing Angkor in the following way:

*Angkor is one of the most important archaeological sites in South-East Asia. Stretching over some 400 km<sup>2</sup>, including forested area, Angkor Archaeological Park contains the magnificent remains of the different capitals of the Khmer Empire, from the 9th to the 15th century. They include the famous Temple of Angkor Wat and, at Angkor Thom, the Bayon Temple with its countless sculptural decorations. UNESCO has set up a wide-ranging programme to safeguard this symbolic site and its surroundings.*

*The influence of Khmer art, as developed at Angkor, was a profound one over much of South-East Asia and played a fundamental role in its distinctive evolution. Khmer architecture evolved largely from that of the Indian subcontinent, from which it soon became clearly distinct as it developed its own special characteristics, some independently evolved and others acquired from neighboring cultural traditions. The result was a new artistic horizon in oriental art and architecture.*

*At the beginning of the 9th century the two states that covered the territory of modern Cambodia were united by Jayavarman II, who laid the foundations of the Khmer Empire, the major power in south-east Asia for some five centuries. One of the sites was in central Cambodia, to the north of Tonle Sap (Great Lake), where half a century later Jayavarman's son, Yashovarman, was to establish Yashodapura (later called Angkor), the permanent capital of the Khmer Empire until the 15th century.*

*The first city conformed to the classic form of Khmer capital with certain fundamental elements: a defensive bank and ditch with a state temple at its centre, built from brick or stone, and a wooden palace. There would also have been many secular buildings, constructed almost entirely of wood, in and around the enceinte. The state temple at Roluos, the Bakong, and the temple built in memory of the royal ancestors, Preah Ko, were erected around 880. Another essential feature of a Khmer capital, a large reservoir, was added a decade later, with in its centre a third temple built to the north-west of Roluos, around the hill of Phnom Bakeng, now known as the Eastern Baray.*

*The second capital at Angkor was built by Rajendrarvarman in the 960s, the state temple being situated at Pre Rup. He also constructed a temple, the Eastern Mebon, on an artificial island in*

*the centre of the Eastern Baray. During his reign he built the exquisite temple of Banteay Srei. Rajendravarmar's son, Jayavarman V, abandoned the Pre Rup site in favor of a new location with its state temple at Ta Kev, which was consecrated around 1000. Shortly afterwards he was overthrown by Suryavarman I, who was responsible for erecting the formidable fortifications around his Royal Palace and state temple, the Phimeanakas, and also for the construction of the great Western Baray.*

*In 1050 his successor created a new and more impressive state temple, the Baphuon. The succeeding rulers left little traces in the form of monumental buildings, and it was not until the accession of Suryavarman II in 1113 that the next great phase of building began. He was responsible for the greatest of all Khmer monuments, Angkor Vat, set within an extensive enclosure and dedicated to Vishnu. The death of Suryavarman II, around 1150, was followed by a period of internal strife and external pressure, culminating in 1177 with the sack of Angkor by the Chams. The situation was restored by Jayavarman VII, who celebrated his military success by creating yet another capital at Angkor Thorn and launching an unprecedented building campaign. His state temple was the towering Bayon, dedicated to Buddha.*

*Another significant element of the Angkor complex is the irrigation system of the region based on the great reservoirs, which provided the economic infrastructure for the successive Khmer capitals and their rulers.*

## 2. History of the process and conditions of inclusion of Angkor in the World Heritage List

Angkor was included in the World Heritage List under very particular circumstances. Given the exceptional instability of the country in the early Nineties, Cambodia was placed, in accordance with the so-called "Paris Agreements, under the temporary administration of a Supreme National Council (SNC) with the support of the United Nations from July 1991. Given the threats on the integrity of the site, in particular its systematic plundering by looters, the World Heritage Committee has decided to waive some of the conditions required under the World Heritage Convention Operational Guidelines and had inscribed the Angkor site, together with its monuments and its archeological zones, in the World Heritage List in 1992.

The World Heritage Committee stressed that this action was not to be taken as setting a precedent for the inscription procedure. Therefore, in order to guarantee the protection of the site for a three year period (1993-1995), the Committee has decided "that a special in-depth study will be made of the Angkor site, and that further reports will be presented to the Committee".

Moreover in order to deal with urgent problems of conservation, the Committee had inscribed the site on the List of World Heritage in Danger and had requested, on the recommendation of ICOMOS, that the authorities concerned take the necessary steps to meet the following conditions:

- a) Enact adequate protective legislation;
- b) Establish an adequately staffed national protection agency;

- c) Establish permanent boundaries based on a UNDP project;
- d) Define meaningful buffer zones;
- e) Establish monitoring and coordination of the internationally conservation effort.

One of the main reasons for its inclusion in the List of World Heritage in Danger was that the site was subjected to systematic looting of sculptures, bas reliefs and even larger pieces of stones, such as lintels, statues and even entire pillars. At that time the security on the site was not yet ensured. During daytime, the transitional Government could ensure an appropriate protection against pillage but not in the night. This situation lasted until the end of 1994 when, thanks to a large-scale protection program undertaken with UNESCO, the site was finally secured and, practically, the looting ceased.

During the temporary administration of the Supreme National Council and following the constitution of a newly elected Government after the 1993 elections, several important steps were taken, with the support of the United Nations, to respond to the World Heritage Committee's requests:

On the enactment of adequate protective legislation for the site, the following had been achieved:

1. The new Cambodian Constitution has included specific articles (Articles 69, 70, 71) making the protection of national cultural heritage a duty of the State, and declaring designated national and World Heritage sites to be "combat free zones";
2. A cultural property protection legislative text, prepared with the technical assistance of UNESCO, was adopted as a Decision of the Supreme National Council on 10 February 1993.
3. In November 1993, the Ministry of Environment issued a draft "Decree on the Creation and Designation of Protected Areas", thereby proposing a national system of protected areas. This draft Decree was expected to be presented to the future National Assembly for consideration and eventual enactment as law. UNESCO and IUCN were assisting the authorities in refining the text to take into consideration the protection of cultural landscapes which are particularly relevant in the context of large cultural sites in Cambodia, such as Angkor.

As regards the third and fourth request of the World Heritage Committee, the establishment of permanent boundaries and of meaningful buffer zones, the Cambodian authorities and UNESCO have been executing a project entitled the ZEMP "Zoning and Environmental Management Plan" financed by UNDP, the Government of Sweden and others. The ZEMP project team was composed of 25 international experts and Cambodian counterparts. On that basis, the newly elected Government adopted the Royal Decree of 28 May 1994 concerning the zoning and management of the Siem Reap/Angkor region. It sets the boundaries of five protective zones by decreasing levels of protection:

Zone 1/ monument sites

Zone 2/ protected archaeological zones (buffer zone)

Zone 3: protected archaeological landscapes

Zone 4/ points of archaeological, anthropological or historic interest

Zone 5: socio-economical and cultural development areas of the Siem Reap-Angkor region.

As to the second request of the World Heritage Committee (the establishment of a national protection agency), after the 1993 elections the new Government created an inter-ministerial Supreme Council of National Culture (SCNC) in order to resolve day-to-day matters and to define the mandate and authority of a future appropriate national protection agency to be established.

Finally, in order to respond to the last request of the World Heritage Committee (monitoring and coordination of the international effort), an Intergovernmental Committee for the Safeguarding and Development of Angkor (ICC) was decided by the First Intergovernmental Conference for the Safeguarding and development of the Angkor Site (Tokyo, 12 and 13 October 1993). The primary purpose of this Phnom Penh-based Intergovernmental Committee, whose Secretariat is provided by UNESCO, is to assist the Cambodian Government in defining conservation priorities and to promote and coordinate international assistance for Angkor.

### 3. The Law (*chbap*) for the Protection of Cultural heritage (1996)<sup>10</sup>

A new Law (*chbap*) for the Protection of Cultural heritage was adopted by the National Assembly in December 1995 and signed by His Majesty the King on January 25, 1996. It is based upon the above-mentioned 1993 Decision on the Protection of Cultural Heritage formulated under the transitional government, the Supreme National Council of Cambodia. It is a modern text, adapted to the particular type of cultural heritage to be found in Cambodia and to the immediate threats of looting of monumental sites. It also reflects the existence of the Kingdom's specific cultural heritage management institutions, the existing zoning regulations in Angkor and recent international law developments in the area of cultural heritage.

The law on the protection of cultural heritage also aims at protecting cultural property against acts of vandalism, illicit transfer of ownership, excavations, illicit export and import.

Cultural property is meant as "any work produced by human agency and any natural phenomenon of a scientific, historic, artistic or religious nature which bears witness to a certain stage in the development of a civilization or of the natural world and whose protection is in the public interest." This is a general definition which does not fix any particular limit, such as limits

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<sup>10</sup> Analysis based on a chapter for which I contributed in the collective book entitled *Angkor: Past, Present, and Future - A* publication of the Apsara Authority written by Ang Choulean, Eric Prenowitz, and Ashley Thompson and other contributors under the supervision of Vann Molyvann. March, 1996, rev. March, 1998.

on age or the monetary value of the property and which leaves wide freedom of judgment to the executing authority. It is also compatible with the definition given by Article 1 of the UNESCO 1970 Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property ratified by Cambodia in the early Seventies.

The law covers both movable and immovable cultural heritage, of public or private ownership. It protects property belonging to the national cultural heritage, in the meaning of Article 4 of the 1970 UNESCO Convention, and it contributes to the protection of cultural property of other countries by encouraging international solidarity and laying principals of reciprocity.

It assures also the legal protection required by the 1972 UNESCO Convention concerning the Protection of the World Cultural and Natural Heritage (World Heritage Convention) for the Angkor site and for any other cultural site which could also be included at a later stage in the World Heritage List.

The law confirms that the protection, the conservation and presentation of the cultural heritage will be ensured, in conformity with the Royal Decree of 19 February 1995, by the Supreme Council on National Culture for the whole country.

In order to ensure effective protection of the various historical sites, which often contain several monuments and which cover a wide area of the territory, the law provides for the delimitation of protected sites. Indeed the Cambodian cultural heritage includes a number of groups of immovable cultural property, each of which forms a homogeneous whole and has in itself unique historical, architectural and scientific value. It was felt important to take specific protective measures in order to safeguard the integrity of these groups. The demarcation of these sites and the protective measures are contained in the above-mentioned Royal Decree of 28 May 1994 concerning the zoning and management of the Siem Reap / Angkor region.

The protected monumental sites and archeological reserves are of public ownership and any property inside is automatically classified. Owners of lands located inside the protected zones must be expropriated. However they are entitled to an equitable indemnity. Expropriation of private owners does not necessitate evacuation of the protected zones. The State is however given exclusive land rights and solely determines land allocation. The villages which are now in the protected zones do not constitute a danger for these zones. Rarely containing permanent structures, these villages are to the contrary essential to the perpetuation of the religious use of numerous temples and their continued presence is encouraged.

