



**ICOMOS INTERNATIONAL SCIENTIFIC
COMMITTEE ON LEGAL, ADMINISTRATIVE
AND FINANCIAL ISSUES (ICLAFI)**

ANNUAL MEETING

**ORGANIZED BY
THE ICOMOS/BULGARIA**

**WITH THE FINANCIAL SUPPORT OF
THE "A. G. LEVENTIS" FOUNDATION**

**PLOVDIV, BULGARIA
MAY 2004**

**ICOMOS INTERNATIONAL SCIENTIFIC
COMMITTEE ON LEGAL, ADMINISTRATIVE
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ANNUAL MEETING

**PLOVDIV, BULGARIA
MAY 2004**

Accepted at the

~~for~~ ~~the~~ ~~meeting~~ ~~held~~ at the
Symposium on Tax

RECOMMENDATIONS OF THE ANNUAL MEETING

and other Economic
Incentives

of the ICOMOS International Scientific Committee
on Legal, Administrative and Financial Issues (ICLAFI)

Organized.

Plovdiv, Bulgaria, May 2004

and financing

law The participants in- experts from 14 countries in the field of
jurisdiction and management of the activity on preserving the cultural heritage,

- Recognizing the great importance of the cultural heritage for the spiritual enrichment and perfection of mankind, for its steady social progress, for preserving and expressing the cultural identity and variety of different communities, for cultivating tolerance and mutual understanding between people and nations;
- Appreciating the responsibilities of the state and local authorities, as well as of the whole society in each separate country for preserving its ~~national~~ ^{cultural} heritage;
- Considering the complexity and multidisciplinary specificity of the activity ~~of~~ ^{the} preserving the cultural heritage, as well as the high costs connected with it;
- Accepting unconditionally the necessity of providing stimuli for this kind of activity in the national legislation of each country,

RECOMMEND

initiate an assessment of
the existing

② The national committees of ICOMOS ~~to undertake the initiative for review~~
~~of their national legislation and assessment of the economic incentives and~~
~~tax concessions stipulated therein for the activity of preserving the cultural~~
~~heritage.~~ The comparative analysis method is recommended for the
purpose, by using the data for similar incentives in other countries,
including those represented at the annual meeting of ICLAFI.

③ The national committees of ICOMOS, whose assessment of the sufficiency
and efficiency of the existing economic incentives and concessions for the
activity in preserving the cultural heritage is negative, to work out specific
proposals for respective amendments of the national legislation, and
address the same to the competent authorities with initiative.

① The package of proposals for economic incentives and concessions for the
activity of preserving the cultural heritage, should include measures for:

That economic incentives and concessions
should include measures for

- or elimination on expenditures for ^{incurred} ~~investment~~ ^{reserves} ~~for~~ ^{to encourage} ~~conservation initiatives~~ ^{to increase} ~~in this field~~ ^{to encourage} ~~in conformity with the priority significance with which society treats cultural heritage;~~ ^{to encourage}
- maximum reduction of VAT for investment initiatives in this field - in conformity with the priority significance with which society treats cultural heritage;
 - exempting the donations for preservation of the cultural heritage from taxes and charges and deducting the granted amounts from the grantor's taxable income; ^{to encourage} ^{to increase}
 - providing tax concessions for the owners of buildings (monuments of culture) engaged with maintaining and socializing the monuments; ^{to encourage} ^{to increase}
 - establishing special funds ensuring low interest and/or interest-free credits for investing in the preservation of monuments;
 - stipulating write-off from the profit of economic operators using cultural heritage and directing this write-off to the activity of its preservation..

and subscriptions

Establishing special taxes, fees or set-asides to support the preservation of cultural heritage.

To encourage ^{specific} ~~special~~ allocations of public money for heritage conservation purposes ^{to encourage} ^{to increase}

* of sales and use

To ~~encourage~~ ^{to encourage} ~~special~~ ^{to encourage} ~~allocations~~ ^{to encourage} ~~of public money for heritage conservation purposes~~ ^{to encourage} ^{to increase} ~~the national system of taxation~~

**ANNUAL MEETING OF THE ICOMOS INTERNATIONAL SCIENTIFIC COMMITTEE
ON LEGAL, ADMINISTRATIVE AND FINANCIAL ISSUES (ICLAFI)**

PLOVDIV, BULGARIA, MAY 2004

AGENDA

25 May (Tuesday)

Day for arrival in Sofia

16:00 – City site tour

19:30 – Dinner

26 May (Wednesday)

09:00 – Departure to Plovdiv

09:30 – Visit to Boiana church, World Heritage

12:30 – Lunch in Plovdiv

14:00 – Opening of the meeting in Danchov's house

15:00 – Coffee break

15:30 – Working session

Chairman H. Staneva, assisted by Alberto Martorell and Thomas Adlercreutz

15:30 – Lecture from Dr James K Reap, Dean Rusk Center, International, Comparative and Graduate Legal Studies, University of Georgia, USA