In order to control transfers of ownership of cultural properties and to ensure the protection of those belonging to the public collections against thefts and illegal export, the law provides for the inventory – as a provisional measure – and for the classification of public and private cultural property which is important from a scientific, historical, artistic and religious point of view. Classified public and private cultural properties are imprescriptible. Classified public cultural properties are inalienable.

The law also contains provisions concerning the effects of the classification, the pre-emptive right and expropriation.

In reinforcing the struggle against illicit traffic in cultural property, the law also contains provisions regulating trade, fortuitous discoveries, archeological excavations, export and import of cultural property. The law holds that all such trade is subject to approval. It determines the obligations of the trader and the necessary control measures. The archaeological excavations are also subject to authorization which can only be issued to scientific institutions having recognized skills, experience and necessary financial resources. International institutions of this type must also work in collaboration with national scientific institutions. The export of cultural property is also subject to license. Licenses are not issued for property for which the export would cause an impoverishment of the national cultural heritage. The import of cultural property exported in violation of the national legislation of the country of origin is forbidden. Illicitly imported cultural objects will be seized, placed under the protection of the Royal Government and, subject to reciprocity, returned to the country of origin. Under this provision, the Kingdom of Cambodia shows its commitment to contribute to the struggle against illicit traffic and to reinforce the principal of restitution. Provisions on procedure and penalties are also contained in the Law.

This legal instrument allows the Kingdom of Cambodia:

- to fight illicit traffic in cultural property by taking, as a matter of urgency, the necessary executing measures;
- to fulfill its obligations under the 1970 UNESCO Illicit Traffic Convention and to benefit therefore from protective mechanisms under that international instrument;
- to guarantee progressively an effective legal protection of the Angkor site on the World Heritage List providing the legal protection required by the 1972 illicit World Heritage Convention.

The law also takes into account the international commitments of the Kingdom of Cambodia in the field of the protection of cultural heritage and gives concrete expression to several provisions of indirect application contained in the 1970 illicit traffic Convention.

A sub-decree adopted in 2002 gives interpretations and more precisions on the legal provisions of the Law on protection of cultural heritage, in particular on the definition of cultural property, export and import as well as authorizations for archaeological excavations.

Angkor was removed from the List of World Heritage in Danger on 5 July 2004, the World Heritage Committee having considered that the consideration that had led the Committee to include it in this list were no longer valid. This referred in particular to the end of the looting of the site, the enactment of the legislation and the sub-decrees for the application of the law and the functioning of a institutional framework with a specific body in charge of the management of the site.

#### 4. Institutional framework

##### a) Supreme Council on National Culture

In August of 1993, the Supreme Council on National Culture (SCNC) was established, as an inter-ministerial body to ensure the management of the Khmer cultural heritage throughout the country. The Decision made by the transitional government creating the SCNC was subsequently confirmed as a Royal Decree by the Royal Government in February of 1995.

The SCNC is a national authority established at the highest level of governmental branches. The Council is charged with the coordination and management of all operations in the Kingdom related to cultural heritage in its largest sense and organically involving directly or indirectly several sectors of the Royal Government. For example, all operations including archaeological excavations necessarily require the coordinated contributions of the cadastral service, the Ministries of the Interior, the Environment, Tourism, and Foreign Affairs, as well as Culture. In a similar manner, the restitution of illegally exported art objects generally involves the efforts of Foreign Affairs, Justice, Interior and Culture authorities. The SCNS is responsible for successfully and efficiently accomplishing these and other important tasks in coordinating and overseeing the diverse operations necessary.

b) The APSARA National Authority (ANA)

The Authority for the Protection and Management of Angkor and the region of Siem Reap (APSARA), was created by Royal Decree on 19 February of 1995. Responding to the enormous cultural, scientific, touristic and thus economical importance of the site, APSARA assumes three levels of management responsibility: political, technical and operational.

Technical and operational responsibilities concerning Angkor which were assumed by the SCNC, were progressively transferred to APSARA.

APSARA evaluates proposals for future intervention, monitors conservation and coordinates national and international efforts in the sole region of Siem Reap / Angkor. It is by nature inter-ministerial, while maintaining financial and administrative autonomy. Its Board of Directors is composed of all concerned Ministers, as well as the Governor of the Siem Reap province. The Executive Direction of APSARA defines directives for the implementation of policies in Angkor in collaboration with the appropriate Ministries and each of its five operational branches: the Angkor Conservation Office, the Institute of Khmer Culture, the Urban Development Agency, the Tourist Development Agency and the Cultural Heritage Police Corps. Operational since 1994, the last of these branches, a specially trained police force responsible for the protection of cultural heritage in the Angkor region, was integrated into APSARA at the time of the legal creation of this institution.

The latest development of the APSARA authority is its restructuring by the Governmental decree N°50 of May 7, 2008. It reflects the adoption of a new organizational chart and new modalities of functioning. It is still placed under the Office of the Council of Ministers and chaired by the Deputy Prime Minister in charge of the Council of Ministers.

c) The Intergovernmental Committee for the safeguarding and development of Angkor (ICC)

As decided by the Tokyo Conference on 12 and 13 October 1993, the ICC still functions nowadays. It recently celebrated its 15 years of existence. It also adopted, on 1 December 2008, its internal regulations which were subsequently amended on 31 May 2009.

Etienne Clement, 30 November 2010

Annex I: key dates<sup>11</sup>

1. August 1993: creation of the Supreme Council on National Culture - Royal Decree establishing the Supreme Council on National Culture (NS/RKT/0295/11)
2. September 1993: creation of the ICC, co-chaired by France and Japan with UNESCO as standing secretary.
3. December 1993: first ICC meeting held in Cambodia, participated in by twenty countries and organizations
4. May 1994: Royal Decree No. 001/NS establishing Protected Cultural Zones in the Siem Reap/Angkor Region and guidelines for their management
5. February 1995: Royal Decree No. NS/RKT/0295/12 for the creation of the Authority for the Protection and Management of Angkor and the region of Siem Reap (APSARA).
6. October 1995: Sub-decree creating the Hotel Zone No. 079/ANKR/PK
7. January 1996: Law on the Protection of Cultural Heritage No. NS/RKM/0196/26.
8. October 1997: Sub-decree No. ANK-PK establishing the Special Police Corps for the Protection of Cultural Heritage on the Heritage Corps Police supervised by the Ministry of Interior and in close collaboration with the APSARA Authority and the authorities of Siem Reap to assure the security in the Angkor Park and to fight against the illicit traffic of the artifacts
9. January 1999: Royal Decree No. NS/RKT/0199/18 strengthening the stature of the APSARA Authority.
10. October 1999: Sub-decree extending the Hotel Zone No. 093/ANKR/PK.
11. December 2001: Sub-decree creating a Tourist Police Corps No. 025/ANK/PK.
12. September 2002: Sub-decree spelling out the provisions of the Law on the Protection of Cultural Heritage.
13. July 2004: removal from the List of World Heritage in danger

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<sup>11</sup> Based on a compilation by Kerya Chau Sun, in “Angkor sites, cultural world heritage”, a chapter of “Art and Cultural heritage, Law, policy and practice”, Barbara Hoffmann, Cambridge university press, 2006

## REPORT FOR THE 2010 ICLAFI MEETING,

### **CHILEAN LEGAL FRAMEWORK FOR THE PROTECTION OF THE MONUMENTS REGISTERED ON THE WORLD HERITAGE LIST**

**Amaya Irarrázaval Z.**

**Chile. National Committee of ICOMOS**

#### **I. MONUMENTS REGISTERED ON THE WORLD HERITAGE LIST. SHORT ABSTRACT**

##### **1.- RAPA NUI NATIONAL PARK**

a.- Registration year: 1995

b.- Standards fulfilled: cultural standards i), iii), v).

- (i) to represent a masterpiece of the human creative genius;
- (iii) to bear a unique or at least exceptional testimony to a cultural tradition or to a civilization which is living or which has disappeared;
- (v) to be an outstanding example of a traditional human settlement, land-use, or sea-use which is representative of a culture (or cultures), or human interaction with the environment especially when it has become vulnerable under the impact of irreversible change;

c.- Justification for the registration: The World Heritage Committee concluded that Rapa Nui “is a place where some of the most remarkable cultural phenomena of the world have taken place. A very powerful and imaginative artistic and architectonic tradition was developed by a society that was completely isolated from every kind of external cultural influence during more than a millennium. The substantial remains of this culture combine with their natural surroundings to create an unparalleled cultural landscape.”

##### **2.- CHURCHES OF CHILOÉ (16)**

a.- Registration year: 2001

14 Churches of Chiloe (Achao, Quinchao, Castro, Rilán, Nercon, Aldachildo, Ichuac, Detif, Vilupulli, Chonchi, Tenaun, Colo, San Juan, and Dalcahue) were registered on the List in 2000. The Churches of Caguach and Chelin were included in this group by means of an “amendment” to the registration in 2001.

b.- Standards fulfilled: cultural standards ii), iii).

- (ii) to exhibit an important interchange of human values, over a span of time or within a cultural area of the world, on developments in architecture or technology, monumental arts, town-planning or landscape design;

(iii) to bear a unique or at least exceptional testimony to a cultural tradition or to a civilization which is living or which has disappeared;

c.- Justification for the registration: the Committee considered that “the Churches of Chiloe are outstanding examples of the successful fusion of European and indigenous cultural traditions to produce a unique form of wooden architecture” and that “the mestizo culture resulting from Jesuit missionary activities in the 17<sup>th</sup> and 18<sup>th</sup> centuries has survived intact in the Chiloe archipelago, and achieves its highest expression in the outstanding wooden churches.”

### **3.- SECTOR OF THE HISTORICAL AREA OF THE VALPARAISO CITY – PORT**

a.- Registration year: 2003

b.- Standard fulfilled: cultural standard iii).

(iii) to bear a unique or at least exceptional testimony to a cultural tradition or to a civilization which is living or which has disappeared;

c.- Justification for the registration: the UNESCO Committee stated that “Valparaiso is an exceptional testimony to the early phase of globalization in the late 19th century, when it became the leading merchant port on the sea routes of the Pacific coast of South America”.

### **4.- HUMBERSTONE AND SANTA LAURA SALTPETER FACILITIES (office)**

a.- Registration year: 2005.

This site was simultaneously registered on the List of World Heritage Sites in Danger.

b.- Standards fulfilled: cultural standards ii), iii) y iv).

(ii) to exhibit an important interchange of human values, over a span of time or within a cultural area of the world, on developments in architecture or technology, monumental arts, town-planning or landscape design;

(iii) to bear a unique or at least exceptional testimony to a cultural tradition or to a civilization which is living or which has disappeared;

(iv) to be an outstanding example of a type of building, architectural or technological ensemble or landscape which illustrates significant stages in human history;

c.- Justification for the registration: the Committee stated that “the development of the saltpeter industry reflects the combined knowledge, skills, technology, and financial investment of a diverse community of people who were brought together from around South America and from Europe. The saltpeter industry became a huge cultural exchange complex where ideas were quickly absorbed and exploited. The two works represent this process.” Moreover, these mines and company towns developed into “an extensive and very distinct urban community with its own language, organization, customs, and creative expressions, as well as displaying technical entrepreneurship”, as shown by these sites. Finally, “the saltpeter mines in the north of Chile became the largest producers of natural saltpeter in the world, transforming the Pampa and indirectly the agricultural lands that benefited from the fertilizers the works produced. These saltpeter mines represent this transformation process.”

### **5.- SEWELL CAMP**

a.- Registration year: 2006

b.- Standard fulfilled: cultural standard ii).

(ii) to exhibit an important interchange of human values, over a span of time or within a cultural area of the world, on developments in architecture or technology, monumental arts, town-planning or landscape design;

c.- Justification for the registration: the Committee stated that “the Sewell Camp, in its hostile environment, is an exceptional example of the company towns that arose in many remote parts of the world from the fusion of local labor and resources from an industrialized nation, to mine and process high grade copper. The settlement contributed to large-scale global diffusion of mining technology.”

## **II. LEGAL PROTECTION INSTRUMENTS.**

The **CONSEJO DE MONUMENTOS NACIONALES (CMN) (National Monuments Council)** is an organization existing in Chile since 1925 which is expressly devoted to the protection of our cultural heritage, which includes the whole range of cultural expressions of the human being. For many years only buildings were covered, and later moveable cultural property, and then scenery and intangible patrimony were included.

This Council is the technical body in charge of the application of the WORLD HERITAGE CONVENTION to that concerning cultural patrimony.

### **A. NATIONAL INSTRUMENTS**

#### **1. POLITICAL CONSTITUTION OF THE REPUBLIC**

It assigns to the State:

Chapter III: Constitutional Rights and Obligations

Article N° 19: The Constitution guarantees to all persons... No. 8: The right to live in an environment free from contamination. It is the duty of the State to watch over the protection of this right and the preservation of nature.

The law may establish specific restrictions on the exercise of certain rights or freedoms in order to protect the environment.

Article No. 10: The right to education..... It is likewise the duty of the State to promote the development of education at all levels, encourage scientific and technological research, artistic creation, and the protection and increase of the cultural heritage of the Nation.

Article No. 24: The right of ownership in its diverse aspects over all classes of tangible and intangible property ..... watching over the conservation of the environmental heritage.

#### **2. EASTER ISLAND LAW**

Law 16441, 1966, of the Ministry of the Interior: It creates the Department of Easter Island. The removal outside of the national territory... of any cultural element whatsoever from the island can only be authorized by the President of the Republic by means of a duly founded decree.

#### **3. DEVELOPMENT AND DIFFUSION OF ART**

LAW N° 17.236 of 1969: art. 2 – art. 3, on the DEVELOPMENT AND DIFFUSION OF ART. CMN only approves that a work is taken out of the country if it is a NM (national monument) or forms part of the collection of a State Museum.

#### **4. LAW OF NATIONAL MONUMENTS**

LAW No. 17288, 1970: legislates on National Monuments. It is applied by the Consejo de Monumentos Nacionales (National Monuments Council), a Chilean State organization created in 1925, in charge of the protection and tuition of the monuments of cultural and natural heritage.

It is the first legal instrument used by Chile for the protection of its World Heritage.

**Section I. National Monuments:** the following are considered national monuments and are kept under the State's tuition: sites, ruins, buildings, or objects of historic or artistic nature, and nature sanctuaries that exist in the national territory or in the submarine platform of its jurisdictional waters.

**Section II. The National Monuments Council:** a technical organization directly subject to the Ministry of Public Education.

**Section III. Historic Monuments:** historic monuments are the sites, ruins, buildings, and objects of fiscal, municipal or private property that due to their quality and historic or artistic interest, or to their antiquity, are declared as such by executive decree, dictated at the request and previous agreement of the National Monuments Council.

**Section IV. Public Monuments:** the following are considered public monuments and are kept under the National Monuments Council's tuition: statues, columns, bridges, pyramids, plaques, crowns, inscriptions and, generally, all the objects placed in fields, streets, public squares or other public places to perpetuate memory.

**Section V. Archaeological Monuments, Excavations and the Respective Scientific Research:** By Law, the following are considered Archaeological Monuments owned by the State: sites, ruins, deposits and anthropological -archaeological pieces that exist on or under the national territory surface, as well as paleontological pieces and the places where they were found.

**Section VI. Preservation of the Environmental Characteristics:** The National Monuments Council may request that the protection and preservation of the typical and picturesque aspect of some public place, or places, or certain zones of the latter, be declared to be of public interest.

**Section VII. Nature Sanctuaries and the Scientific Research:** Sanctuaries of nature are all of the terrestrial or marine sites that could offer special possibilities for studies and geologic, paleontological, zoological, botanic or ecologic research, or that have natural formations which conservation could be of interest for science or for the State.

**Section VIII. Exchanges and Lending between Museums:** The State museums can make exchanges and lend collections, when duly approved by means of justified resolution.

**Section IX. Registration.**

**Section X. Punishments and Penalties.** For damages caused to monuments.

**Section XI. Resources:** The National Budget Law shall refer annually to the funds required for the National Monuments Council and the fulfillment of its objectives as established by the law.

#### **CMN. INSTRUCTION DOCUMENTS**

1. Declaration of National Monuments: Historic Monument, Typical or Picturesque Zone, Nature Sanctuary.
2. Request of Authorization for operations or interventions in NM works.

**5. REGULATIONS ON EXCAVATIONS AND/OR ARCHAEOLOGICAL, ANTHROPOLOGICAL AND PALEONTOLOGICAL PROSPECTING**  
EXECUTIVE DECREE No.484, 1990, OF THE MINISTRY OF EDUCATION.

**6. LAW ON DONATIONS FOR CULTURAL PURPOSES**

Article 8 of Law No. 18985, 1990, establishes tax benefits for natural or legal persons that make donations for the execution of preservation or restoration projects on national monuments of public or fiscal property for non-profit purposes.

Applied by: Consejo Nacional de la Cultura y las Artes (Culture and Art National Council)

**7. GENERAL URBAN PLANNING AND CONSTRUCTION ORDINANCE**

Executive Decree No. 47, 1992, of the Ministry of Housing and Urban Planning: coordination between the urban planning legislation and the Law of National Monuments.

It establishes the definitions of historical real estate preservation, national monument, reconstruction, rehabilitation, renewal, repair, restoration, historical preservation zone.

**8. INDIGENOUS PEOPLES LAW**

Law No. 19253, 1993, establishes regulations on the protection, promotion and development of the indigenous peoples, and creates the National Corporation of Indigenous Development.

This Law recognizes, respects, and protects the indigenous cultures and languages.

It encourages indigenous artistic and cultural expressions.

**9. ENVIRONMENTAL FRAMEWORK LAW**

Law No. 19300, 1994: environmental framework, concepts of Preservation of the Environmental Heritage, Environment, Environmental Damage, Environmental Impact, Protected Area.

**ENVIRONMENTAL IMPACT ASSESSMENT SYSTEM, EIAS:** prevention and mitigation of the impact of different kinds of projects and activities on the patrimony.

It applies the **FOREST LAW**, Decree-Law No. 656, 1925, and Executive Decree No. 44.363, 1931:

Art. 11: The Forest Reserves and the Tourism National Parks... can only be destined to other objectives by virtue of a law. The Ministry of Agriculture shall be in charge of the fulfillment of this Law.

It applies the **WASHINGTON CONVENTION WASHINGTON, 1940**. It is a Law of the Republic, Executive Decree No. 531, 1967, on protection of flora, fauna and beauty of the scenery in America. It defines the National Parks and also includes the National Reserves, Natural Monuments, and Reserves of Wilderness Regions as categories to be controlled.

**CORPORACIÓN NACIONAL FORESTAL (Forest National Corporation):** 1973 Decree: to contribute to the preservation, increase, control and utilization of the nation's forest resources .

**10. CONSEJO NACIONAL DE LA CULTURA Y LAS ARTES (Culture and Art National Council).**

Law No. 19.891, 2003: It creates the Culture and Art National Council and the National Fund for Culture and Art Development.

Art 2°: The objective of the Council is to support art development and the diffusion of culture; to contribute to the preservation of the national cultural heritage and make it accessible to the people; to

promote people's participation in the cultural life of the country; to design and execute cultural policies, and the Research, Diffusion and Creation of Arts.

The National Fund for Culture and Art Development is aimed at financing projects, programs, and activities for preservation of arts and the cultural heritage by means of public contests. The financing guidelines are as follows:

- Arts promotion: projects of creation
- Regional cultural development: diffusion and training projects
- Preservation and diffusion of the cultural heritage: projects of preservation and recovery of tangible and intangible goods.
- Development of indigenous cultures: research, rescue, preservation and diffusion projects.
- Cultural infrastructure development: projects of repair, construction, etc.
- Scholarships and in-service training: projects for natural persons in the domain of artistic and cultural training

CNCA: it coordinates DIBAM and CMN by means of its policies, plans, and programs.

### **11. INCOME TAX LAW II:**

Law No. 20,033, July **2005** : it modifies a number of standards in order to increase the municipal economic resources. This law is better known as "Municipal Income II". It establishes total exemption of the property tax for the immovable Historic Monuments which are not used for commercial purposes.

## **B. INTERNATIONAL INSTRUMENTS**

### **1. CONVENTION CONCERNING THE PROTECTION OF THE WORLD CULTURAL AND NATURAL HERITAGE. UNESCO. 1972**

LAW OF THE REPUBLIC OF CHILE since 1980: Until 2009, it was the only International Convention on Cultural Heritage in force in Chile .

### **2. CONVENTION FOR THE PROTECTION OF CULTURAL PROPERTY IN THE EVENT OF ARMED CONFLICT. UNESCO - THE HAGUE CONVENTION, 1954-**

LAW OF THE REPUBLIC OF CHILE since 2009

### **3. CONVENTION FOR THE SAFEGUARDING OF INTANGIBLE CULTURAL HERITAGE - UNESCO. 2003.**

LAW OF THE REPUBLIC OF CHILE since 2009

## **III. DESCRIPTION OF THE HERITAGE PROTECTION MECHANISMS**

The Consejo de Monumentos Nacionales (CMN) (National Monuments Council) has an INTERNATIONAL AREA for the support of the institutional management in the field of international relations. This area was specially focused until 2008 on the application of the UNESCO World Heritage Convention.

The respective applications of the World Heritage Sites –WHS- in the UNESCO Convention Framework are resolved at the CMN on the basis of a long range programming. The initiatives concerning valuation require a task extended in time which involves the whole organization and is performed with great efforts. The Executive Secretariat of CMN is in charge of the reports requested by UNESCO.

During the 2006-2009 period, the CMN implemented the second stage of its World Heritage Program on the basis of an evaluation of the first stage. The list of the World Heritage Sites in Chile has increased from 1998.