16:00 – Lecture from Dr Werner von Trützschler, Thüringisches Landesamt für Denkmalpflege, Erfurt, Germany

16:30 – Lecture from Prof Pierre-Laurent Frier, Toulouse, France

17:30 – Lecture from Prof Dr Wojciech Kowalski, University of Silesia, Faculty of Law, Poland

18:00 – Dinner

20:00 – Official opening of the ancient Odeon

27 May (Thursday)

09:00 – Working session

Chairman- Prof James Reap, assisted by Prof Pierre-Laurent Frier ; and Prof Dr Wojciech Kowalski

09:00 – Lecture from Conf Sergiu Nistor, University of Architecture and Urbanism Ion Mincu, Bucharest, Romania

09:30 – Lecture from Thomas Adlercreutz, Esq, National Fortifications Administration, Sweden

10:00 – Coffee break

10:30 Lecture from Dr Luis Anguita Villanueva, Universidad Complutense de Madrid, Spain

11:00 – Lecture from Hristina Staneva, Bulgaria

11:30 – Lecture from Alberto Martorell Carreño, Peru

12:00 – Lunch

14:00 – Departure for Bachkovo Monastrey

19:30 – Dinner

28 May (Friday)

09:00 – Working session

Chairman – Dr Werner von Trützschler, assisted by; Prof Anne Marie Draye and Dr Luis Anguita

09:00 – Lecture from Leonard de Wit, The Netherlands

09:30 – Lecture from Ms Satu-Kaarina Virtala, Ministry of the Environment, Finland

10:00 – Coffee break

10:30 – Lecture from - Athina Christofidou, Athens, Greece

11:00 – Lecture from Prof Anne Marie Draye, Belgium

11:30 – Discussions

13:00 – Lunch

14:00 – Visit to a Thracian cult complex (5-3 c BC)

19:30 – Dinner

29 May (Saturday)

Start for Sofia via Rila Monastery – World Heritage

Accommodation in Sofia

20:00 – Dinner

30 May (Sunday)

Departure

**ANNUAL MEETING OF THE ICOMOS INTERNATIONAL SCIENTIFIC COMMITTEE ON
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PLOVDIV, BULGARIA, MAY 2004

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**ANNUAL MEETING OF THE ICOMOS INTERNATIONAL SCIENTIFIC COMMITTEE
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PLOVDIV, BULGARIA, MAY 2004

QUESTIONS TO THE PARTICIPANTS

- I. Main topic of the event:** Tax concessions and the VAT problems by financial initiatives in the field of the preservation of the cultural heritage
- II Problems, related to the necessity to develop new legislation regulations**
1. Formulating the State obligations regarding the preservation of the monuments of culture – administrative (a strictly defined national system for management and control, with its subjects and their respective functions and interrelations) and financial (with a fixed quota of the national budget)
 2. Development of mechanisms for preventing and sanctioning of non-regulated intervention in the monuments of culture and their environment, including also possible official offence during this intervention
 3. Development of mechanisms for the strict application of the requirements of the law to the owners of monuments of culture regarding the management and maintenance of the monuments
 4. Development of mechanisms regulating the relations between the owners of monuments of culture and the State in all cases of conflict between the personal interest of the owners (impossibility or unwillingness to overtake the obligations and responsibilities, assumed by the law) and the public interest in the preservation of these monuments
 5. Various forms and ways for co-ordination of the specific law for the monuments with the other laws – in the sphere of the territorial and economic development, ecology, taxation, state budget, criminal law, etc.
- III Additional questions**
1. Regulation of the management and establishment of “integrated conservation”, including the development of all necessary instruments – specific plans for preservation to set the relation between the conservation and the planning activities
 2. Economic relation between preservation and cultural tourism; mechanisms through which part of the incomes from tourism could be accumulated for conservation activities
 3. The role of NGO in the process of preservation. Public mechanisms for stimulation of the NGO in this process

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PLOVDIV, BULGARIA, MAY 2004

TAX AND OTHER ECONOMIC INCENTIVES
FOR HERITAGE CONSERVATION IN THE UNITED STATES OF AMERICA

James K. Reap¹
University of Georgia, U.S.A.

This paper will provide a brief overview of tax and other economic incentives in the United States. The primary emphasis is on the legal mechanisms used to provide economic incentives for preservation activities, but it touches briefly on the economic benefits produced both directly and indirectly by the conservation of historic buildings and sites.