The following sites were added after the RAPA NUI NATIONAL PARK in 1995:

- Year 2000: 16 CHURCHES OF CHILOE
- Year 2003: HISTORICAL AREA OF VALPARAISO
- Year 2005: HUMBERSTONE AND SANTA LAURA SALTPETER FACILITIES
- Year 2006 : SEWELL CAMP

The World Heritage Program has confirmed that the sites are to date in better conditions than in 1998, after long and persistent efforts.

The Program has established the execution of great preservation projects financed with international cooperation and State resources, ... considering that such projects are a State objective, and it has promoted the goods at the national and international levels, being essential for a greater appraisal of such goods.

During the 2006-2010 period, the CMN has focused on the following:

- Site protection , preservation and management.
- An exceptional universal value, authenticity, and integrity are the parameters for applications;
- New applications shall not be undertaken if they do not represent serious works.
- Priority is assigned to the HUMBERSTONE AND SANTA LAURA SALTPETER FACILITIES, because they have been included in the List of World Heritage Sites in Danger.

### **CMN MANAGEMENT AT THE REGISTERED SITES:**

#### ***1.- NAME: RAPA NUI NATIONAL PARK, 1995.***

APPLICATION: Corporación Nacional Forestal (Forest National Corporation)

ORGANIZATION IN CHARGE: Corporación Nacional Forestal, CONAF

FINANCING FUNDS: International and National Funds

USE: Tourism

“UNESCO-JAPAN PROJECT”. 2001-2006:

Financed by Japan: “Easter Island Archaeological Heritage Preservation”

U4 671.536.

“Training Course, interpretation abilities”

U\$ 50,000

CMN to CONAF. 2008 : U\$ 45,000

2009: U\$ 22,600

#### ***2.- NAME: 16 CHILOE CHURCHES, 2000.***

APPLICATION: Fundación Amigos de las Iglesias de Chiloé (Friends of the Chiloe Churches Foundation)- CMN - Episcopate

MANAGER IN CHARGE: Fundación Amigos de las Iglesias de Chiloé.

FINANCING FUNDS: IDB – SUBDERE – DA MOP (Architecture Division, Ministry of Public Works)

USE: Religious use – Local Community Meetings – Tourism.

Project: “Tourism Development of the Chiloe and Palena Provinces Project”, 2003-2009

Financing: IDB Credit 1507/OC-CH US\$ 3,585,000 (one party is Chilean)

Chilean other party: SUBDERE of the Ministry of the Interior

Execution Supervision: CMN.

Objective: Restoration, Carpenters School Continuity, material storage center equipping, Heritage guides training, creation of the church memory and mural painting.

On the other hand, for the Tenaun Church: World Monuments Fund financing contribution

San Juan Church: UNESCO contribution

Year 2007: according to the UNESCO requirements, damping polygons were generated around these churches.

### **3.- NAME: VALPARAISO HISTORICAL AREA, 2003.**

APPLICATION: CMN

MANAGER IN CHARGE: VALPARAISO MUNICIPALITY

FINANCING FUNDS

USE: CITY – TOURISM

The declaration of the Valparaíso Historical Area as a World Heritage Site was made without the creation of the Master Plan or “Regulation Framework”, defined only in 2007.

The urban regulations are still a matter of concern: coordination is required for the “Commune Master Plan”, the Historical Preservation Zone, and the National Monument condition of the Historical Area.

The CMN examines and improves the “Intervention Instructions”, with the Ministry of Housing and Urban Planning and the Valparaíso Municipality contributions.

On February 2, 2007, a great explosion and a resulting fire on Serrano Street destroyed a valuable urban heritage. This event revealed the “vulnerability of the heritage built in the port-city and the country in general: the NM condition, their habitability, the life condition of the inhabitants, the lack of insurance and support for preservation, the obsolete conditions of the installations, and the condition of the basic services”. The lack of support given to the heritage valuation became evident.

2006 - 2010: “Recovery and Urban Development of Valparaíso” Program

Financing: Chilean State: US\$ 48,000,000

IDB: US\$ 25,000,000 – credit (BID)

Use: - Urban Recovery

- Economic and sociocultural development -

- Communications, participation and institutional development of the Valparaíso Municipality = preparation of the “MASTER PLAN” for the World Heritage Site.

Heritage Grant Program: US\$ 7,900,0

**State support for people and personal credit for restoration of their homes.** The problem observed was the fact that people only restored the front of the buildings and the inside came to pieces, being the resulting architecture focused on the fronts. On the other hand, the colors used do not represent the history and the reality of Valparaíso. Many of the houses subject to this intervention were sold and their old residents began to leave their quarters which became weekend places.

However, the houses also became Boutique Hotels, good quality restaurants and more refined stores, but this only happens in the most elegant and older zone.

**The trolley buses and the elevators**, essential elements of the exceptional universal value of Valparaiso, have been seriously deteriorated in the last few years, with ownership problems and a total lack of incentives for the restoration of the private heritage. A great part of these trolley buses and elevators are not in operation now.

One of the outstanding valuable works is the recovery of an old abandoned building, the **Luis Cousiño Building** which was bought and restored by a professional educational institution. It is one building.

It is an example beside many other buildings where nothing has been done.

**4.- NAME: HUMBERSTONE AND SANTA LAURA SALPETER FACILITIES(office), 2005**

APPLICATION: CMN – DA MOP

MANAGER IN CHARGE: CORPORACION MUSEOS DEL SALITRE (SALTPETER MUSEUM CORPORATION)

FINANCING FUNDS

USE: SITE MUSEUM - TOURISM

The site is in the List of World Heritage Sites in Danger since 5 years ago, i.e. from its beginning.

In 2006, the World Heritage Fund made a U\$ 30,000,0 contribution in a joint financing for the “Preparation of 15 dossiers and the Study of the Second Stage of the Humberstone and Santa Laura Saltpeter Facilities Primary Interventions Plan”, executed in 2008-2010.

The execution of the Primary Intervention Plan began in 2007, in an engagement with UNESCO. The “Survey and Execution of the Reinforcement Works and the Safety Measures at the Santa Laura Saltpeter Facilities” was carried out: architectural survey, project and execution of 8 works in 9 buildings.

The cost was U\$ 56,600,0.

The planning design stage has not been completed to date, and the whole projects and budgets required are not yet available.

At the request of the World Heritage Committee, the Concessions Department of the Ministry of Public Works modified the layout of the A-16 route that separated both saltpeter facilities. They are connected today, and so their natural desert environment can be appreciated. It was a minor modification of the World Heritage limit of this Site which will not affect the integrity and authenticity of the site.

On the other hand, the Dirección de Vialidad (Road Construction Division) of the Ministry of Public Works has forbidden the installation of commercial advertising on the A-16 route in order to protect the visual integrity of the site and its damping zone.

In 2007, the Saltpeter Museum Corporation made a workshop with the Pampa community. There were 50 trainees at the workshops on the use of the site and the corporation strategic plan for redesigning the new control plan for the site.

**5.- NAME: SEWELL CAMP**

APPLICATION: CMN- EL TENIENTE DIVISION, CODELCO CHILE

MANAGER IN CHARGE: SEWELL FOUNDATION

## FINANCING FUNDS USE

The Management Plan has been implemented as established in the application framework. According to one of its basic principles, the site valuation should not only be compatible with El Teniente Copper Mining production, but also be strengthened by such production. The Sewell Camp still has a role in such production, especially in the Sewell Concentrator ore grinding. On the other hand, preservation and maintenance works have been carried out in “original cell” spaces, with the help of its old inhabitants.

Next challenges:

- Management of the operating damping zones, in the contractors section.
- Preparation of the new Management Plan version: to go on with the preservation and prospecting works.

## IV. TRAINING AND EDUCATION ON THE WORLD HERITAGE

The Commission in charge of the Archaeological Heritage has created initiatives in order to strengthen the capacity of research and preservation of the underwater cultural heritage, being Germany and Italy counterparts in these efforts. The fight against illegal traffic of the heritage cultural property has also been included in this training.

With the participation of Spain, new collaboration has been opened with regard to strengthening the capacity of the institutional personnel. A course on “Management of Administrative Documents and Files” was organized by the Spanish Ministry of Culture and the Agencia Española de Cooperación Internacional (International Cooperation Spanish Agency), in Santa Cruz, Bolivia. On the other hand, the Spanish Subdirección General de Protección del Patrimonio Histórico (General Sub Direction of the Historical Heritage) offered courses on “Management of the World Heritage”, with the resulting benefits for CMN, including the “Assistance for Cultural Cooperation with Ibero-America - 2008”.

The Servicio Nacional de Turismo. SERNATUR (Tourism National Service) cooperates in the diffusion of welfare and proper behavior of the visitors. In 2008, booklets were printed with that purpose in coordination with the Province Governor’s Office, due to the damages caused by a tourist to one of the MOAIS.

CMN issued the document called “Criteria and Intervention Procedures for the Chiloe Churches, Declared Heritage of Humanity”. This document is a base for the restoration of all the churches and wooden works of the southern zone of Chile. 2005.

2006: Meeting in Chiloe, “Challenges for Tourism Development in Chiloe and Palena”, called by the SUBDERE to make an analysis of the Church Recovery program.

## V. ANOTHER TYPES OF FINANCING

- Of CMN, 2006: “Emergency Funds for National Monuments”
- COOPERATION OF SERNATUR
- PROVINCE GOVERNOR’S OFFICES

On the other hand,

for the Tenaun Church (Chiloé) : World Monuments Fund Financing contribution

for the San Juan Church (Chiloé): UNESCO contribution

## **VI. NATIONAL EXPERIENCE**

### **PUBLIC OPINION**

In general, the World Heritage Sites nominations are welcome by public opinion as something that gives a higher level and category to our heritage properties.

The problems arise later on, when people confirm that the sites are not preserved or become even more damaged, that they have no access to them, that in situ information is scarce, that management and protection booklets are not available for the users, etc.

Such conditions are specially observed in Valparaiso.

### **FROM A PERSONAL POINT OF VIEW**

1. Can a poor country have such a great world heritage?
2. How can it be maintained?
3. Is a Site declaration possible without a defined and sustainable Management Plan?
4. Why do Management Plans change in the course of time?
5. Who can control at international level the destination and use of the funds requested and given?

## **VII. SITES CURRENTLY PRESENTING APPLICATIONS FOR INCLUSION IN THE WORLD HERITAGE LIST**

At the beginning of the year 2001, the Peruvian government began to promote the Multilateral Application of the Inca Road, known as the **Main Indean Road or QHAPAQ ÑAN**, to be included as a World Heritage Site by UNESCO. The Peruvian government invited the governments of Argentina, Bolivia, Ecuador, Colombia and Chile to participate, and requested as a first measure the inclusion by each country of the Inca Road in the application Tentative Lists. This step was taken in Chile in March 2002. The purpose of this procedure is to help the indigenous communities of the area in a straight manner as well as the strengthening of a sustainable development based on the heritage, identity and diversity, among other advantages.

In September 2010, the dossier will be delivered to the International Technical Committee as a single document in the category of Cultural Itinerary.

### **TENTATIVE LIST**

#### **THE CHINCHORRO CULTURE ARCHAEOLOGICAL SITES**

The Chinchorro culture was developed in the Peruvian southern coast and in the North of Chile, approximately between the ports of Ilo and Antofagasta. The Chinchorro name comes from the beach called with the same name in Arica, Chile, where the remains of that culture were found for the first time. The Chinchorros were fishermen, hunters and gatherers specialized in exploiting marine resources with a number of different tools conceived by them. The Chinchorro artistic development was almost exclusively expressed in the delicate clothing of their mummies, and in some way in the elaborate mummification treatment used for their dead people.

**Social Organization** – These population groups were organized in small groups of approximately 30 to 50 members apparently from the same family. There were surely different roles between the members according to their experience and abilities. It is assumed, for instance, that the members specialized in mummification would probably have a special position in the group.

Settlement in America

Arrival of European people

### **MONTE VERDE ARCHAEOLOGICAL SITE**

A discussion about the initial population of America has taken place during more than a hundred years. According to the most convincing and redundant evidence, the Clovis culture in the North American continent would have been the first, approximately eleven thousand years ago. However, many archaeologists have believed in the presence of people in this continent from a long time before. Tom Dillehay distinguished himself by the fact that he decided to convince those who were skeptical by means of evidence in favor of the hypothesis of an early population in America, in similar dates as those regarding the Clovis culture.

The Monte Verde site, near Puerto Montt, offered exceptional conditions for a study of this nature. Only one group of inhabitants had been in this place, and the stratigraphy was rather intact. The radiocarbon dating was sufficient and coherent, and revealed beyond any reasonable doubt that the site was around 12,500 years old. The preservation of organic materials, such as tied ropes and wooden stakes, gave clear evidence of human activities, notwithstanding the doubts of many people who were in the habit of recognizing artefactual evidence in durable materials such as stones.

## **WORLD HERITAGE CONVENTION AS APPLIED IN FINLAND**

Satu-Kaarina Virtala

Katri Nuuja

Finland

### **World Heritage in Finland**

Finland ratified the convention concerning the Protection of World Cultural and Natural Heritage in 1987. At present the World Heritage List contains six Finnish World Heritage Sites and one Natural Heritage Site.

The first two sites on the list were the Suomenlinna Fortress in front of Helsinki and the Old Rauma, a typical Scandinavian wood-built town. Both were added to the list in 1991. They were followed in 1994 by the old church at Petäjävesi, which is a good example of the way which local master builders skilfully adopted the styles of European ecclesiastical architecture to the vernacular technique of log jointing.

Verla Groundwood and Board Mill, a small scale industrial complex dating from the early years of The Finnish wood processing industry, was added to the List in 1996.

The only archaeological site was added to the List in 1999, the Bronze Burial Site at Sammallahdenmäki in the south-western part of Finland. The site consists of 33 stone burial cairns forming a kilometre-long chain of clusters along a sizeable outcrop of bedrock.

The Struve Geodetic Arc, the chain that runs through ten states, has six station points of a total of 34 in Finland. It was added to the list in 2005. The National Land Survey of Finland takes care of the maintenance and protection issues.

The first Finnish Natural Heritage Site was added to the List in 2006, the Kvarken Archipelago, an extension of Sweden's High Coast. Together, as Kvarken could be called Low Coast, these areas form a complementary geological complex featuring land uplift unlike anything found elsewhere in the world. Land uplift is very intense, and land surface increases by a hundred hectares a year, so the changes can be noticed during one generation.

Only one of these sites is owned by the Finnish government, the Suomenlinna Fortress. It is managed by the Governing Body of Suomenlinna, an agency subordinate to the Ministry of Education and Culture. The Body manages the site, restores it, leases residential apartments and facilities, manages landscape development in the area and is responsible for cleaning and maintaining the buildings. Suomenlinna is also a suburb of Helsinki, with 850 people living in the area. The protection of Suomenlinna as an area is in the hands of Helsinki and the city is in the process of preparing a detailed plan. At the time of inscription of the site the question of a buffer zone was not covered, so now it must be taken into account in the planning process. The protection of the buildings and ramparts is in the Governing Body's concern, and it has the personnel of 90.

The wooden town of Old Rauma has a multitude of owners; its all buildings are privately owned. The town of Rauma has issued building stipulations and organised a renovation centre to advice in renovation techniques suitable for just Old Rauma's buildings. The town has also a spare part supply, where house owners can buy appropriate building materials.

Verla Groundwood and Board Mill is still owned and maintained by a paper mill, the UPM-Kymmene Corporation. The Mill functions now as a museum, and during summertime several guided tours are organised daily. In the mill area there are also several shops and restaurants. The people's hall, also situated in the area, is now being renovated with the help of local assemblies (clubs?) and government subsidy.

The old church at Petäjävesi is the property of Petäjävesi parish, which also is responsible for the maintaining of the church. Like many other similar sites, it is held open during summer months and it has no heating. During opening hours a guide in attendance and it is possible to arrange a guided tour outside the opening hours as well. The parish is quite small and it has also another church to maintain. The old church has a foundation to help its support. The foundation realizes its purpose through special development projects.

The Bronze Burial Site at Sammallahdenmäki is protected by The Act of Antiquities. The area is owned by individual land owners, and The Board of Antiquities with owners and the municipality have made a treatment and operating plan for it.

The Kvarken Archipelago consists mainly of water, a bit more than half owned by local communities and private persons and the rest by state. Nature Conservation areas make up about 60 % of the whole area. A management plan is made for the site and each party's responsibility is specified in it. A Heritage Steering Committee has been founded representing all participants. The Committee also has cooperation with the Swedish High Coast Committee.

### **The machinery of protection of world heritage**

The first consideration on possible sites for inscription is done during the preparation of the tentative list. The list is renewed every 8-10 years in cooperation between the Ministry of Education and Culture and the Ministry of the Environment, the Natural Heritage Sites falling in its jurisdiction. The two ministries have the use of consults to heritage issues, like the National Board of Antiquities.

Organisations, municipalities and citizens make continually proposals and ideas for heritage sites and these are discussed with them. More often a proposer is not familiar with the criteria set by the World Heritage Committee, and the criteria do not come to fruition.

Our aim is not to have as many sites as possible on the World Heritage List, but we primarily seek to have those sites accepted to the List that truly fulfil the requisite criteria, including outstanding universal value. It is also considered important that the List should be in balance geographically. Now European sites are in majority.

The responsibility for a site's protection and management lies mainly with the owner. There might be some restrictions in property rights, but they are such as can be issued in detailed plan or in a ruling of protection decision. A few years ago a smallish amount of subsidy was allocated in the state budget for World Heritage Sites. The subsidy is granted by the National Board of Antiquities.

Usually the owners of different sites have each their educational, information and marketing programs. The National Board of Education just finished an educational program for schools, which lasted several years concerning built heritage and also Heritage Sites. Part of the program was connected with Unesco's World Heritage educational project. The program duration with different parts was nine years and it ended 2008. During the program about a dozen booklets were published for background material for

teachers and pupils. With the support of the Board of Education world heritage schools are being organised, for instance Icomos Finland is one of the organisers.

### **Legal instruments used to protect World Heritage in Finland**

The main instrument used to protect World Heritage sites in Finland is land use planning in accordance with the Land Use and Building Act (LBA, 132/1999). The means of protection vary depending on the nature of the monument or site in question. Also other legislation includes provisions that may apply to the protection. These include for example the Building Protection Act (former Act 60/1985, new Act 498/2010 in force since 1<sup>st</sup> July 2010), Church Act (1054/1993) and Antiquities Act (295/1963).

The legislation does not specifically mention World Heritage sites, but applies to the protection of cultural heritage in general. However, the significance of these sites is high and they are considered as cultural heritage of national importance.

### **Land use planning and protection of cultural heritage**

The Finnish land use planning system has three levels of land use plan with a clear division of labour between them: the regional land use plan, the local master plan and the local detailed plan. In addition, the Government defines national land use guidelines (LBA 24 §), which should be taken into account throughout the country in all land use decisions and land use planning.

The land use planning system is hierarchical; higher level plans steer lower plans. The national land use guidelines are implemented mainly through regional plans.

The aim of land use planning, as laid out in LBA 5 §, is to create preconditions for a favourable living environment and promote ecologically, economically, socially and culturally sustainable development. These goals are reflected to land use planning through the content requirements for each plan level. The content requirements lay out, which factors should be taken into account in plan decisions. These include protection of the built environment, landscape and natural values (local master plan, LBA 39 §)

The national guidelines concerning cultural heritage (4.4 Special Guidelines) state that:

**Land use should safeguard the preservation of the nationally important cultural environment and natural heritage. The national inventories made by the authorities should be taken into account as starting points in land use planning. In regional land use planning, nationally important cultural environments and landscape areas are to be indicated. Land use in these areas should be adapted to their historical context.**

The inventories mentioned in the guideline refer to the national inventories made by the authorities that relate to the cultural environment and natural heritage, which are based on sufficiently broad-based preparatory work. At the time of this decision there are in existence the following inventories: Nationally Valuable Landscapes (Ministry of the Environment, Environmental Protection Department, 1992), Nationally Significant Cultural-Historical Environments (National Board of Antiquities, 1993, revision 2010) and Nationally Significant Prehistoric Conservation Areas (Ministry of the Interior, Planning and Construction Department, report 3/1983).

Plan regulations form an essential part of a land use plan. Together with the plan map, they form the legally binding plan document. According to LBA 57.2 § concerning regulations in a local detailed plan,

necessary regulations may be issued, when an area or building requires protection due to its landscape, natural values, built environment, cultural and historical values or other special environmental values.

### **Examples**

World Heritage site of *Old Rauma* is protected by the provisions included in the local detailed plan. The plan was originally approved in 1981 and this plan decision still remains in force for the most part.

The site of *Verla Groundwood and Board Mill* is covered by a local master plan approved in 2001. A revision of the plan has been initiated by the municipality, because it is considered that the current plan does not adequately protect the values of the site, e. g. by allowing new building in the area.

The *Kvarken Archipelago* is the first Natural Heritage site in Finland. The site is included in the regional plan of the region of Ostrobothnia (the plan has been approved, but is not yet legally valid). The plan regulation concerning the site lays out, that on lower level plans (local master plan, local detailed plan) the geological values of the World Heritage area must be taken into account.

### **Other relevant legislation**

The protection of World Heritage sites may also be based on special legislation. In these cases, the protection is also recognised in land use planning decisions, but the basis of protection is in the special provisions.

### **Church buildings**

The area where *Petäjävesi Church* World Heritage site is located, is covered by a local detailed plan. The plan regulations recognise the protection on the building as well as the status of the area as a World Heritage site.

However, due to its nature, the protection of the building is based on the provisions of chapter 14 of the Church Act. The Act lays out, that any church building built before the year 1917 is protected directly on the basis of the Act. The protection extends also to the integral interior, painting and artwork in the building, as well as the churchyard.