To understand preservation in the United States, one must recognize that Americans tend to view real estate, including historic buildings and sites, as marketable commodities whose purpose is to increase the wealth of the owner.² Most historic properties are in private hands, and there are not enough public or charitable resources available to save all historic properties that merit preservation.³ Even if public and charitable resources were available, widespread public ownership is not seen as feasible or wise, since that would reduce the tax base, burden the budget with costs for acquisition and maintenance, and crowd out economically productive activities.⁴

In a market economy, historic properties compete for private investment not only with other real estate, but also with stocks, bonds, art, precious metals, and many other investment opportunities. The preservation or restoration of older buildings must compare favorably with these other choices in order to attract private capital. For many historic properties, the cost of preservation or restoration can exceed the value to the owner or potential investor. It is in this context that economic incentives can be effective in bridging the gap between cost and value and encouraging the influx of private capital for historic preservation.⁵

There are a wide variety of possible incentives to encourage the preservation of historic properties. Donovan Rypkema, an American expert on preservation economics, classifies specific incentives into five broad categories:⁶

- ☐ **Income tax incentives**, which include both tax deductions and tax credits. A deduction reduces the amount of income subject to taxation, whereas a credit is a reduction in that actual amount of tax owed.

¹ ☐ James K. Reap, 2000. Professor Reap is an attorney who teaches historic preservation law at the University of Georgia, Athens Georgia, USA, and Georgia State University, Atlanta, Georgia USA. He chairs the Preservation Law Committee of US/ICOMOS and is the voting representative of US/ICOMOS to the ICOMOS International Scientific Committee on Legal, Administrative and Financial Issues and President of that Committee.

² Robert E. Stipe, *Historic Preservation: The Process and the Actors*, in THE AMERICAN MOSAIC at 5-6 (Robert Stipe and Antoinette J. Lee, eds., 1987).

³ Donovan D. Rypkema, *Financial Incentives in Urban Conservation*, PROCEEDINGS OF THE 4TH INTERNATIONAL SYMPOSIUM OF THE WORLD HERITAGE CITIES, at 112 (1997).

⁴ Penn Central Transportation Co. v. City of New York, 238 U.S. 104, at 110, Note 6 (1978).

⁵ Rypkema, *supra* note 3, at 113.

⁶ *Id.* At 113-114.

- ❑ **Cost reducing incentives**, which include direct grants, reductions or waiving government-imposed fees, providing technical assistance such as engineering analyses or architectural services, and selling a property below cost with stipulations on its rehabilitation.
- ❑ **Financing incentives**, which involve programs for either making money available at an interest rate below what would otherwise be secured on the open market or by offering a loan guarantee on behalf of the borrower who would not be able to obtain the loan needed.
- ❑ **Operational incentives**, which focus on increasing income or reducing costs. Public occupancy and rent subsidies have both been used to increase income. Tax abatements have proved to be a powerful tool to reduce costs. Tax exemptions, which relieves a person or organization from paying a particular tax (e.g. sales tax) can increase income as well.
- ❑ **Policy incentives**, which are administrative procedures or public initiatives that encourage private investment. Public infrastructure improvements, construction of public buildings, building codes with less stringent requirements for historic buildings and other regulatory flexibility, and the enactment of protective ordinances all come under this category.

Some of these incentives are explored in more detail below:

Income Tax Incentives

Deductions - A good example of employing an income tax deduction for preservation purposes is the tax recognition of preservation easement donation. A preservation easement is a voluntary legal agreement in which the owner relinquishes part of his or her property rights in perpetuity to a governmental agency or non-profit organization. Preservation easements generally require the current or future owners to obtain permission from the easement holder prior to making changes in the property. The value of the easement is based on the difference between the appraised fair market value of the property prior to conveying an easement and its value with the easement restrictions in place. The more the easement restricts the property's development potential, the more valuable it is. The Internal Revenue Service guidelines suggest that a façade easement can be appraised at 10-15 percent of the value of the property. In most cases, the easement donor can take a one-time deduction of the value of the easement from his adjusted gross income for federal taxes.⁷ Many states also have provisions that will allow individuals to similarly reduce their state income taxes.⁸

Credits - Income tax credits for preservation activities are available under the federal Tax Reform Act of 1986.⁹ The act provides for a 20 percent tax credit for the substantial rehabilitation of historic buildings for commercial, industrial and residential rental purposes.¹⁰ To qualify, both the building

⁷ Federal estate taxes may also be reduced when a property subject to an easement passes by inheritance because the fair market value of the property has been reduced by the easement restrictions.

⁸ National Park Service, *Historic Preservation Easements: A Historic Preservation Tool with Federal Tax Benefits* (accessed April 4, 2000) <<http://www2.cr.nps.gov/TPS/tax/easement.htm>>, see also Mark Primoli, Internal Revenue Service, *Façade Easement Contributions* (last modified Jan. 20, 2000) <<http://www2.cr.nps.gov/tps/tax/IRSFacade.htm>>.