### **Antiquities**

The Antiquities Act concerns the protection of ancient monuments, movable objects as well as finds of ships and vessels. The ancient monuments listed in 2 § of the Act are directly protected on the basis of the Act and it is forbidden without permission to excavate, cover, alter, damage or remove ancient monuments, or to disturb them in any other way.

The World Heritage site of *Sammallahdenmäki* is a site consisting of 36 stone burial cairns from the Bronze Age. It is protected as an ancient monument under the Antiquities Act. The property, where the site is located, is in private ownership.

The protection of *Suomenlinna Fortress* World Heritage site is also based on the Antiquities Act. The buildings and fortification works are considered as ancient monuments as laid out in 2 § of the Act. The area is at present not covered by a local detailed plan, but drafting such plan is pending.

The *Struve Geodetic Arc* is a triangulation chain consisting of 265 station points in ten countries. 34 of these points are included in the World Heritage site, of which six points are located in Finland. Five points are protected as ancient monuments under the Antiquities Act. The sixth point is located in the tower of Alatornio church, which is built in 1797 and protected under the Church Act.

### **Building Protection Act**

Currently, the Finnish World Heritage sites do not include objects protected on the basis of the Building Protection Act. The *Paimio Hospital (formerly Paimio Sanatorium)* by architect Alvar Aalto, which is on the tentative list since 2004, has been protected under the abovementioned Act.

# QUESTIONNAIRE MEXICO

## LEGAL PROTECTION OF THE INTANGIBLE HERITAGE

*Roberto Núñez*

*Ernesto Becerril*

**1. What cultural manifestations from your country are considered as Intangible Heritage?**

**Response:**

In Mexico, there is not a definition of the intangible heritage recognized by the Federal Law. In general, the federal legislation protects the practices, uses and customs as a social heritage of the indigenous communities.

Article 2<sup>nd</sup> of the Federal Constitution establishes some dispositions in order to obligate the government to respect the way of organization, traditions, customs, and in general the culture of the indigenous communities.

However, the Constitution and the federal legislation do not establish the procedures in order to recognize and identify these immaterial goods as part of the cultural heritage.

The Federal Copyright Law also establishes some dispositions in order to declare the importance to identify the immaterial goods as part of a social property of the indigenous

communities. However, these dispositions do not establish a procedure in order to recognize the value of the mentioned manifestations.

In other hand, there are very interesting examples of local laws that recognize the value of the immaterial goods as part of the cultural heritage of a state or municipality.

The Cultural Heritage Law of Baja California establishes a special category of cultural goods, named "Cultural Values" that is defined as the knowledges, representations and visions of the world through manifestations related to the traditions, customs, artistic and intellectual creation and scientific and technologic knowledge of Baja California people. This law, promoted by ICOMOS Mexico in 1995, is the first legal disposition that protects the Intangible Heritage in our country.

These Cultural Values are divided in the following categories: cultural interest manifestations, social festivities, local languages and regional toponymy.

However, not all the local laws in the 32 states of Mexico establish the same definition and classification of the Intangible Heritage.

**2. What legal instruments are used to protect them? General act on the protection of Intangible goods or special act on the protection of Intangible Heritage in the country (if yes, please bring its text with you). Please, describe full machinery of protection of intangible heritage in your country, among other things, general policy of your country, who is responsible for its management and protection, are there special instruments of protection, are there special bodies responsible for the protection, control etc, are there special financial funds allocated for the maintaining and protection of Intangible Heritage, etc.**

**Response:**

Due to the federal legislation does not establish a procedure in order to identify the intangible heritage, it is not possible answer this point. In general, at the federal level, there is not a public policy for the protection of the immaterial goods. In some cases,

National Institute of Anthropology and History (INAH), the National Council for the Culture and the Arts (CONACULTA) and the National Institute of Copyright (INDAUTOR) have designed and executed specific programs for the identification and promotion of the intangible Heritage. But at legal level, we do not find any disposition in order to establish mechanisms in order to protect the heritage. Inclusive, none of the Mexican cultural manifestations considered by UNESCO as masterpiece of the Immaterial Heritage have a specific legal protection.

At the local level, in some states of Mexico, it is possible to verify that the legislation grants the category of cultural heritage to some immaterial manifestations. But, in general, the labor of the authorities is limited to their identification (without a specific procedure) and promotion about the importance to preserve them. In general, the Culture Institute of the local Government is the responsible authority for this matter.

**3. Have you got special educational, information or / and marketing programs relating to the Intangible Heritage?**

**Response:**

Some states of Mexico have included in the educational programs topics related to the immaterial manifestations. However, we considered that these efforts are not enough taking in consideration the importance of the Mexican intangible heritage.

**4. What is your country experience – positive or negative – maybe you have any proposals or new ideas referring to the whole concept of Intangible Heritage or only to the legal provisions and practice in your country?**

**Response:**

Mexico is a country with a rich cultural diversity and specially, the protection of the Mexican Intangible Heritage implies a complex legislation that recognizes the depth of our immaterial goods and the necessity to provide specific criteria in its management and defense.

Also, it is necessary to design and improve specific legislation that recognize and establish specific mechanisms in order to assure the joint protection of the built heritage and the intangible heritage under a global vision.

## QUESTIONNAIRE MEXICO

### PROTECTION OF THE MEXICAN MONUMENTS AND SITES INCLUDED IN THE WORLD HERITAGE LIST

*Roberto Núñez*

*Ernesto Becerril*

The Mexican monuments and sites inscribed on the World Heritage List are the following:

#### **Cultural**

- Agave Landscape and Ancient Industrial Facilities of Tequila (2006)
- Ancient Maya City of Calakmul, Campeche (2002)
- Archaeological Monuments Zone of Xochicalco (1999)
- Archaeological Zone of Paquimé, Casas Grandes (1998)
- Royal Road of Tierra Adentro (2010)
- Central Campus of the *Universidad Nacional Autónoma de México* (UNAM) (2007)
- Earliest 16th-Century Monasteries on the Slopes of Popocatepetl (1994)
- The Tajin, pre-Hispanic City (1992)
- Franciscan Missions in the Sierra Gorda of Querétaro (2003)
- Historic Centre of Mexico City and Xochimilco (1987)
- Historic Centre of Morelia (1991)
- Historic Centre of Oaxaca and Archaeological Site of Monte Alban(1987)
- Historic Centre of Puebla (1987)
- Historic Centre of Zacatecas (1993)
- Historic Fortified Town of Campeche (1999)

- Historic Monuments Zone of Querétaro (1996)
- Historic Monuments Zone of Tlacotalpan (1998)
- Historic Town of Guanajuato and Adjacent Mines (1988)
- Hospice Cabañas, Guadalajara (1997)
- Luis Barragán House and Studio (2004)
- Pre-Hispanic City and National Park of Palenque (1987)
- Pre-Hispanic City of Chichen-Itza (1988)
- Pre-Hispanic City of Teotihuacan (1987)
- Pre-Hispanic Town of Uxmal (1996)
- Prehistoric Caves of Yagul and Mitla in the Central Valley of Oaxaca (2010)
- Protective town of San Miguel and the Sanctuary of Jesús Nazareno of Atotonilco (2008)
- Rock Paintings of the Sierra of San Francisco (1993)

## **Natural**

- Islands and Protected Areas of the Gulf of California (2005)
- Monarch Butterfly Biosphere Reserve (2008)
- Sian Ka ' an (1987)
- Whale Sanctuary of El Vizcaino (1993)

Mexico is the fourth country in many cities declared world heritage sites. In 1996, the National Association of World Heritage Mexican Cities, A. C. was formed with the purpose to obtain among others federal government support for the preservation, promotion and dissemination of these historical centers getting resources from the Federal Government for carrying out works of improvement of the urban environment, urban signage, lighting, laying of boards in monuments and regeneration of urban image.

The Association has signed agreements of collaboration with the National Institute of Anthropology and History and municipal governments, as well as through efforts undertaken at the Congress, has obtained from the budget of expenditures of the Federation of the fiscal years 2004-2008 approval of the Ministry of Tourism, Ministry of Social Development and the National Congress in order to assign resources for the culture and arts in specific programs for cities included in the World Heritage List. These resources have been approximately between 100 and 150 million annual Mexican pesos.

In the case of the Mexican legislation, there is no difference between the legal status of a monument declared by the Mexican authorities and a monument or site included in the World Heritage List. In consequence, the protection of a monument or site included in the World Heritage List is limited to the obligation to be registered in the Public Registry of Monuments and Sites, to obtain an authorization of the competent authority for intervention, rehabilitation, construction and archaeological investigation activities; and, finally, these activities developed in relation with monuments and sites are verified by the authorities in order to assure its protection granting to the authorities the faculty to impose penalties and file criminal claims if a potential risk or real damage are detected.

In Mexico, the National Institute of Anthropology and History is the responsible authority for the archaeological and historical monuments and the National Institute of Fine Arts is the responsible of artistic monuments.

In general, some Mexican specialists have insisted that, taking in consideration the importance to propose a specific legislation for the monuments and sites included in the World Heritage List, taking in consideration the complexity of their preservation before the economical pressures, their outstanding value and the necessity to establish a management system of this cultural goods and sites.

REPORT FOR THE 2010 ICLAFI MEETING,

THE ICOMOS INTERNATIONAL COMMITTEE ON LEGAL, ADMINISTRATIVE AND  
FINANCIAL ISSUES, JABŁONNA, SEPTEMBER 13-16<sup>th</sup>, 2010

**LEGAL PROTECTION OF WORLD HERITAGE CITIES IN THE REPUBLIC OF POLAND**

## I. UNESCO sites in the Republic of Poland

As of September 2010 Poland has thirteen World Heritage sites<sup>12</sup>:

- 1) Cracow's Historic Centre (1978),
- 2) Wieliczka Salt Mine (1978),
- 3) Auschwitz-Birkenau. German Nazi Concentration and Extermination Camp /1940-1945/ (1979),
- 4) Belovezhskaya Pushcha / Białowieża Forest (1979),
- 5) Historic Centre of Warsaw (1980),
- 6) Old City of Zamość (1992),
- 7) Medieval Town of Toruń (1997),
- 8) Castle of the Teutonic Order in Malbork (1997),
- 9) Kalwaria Zebrzydowska: the Manierist Architectural and Park Landscape Complex and Pilgrimage Park (1999),
- 10) Churches of Peace in Jawor i Świdnica (2001),
- 11) Wooden Churches of Southern Little Poland - Binarowa, Blizne, Dębno, Haczów, Lipnica Murowana, Sękowa (2003),
- 12) Muskauer Park / Park Mużakowski - (2004),
- 13) Centennial Hall in Wrocław (2006).

Twelve of them are cultural sites with Belovezhskaya Pushcha being the only natural site. Two sites are trans-boundary: Belovezhskaya Pushcha shared with Belarus and Muskauer Park shared with Germany. World Heritage Convention of 1972 was ratified by the State of Poland in June 29th 1976<sup>13</sup> and two Polish sites - Cracow and Wieliczka –were among the 12 protected monuments included into the first list published in 1978.

Four out of the above mentioned thirteen sites encompass parts of still functioning cities – these are:

- Cracow – inscribed under Criterion IV “to be an outstanding example of a type of building, architectural or technological ensemble or landscape which illustrates (a) significant stage(s) in human history”;

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<sup>12</sup> The year of inscription is given in brackets

<sup>13</sup> Government Statement of 14th September 1976 on the ratification by the People's Republic of Poland of the Convention Concerning the Protection of the World Cultural and Natural Heritage adopted by the General Conference at its seventeenth Session in Paris, 16th November 1972 Poland - *Oświadczenie Rządowe z dnia 14 września 1976 r. w sprawie ratyfikacji przez Polską Rzeczpospolitą Ludową Konwencji w sprawie ochrony światowego dziedzictwa kulturalnego i naturalnego, przyjętej w Paryżu dnia 16 listopada 1972 r. przez Konferencję Generalną Organizacji Narodów Zjednoczonych dla Wychowania, Nauki i Kultury na jej siedemnastej sesji*, (Journal of Laws 1976, No 32, item 191)

- Toruń – inscribed under Criterion II “to exhibit an important interchange of human values, over a span of time or within a cultural area of the world, on developments in architecture or technology, monumental arts, town-planning or landscape design” and Criterion IV “to be an outstanding example of a type of building, architectural or technological ensemble or landscape which illustrates (a) significant stage(s) in human history”;

- Warsaw - inscribed under Criterion II “to exhibit an important interchange of human values, over a span of time or within a cultural area of the world, on developments in architecture or technology, monumental arts, town-planning or landscape design” and Criterion VI “to be directly or tangibly associated with events or living traditions, with ideas, or with beliefs, with artistic and literary works of outstanding universal significance. (The Committee considers that this criterion should preferably be used in conjunction with other criteria)”;

- Zamość. - inscribed under Criterion IV “to be an outstanding example of a type of building, architectural or technological ensemble or landscape which illustrates (a) significant stage(s) in human history”.

They will be therefore addressed in this article with special attention.

## II. Legal protection on the state level

There are no special, dedicated regulations concerning protection, maintenance nor financing of the World Heritage sites in the Republic of Poland<sup>14</sup>. All the UNESCO enlisted monuments are subject to general regulations on protection, management and guardianship of historical monuments.

Although legal basis for the protection of historical monuments is primarily given in the Act on the Protection and Guardianship of Historical Monuments of July 23rd 2003<sup>15</sup>, there is also a number of other acts that provide legal framework at this field. These include above all:

- the Constitution of the Republic of Poland - Article 5 (The Republic of Poland shall (...) safeguard the national heritage and shall ensure the protection of the natural environment pursuant to the principles of sustainable development) as well as the Article 6 item 1 (The Republic of Poland

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<sup>14</sup> The only example of a state-level regulation on financing of a UNESCO enlisted site can be the National Fund for Restoration of Cracow Heritage. However the Fund is not limited to the enlisted area only and therefore cannot be recognized as a tool serving to provide funding specifically for the enlisted area. The Fund was introduced by the Act on Fund for Restoration of Cracow Heritage, 18<sup>th</sup> April 1985 - *Ustawa z dnia 18 kwietnia 1985 r o Narodowym Funduszu Rewaloryzacji Zabytków Krakowa* (Journal of Laws 1981, No 21, item 90 with later changes)

<sup>15</sup> Journal of Laws No 162, item 1568 with later changes

shall provide conditions for the people's equal access to the products of culture which are the source of the Nation's identity, continuity and development),

- other respective acts (ex. on museums, spatial planning, building & construction, protection of natural environment).

For the protection of World Heritage sites any of the four means of protection of historical monuments named in the Act on the Protection and Guardianship... can be applied:

- entry to the Inventory of Monuments,
- recognition as a Memorial of History,
- establishment of a Cultural Park,
- protective measures in Local Spatial Development Plan.

The above mentioned Act, ualong with subsidiary legal provisions, provides regulations on the organization of Polish system of protection of historical monuments. An extremely concise description shows that the protection is executed by two state organs:

- at the state level – by Minister in charge of Culture and National Heritage with the General Inspector of Monuments (Generalny Konserwator Zabytków), who occupies the position of a Secretary or Undersecretary of State in the Ministry of Culture acting on behalf of the Minister in exercising his tasks and competencies,
- at the regional level – by a Voivod (being a regional representative of central government) - with a Voivodship Inspector of Monuments (wojewódzki konserwator zabytków) acting on behalf and managing the Vivodeship Monument Protection Office.

### III. Legal protection on the regional/local level

Also local self-governments play vital role in heritage protection with protection and safeguarding of monuments being executed at local and regional level. Local self-governments of all the three levels<sup>16</sup> were included into the protection and safeguarding of historical monuments only in 2003 when the presently binding Act on the Protection and Guardianship... entered into force. It gradually included the competences and obligations on this field into the catalogue of gminas, poviats and voivodships own tasks introducing changes to the respective acts on gmina, powiat and voivodship self-government.

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<sup>16</sup> Territorial reforms of 1990 introduced deep changes leading to decentralization of public power in Poland. Therefore three levels of local self-governments were created – both independent of each other as well as of the central government. These include gmina (commune) – being basic territorial unit, powiat (district) and voivodship (region).

This broadening of scope of competences was, however, not followed by granting or securing any form of financing of new obligations from the state budget.

Therefore a conclusion may be drawn that local governments are – within legal framework, of course - entirely responsible for creating policies of protection of the World Heritage enlisted areas as well as finding methods of financing them. The latter include applying for external funds i.e. EU funding, applying for funding from the state budget and using money from own revenues.

Local government's own tasks, besides the ones explicitly dedicated to protection and guardianship include several more, which may also influence the attitude towards and maintenance of historical monuments. These above all include: education, spatial planning / architecture, strategic planning (development) and tourism

It is worth noticing that one of the earlier mentioned four means of protection of historical monuments - protective measures in Local Spatial Development Plan - is entirely in hands of local governments, as spatial planning is within their exclusive competences. Therefore local governments have the power to effectively protect World Heritage cities by introducing protective measures in the chosen areas. However, for various reasons, both political and economical, this tool is not being taken full advantage of. After the change of the political system in Poland all the formerly existing spatial plans passed before January 1st 1995 legally expired December 31 2003. Since then there are no spatial plans for the UNESCO enlisted area in Cracow, Toruń nor Warsaw. A plan for Zamość, introduced in 2006 encompasses a much broader area and therefore is not specifically dedicated to the inscribed part of the city. Lack of a plan allows local governments to take *ad hoc* decisions and therefore gives them much more freedom in managing areas regardless of their historic values.

Another powerful tool that local and regional governments have at their disposal is the privilege to pass they own local laws to provide more accurate and effective protection. Yet, he examination of local laws passed by the local governments of the four cities in question proved that this tool was mostly being used to enable the absorption of EU funding only.

Another field in which local self-governments, within legal limits, enjoy full sovereignty is organizing their own administrative structures. It is often a case that President / Voit (heads of a gmina self-government) appoint a City Inspector of Monuments (miejski konserwator zabytków) acting on their behalf. Presently there are City Inspectors of Monuments in Cracow, Toruń and Warsaw. There is no such post in Zamość. City Inspector of Monuments may also manage their own office. It is subject to the free choice of local self-government governing bodies how many people and in what kind of units will

there be employed to secure the fulfillment of obligation on protection and safeguarding of historical monuments.

Local self-governments also have the power to include regulations and suggestions on issues related to the World Heritage site protection in strategic documents – such as Local / Regional Development Strategies. Thorough examination of all valid strategic documents shows their use to secure proper protection and guardianship of historical monuments as very limited. Mostly they address being the World Heritage site as a capital of attractiveness they are expecting to be able to make use of.

Local self-governments also prepare World Heritage Site Management Plans and Local / Regional Programmes for the Protection and Guardianship of Monuments – the latter have to be updated every four years based on the requirements of the Act on Protection and Guardianship...

#### IV. Conclusions

To summarize it has to be underlined that although Poland has a system of protecting and safeguarding historical monuments, this does not provide any special tools for protection of World Heritage sites. Standard means and procedures are to be applied both on the national as well as regional and local level. However on the level of self-governments legal tools are provided for them to enable them to create, within legal framework, custom-made solutions – best suited to the needs of local communities in order to better protect and manage the UNESCO listed sites. The main obstacle, however, as seen by local and regional governments are financial limitations and lack of regular funding from the central government.

## IS A 'WORLD HERITAGE CONVENTION ACT' RELEVANT OR NECESSARY? THE SOUTH AFRICAN EXPERIENCE

(Paper Submitted for the annual symposium of the ICOMOS International Committee on Legal Administrative and Financial Issues, Jablona, Poland, September 2010.)

South Africa presently has eight World Heritage Sites, five cultural three natural and one mixed. It also has 12 sites on its tentative list of which eight are cultural and four natural. The country acceded to the World Heritage Convention in 1997 and the current World Heritage Sites were inscribed between 1999 and 2007. The Tentative List was last updated during the World Heritage Committee meeting in Brasilia in July/August 2010.

South Africa has a quasi-federal constitution with nine provinces that, whilst they have powers to pass legislation for and administer areas of government as set out in the Constitution, have no powers to tax and hence depend on the national government for the bulk of their funding. Both heritage and environment conservation are what are known as 'concurrent powers' that are shared between the national government and provinces. Whilst some provinces, have chosen to enact their own legislation for these areas, most use mandates provided in terms of acts of the national parliament. This paper will hence deal mainly with issues pertaining to national legislation and World Heritage, whether implemented by the provincial or national governments.

South Africa is one of the few countries to have legislation dealing specifically with World Heritage matters. The World Heritage Convention Act (WHCA) was passed in December 1999 and was a specific response to management issues that had arisen following the inscription of the iSimangaliso Wetlands Park (at the time known as Lake St Lucia), an area having multiple ownership, essentially by different organs of national, provincial and local government. It nevertheless provides the basic framework for management and inscription of all South African World Heritage Sites.

Other than for the WHCA, World Heritage Sites are protected and in most instances managed under the provisions of other Acts. Cultural Sites are provided with protection under various provisions of the National Heritage Resources Act (NHRA), whilst natural sites are 'protected area's under the terms of the National Environmental Protection: Protected Areas Act, Act 57 of 2003, commonly known as the 'Protected Areas Act', which provides the same level of protection to both National Parks and Provincial Nature Reserves which are respectively managed by South African National Parks (SANParks) or the relevant provincial nature conservation service.

The NHRA provides a range of different forms of protection most of which are administered at provincial level and with some of them being the responsibility of municipalities. The national heritage conservation body, SAHRA, has powers to declare National Heritage Sites, the strongest form of protection provided by the NHRA and consisting essentially of a strict permit application system for work of any nature that impacts on a site. Provinces may declare Provincial Heritage Sites which differ from National Heritage Sites only in terms of status, the protective mechanism being precisely the same. The other provision that is relevant to World Heritage Sites and which is established through municipal planning systems, primarily what is known in South Africa as a Spatial Development Framework, is the Heritage Area, each of which is purpose designed to suit the nature of the heritage concerned and is most often, though not exclusively, used in urban conservation.

South Africa's World Heritage Sites are protected by a mixture of the protections described above:

- Robben Island is a National Heritage Site and is managed as a museum under the terms of the Cultural Institutions Act, the instrument used to establish and run national museums.
- The Richtersveld Cultural and Botanical Landscape, a cultural site, is a Heritage Area with a set of regulations that establishes what is protected and how. It is also subject to a Heritage Agreement

(covenant) in terms of the NHRA whereby responsibility for management and conservation are divided between community structures, the provincial heritage resources authority, the local and district municipalities and two departments of the Northern Cape Provincial Government. The board of its management authority is established as a non-profit company in terms of the South African Companies Act.

- The Fossil Hominid Sites of South Africa, specifically the so-called ‘Cradle of Humankind’ outside Johannesburg, are protected by a Heritage Agreement governing the buffer zone, whilst individual palaeontological sites are National Heritage Sites. The extensions at Taung and Makapan’s Valley, elsewhere in the country, are also National Heritage Sites. The Cradle of Humankind is administered by an agency of the Gauteng Provincial Government specifically established for the purpose.

- The Mapungubwe Cultural Landscape is a National Heritage Site, but although a cultural site it is situated within a National Park established mainly in order to provide a protective and management system for the site. It is managed by SANParks.

- The mixed site, the Ukhahlamba/Drakensberg Park is a provincial reserve protected in terms of the Protected Areas Act, with some of the rock art sites which provide its cultural value, protected as Heritage Landmarks in terms of the KwaZulu-Natal Heritage Act and otherwise in terms of the general protections provided for archaeology and rock art in terms of the Act. It is managed by Ezimvelo KZN Wildlife, the nature conservation service of KwaZulu-Natal Province.

- The Cape Floral Region is a serial nomination of National Parks and provincial reserves in two provinces, all subject to the Protected Areas Act. The component parts are managed by SANParks and the nature conservation services of the Eastern and Western Cape provinces. There is a management committee made up of representatives of the three bodies.

- iSimangaliso Wetland is also a protected area and is managed by an agency established in terms of Section 9 of the WHCA.

- The Vredefort Dome meteor impact crater is a protected area administered by the nature conservation agencies of the Free State and North West provinces.

The main purpose of this paper is to examine the workings of the World Heritage Convention Act. Its primary purposes are to provide a framework for South Africa to recognise inscription of World Heritage Sites by UNESCO’s World Heritage Committee and the existence of the national tentative list. It is also to provide for recognition of management authorities for World Heritage Sites. The opinion of the author is that, whilst South Africa has been lauded for providing legislation that is specific to the World Heritage Convention, an act of this nature is for the most part neither required nor necessarily a good thing. Although it seems to impress certain constituencies at the World Heritage Centre and in World Heritage Committee that legislation bearing the name of the convention exists at national level it in many ways makes processes more complex than is necessary and duplicates measure and procedures that are already provided in terms of other legislation. It has hence tended to make processes unnecessarily complex and at times even contradictory.

The WHCA provides for two systems of recognition of management authorities and is limiting in that it leaves few options open for management systems and in effect creates situations where the form of management authority best suited to a given site or created in terms of other legislation is not always possible to recognise. The two options available are as follows:

- Section 8 of the WHCA provides for existing management bodies to be recognised, but requires that they must be ‘organs of state’.

- Section 9 provides for the minister responsible for implementing the convention to establish a new authority by means of a notice in the Government Gazette and Section 10 then limits the minister to two options for a governing body of the authority which may be either a board or an

‘Executive Staff Component’.

The limiting factor is that the minister cannot recognise a prior existing authority that is not an organ of state. This means that organs of civil society such as NGOs, corporations and profit making companies that might own a site, private owners, etc. cannot be recognised as management authorities. It in effect cuts out the possibilities of using the many provisions provided for in the Companies Act, the Nonprofit Organisations Act, etc. which can be very effective in providing community based and others systems of government for heritage sites. It also removes certain of the possibilities provided by provisions in the NHRA through its ‘heritage agreement’ system which allows for covenants/contracts between heritage authorities and owners concerning amongst other things site management and does so in a very flexible way which creates purpose designed management systems suited to various needs and situations existing at a particular site.

However, although the above adds considerably to the complexities of setting up a World Heritage Site, public servants have found ways of getting around the limitations of the WHCA. Section 9 of the Act is to all intent and purpose useless as it only allows the minister to establish a management authority after a site is inscribed. Section 8 is hence the provision most commonly used and whilst useful in recognising authorities that are ‘organs of state’, eg: the board of the Robben Island Museum, it cannot directly recognise non-state bodies, eg: the non-profit company that manages the Richtersveld. The way around this is that the minister appoints another agent of government as the management authority, typically the provincial minister responsible for heritage or nature conservation. That provincial minister in turn reaches an agreement with the de facto management authority in terms of which powers to manage the World Heritage Site are delegated by the provincial minister. It works, but creates long and unnecessary chains of communication and complex paper trails with correspondence and reporting systems running from the national ministry to the provincial ministry and then to actual management. It tends to slow processes down and is not well understood by people on the ground.

The WHCA also duplicates the consultative systems required in terms of other conservation legislation or policies thereunder as well as provisions of the Promotion of Administrative Justice Act which requires consultation with individuals and communities affected by actions of the state, eg: The approach when implementing both the NHRA and Protected Areas Act is to work closely with and consult landowners and others affected by envisaged protections under those acts, and no implementation of either act is really possible without extensive consultation processes. Since the WHCA does not itself provide for any protections consultative procedures under policies used to implement the other two acts are concluded well before the WHCA can be implemented. However, the WHCA sets out another consultation process before a site can be recognised as a World Heritage Site, a procedure which seems unnecessary given that consultation on the restrictions involved has already taken place and absorbs funds which could be better used elsewhere. Again the WHCA is clumsy and inflexible and fails to recognise other processes and possibilities most of which are required well in advance of any action under its own provisions.

The WHCA also requires that a World Heritage be gazetted as such via publication of a Government Notice. This may only take place after the public consultation process outlined above. Other than officially recognising World Heritage status, something that the World Heritage Committee has already done, the publication of the Government Notice has no effect on the protection or management of the site all of which has to be in place in terms of other legislation beforehand. Such recognition would hence also seem superfluous and has been the cause of confusion where provisions of other Government Notices providing for protection, defining of boundaries, etc. differ in minor detail. Whilst not required in terms the WHCA, it is in effect only practical to publish such a notice after UNESCO has already taken its decision to inscribe a site, by which time all the legal

provisions required of a state party in terms of the convention and implemented under other legislation have already been in place for some time. Such an action would hence seem to be an unnecessary complication that at best serves no real purpose and at worst leads to contradiction of earlier actions.

Another major area of potential confusion created by the WHCA is that it allows the minister responsible for implementation of the convention 'to prescribe national policy relating to the management of cultural or natural heritage in addition to, but not inconsistent with, the objectives and principles set out in this Act.' This provision does not provide for resolution of potential conflicts with policies under the other legislation that actually protects South Africa's World Heritage Sites. Furthermore, the minister, who is presently responsible only for environmental affairs, potentially has the power to stray into policy making for cultural heritage with which his department is not designed to deal. Fortunately no such regulation has yet been published.

Whilst the WHCA does cover many areas that are not sources of potential conflict, eg: matters management plans, expropriation of land for creation of World Heritage Sites, financial management, etc. none of these areas are not already adequately dealt with under the other legislation it is necessary to implement in order to set up a World Heritage Site and it would seem that most provisions of the WHCA are at best superfluous.

The one positive aspect of the existence the WHCA is that the Protected Areas Act provides for all sites recognised in terms of the WHCA to automatically become protected areas, even those that are cultural rather than natural sites, protection of the latter being the primary purpose of the Protected Areas Act. Not only does the Protected Areas Act have set of regulations that are useful in governing a multitude of matters from flights over sites, to camping in them, it also provides a blanket prohibition on mining and prospecting in areas it protects which is not present in the NHRA and has been useful in preventing attempts to mine cultural World Heritage Sites. That said though, this provision of the Protected Areas Act could just as easily have referred to the World Heritage Committee's decision to inscribe a site as to an actions to recognise such a decision under the terms of the WHCA.

In conclusion, it would seem that whilst South Africa has in certain quarters been lauded for providing legislation that specifically deals with the World Heritage Convention, such legislation is at best superfluous and at worst limits options for conservation and management of sites and can create confusion and contradictions with other legislation that is better suited to dealing with the particular needs of the wide variety of sites covered by the scope of the World Heritage Convention. Whilst most of these problems could be resolved by amendment of the Act there would seem to be little reason for its existence as it covers nothing that is not provided for in the same degree or more effectively elsewhere. Given that there are few precedents around the world for such legislation and few examples of similar legislation to cover national activities under the terms of other international conventions to which South Africa is signatory, the World Heritage Convention Act seems to be an unnecessary duplication of provisions of other legislation, the convention and its Operational Guidelines. The convention as an international law which South Africa has agreed to implement and there seems little practical reason to take that any further.

A more constructive approach in a situation such as that which existed with the iSimangaliso Wetland and led to the introduction of the WHCA would seem to be to pass legislation specific to the needs of the World Heritage Site concerned. This is common practice the world over and not without precedent in South Africa where, when a situation warrants it heritage sites have in the past been specifically legislated for, eg: the Castle Management Act which provides for the Cape Town Castle.

#### BIBLIOGRAPHY:

- 'The Companies Act', Act no. 11 of 2008, Republic of South Africa Government Gazette, vol. 526, no. 32121, Government Notice No. 421 of 9 April 2009. (Replaced the 1973 Act of the same name.)
- 'Castle Management Act', Act 207 of 1993, Republic of South Africa Government Gazette, Government Notice No. 134 of 28 January 1994.
- 'Cultural Institutions Act', Act no. 119 of 1998, Republic of South Africa Government Gazette, vol. 402, no. 19552, Government Notice no. 1578 of 4 December 1998. (Replaced the 1969 Act of the same name.)
- 'KwaZulu-Natal Heritage Act', Act no. 4 of 2008, KwaZulu-Natal Provincial Gazette, no. 225, 12 February, 2009. (Replaced the 1999 Act of the same name.)
- 'National Environmental Management: Protected Areas Act', Act no. 57 of 2003 as amended via the 'National Environmental Management: Protected Areas Amendment Act', Act no 31 of 2004.
- 'National Heritage Resources Act', Act no. 25 of 1999, Republic of South Africa Government Gazette, vol. 406, no. 19974, Government Notice no. 506 of 1999.
- 'Nonprofit Organisations Act', Act 71 of 1997, Republic of South Africa Government Gazette, vol. 390, no. 18487, Government Notice no. 1627 of 1997.
- World Heritage Convention Act, Act no. 49 of 1999, Republic of South Africa Government Gazette, vol. 414, no. 20717, Government Notice no. 1485 of 9 December 1999.