⁹ PL 99-514; Internal Revenue Code Section 47 [formerly Section 48(g).], see also National Park Service, *Federal Historic Preservation Tax Benefits* (last modified March 6, 1999) <http://www2.cr.nps.gov/TPS/tax/tax_t.htm>.

¹⁰ Prior federal tax laws: The tax reform Act of 1976 provided: 5-year amortization of qualified expenditures incurred in the rehabilitation of certified historic structures, or alternatively, accelerated depreciation of substantially rehabilitated historic structures; denial of deduction for costs of demolishing certified historic structure; restriction to straight-line depreciation of buildings constructed on the site of a demolished or substantially altered certified historic structure. The Revenue Act of 1978 provided; a 10% tax credit for qualified expenditures incurred in the rehabilitation of a building that had been in use for a period of at least 20 years before the commencement of the rehabilitation. The Economic Recovery Tax Act of 1981 provided: a 25% tax credit for certified rehabilitation of certified historic structures, a 15% credit for rehabilitation of structures over 40 years old, and a 10% tax credit for rehabilitation of structures 30-39 years old combined with 15-year straight line depreciation. The Tax Equity and Fiscal Responsibility Act of 1982 required: reduction in the depreciable basis of buildings rehabilitated utilizing the 25% tax credit by one-half the amount of the

and rehabilitation must be certified by the U.S. Secretary of the Interior. First, the building must be a certified historic structure -- one that is listed in the National Register of Historic Places, located in a National Register historic district, or contained within a district designated by local government that meets certain federal requirements. Second, the rehabilitation activity itself must also qualify. It must be substantial -- costing \$5,000 or the adjusted basis of the building, whichever is greater.¹¹ The work done on the building also must be consistent with the historic character of the property and, where applicable, the district in which it is located. *The Secretary of the Interior's Standards for Rehabilitation* serve as guidelines for determining whether the work is in character. Property owners must complete and submit applications in accordance with federal regulations in order to receive the credit, and in most cases pay a fee for certification. To avoid repaying all or part of the credit, the owner must retain the property for five years. Since 1976, federal historic preservation tax incentives have resulted in more than 27,000 historic properties saved and rehabilitated, private rehabilitation of over \$18 billion, more than 149,000 housing units rehabilitated, and over 75,000 housing units created. A significant proposal, not yet enacted into law, would extend the federal income tax credits to the rehabilitation of owner-occupied residential dwellings.¹² This change could greatly increase the use of federal tax credits.

A number of states have enacted state income tax incentives to further encourage preservation. The attractiveness of this incentive to property owners is directly related to the tax rate. It is a much more effective incentive in states with high income taxes. States employing income tax incentives include Colorado, Connecticut, Indiana, Maine, Maryland, Michigan, Missouri, New Mexico, North Carolina, Rhode Island, Utah, Vermont, West Virginia, and Wisconsin. Amounts are generally in the 20-25 percent range, but are as low as 5 percent and as high as 50 percent. Unlike the federal government, state preservation tax credits are often available for owner-occupied residential properties as well as income producing properties. Minimum expenditure requirements and rehabilitation standards are usually key parts of these programs.¹³

Cost-reducing Incentives

Grants - Direct grants from the government are one way of reducing rehabilitation costs. Grants can be superior to tax incentives in a number of ways. They can be more closely targeted to certain types of historic properties and particular program users. They are not limited to those with high tax liabilities, but can focus on properties of low and moderate income owners. Grants also tend to provide better control over the quality of work. While the impact of grants on state and federal budgets is more predictable than incentive programs, grants depend on yearly appropriations and are more subject to reductions or elimination.¹⁴

The National Historic Preservation Act of 1966, as amended,¹⁵ provides for federal grants to the states, which may be passed through to local governments or individuals. In practice, however, the

credit. The Tax Reform Act of 1984 provided: lengthened depreciation periods of 18 years, subsequently 19 years; denial of tax credits to rehabilitation of tax-exempt use property, permanent requirements that cost of demolition of all buildings be added to basis of land where building was located before demolition.

¹¹ Adjusted basis is in the simplest terms the cost of the property minus the value of the land, plus the costs of any improvements, minus any depreciation already taken.

¹² Different versions have been introduced into both houses of Congress: H.R. 1172 and S. 664. Both bills would extend the 20% tax credit to owner-occupied dwellings. Homeowners with insufficient tax liability could convert the credit to a mortgage credit certificate to obtain a mortgage interest rate reduction from their lender. The lender then takes the credit against its taxes. In distressed areas, buyers could use the value of the credit toward down payment costs at the time of closing. The Senate version would limit the credit to \$20,000 and restrict it to historic districts where median income is less than two times state median income.

¹³ BEAUMONT, CONSTANCE. SMART STATES, BETTER COMMUNITIES 92 (1996).

¹⁴ James A. Sewell. *State Income Tax Incentives Versus Grants: Which Are Better?* in BEAUMONT, *id.*, at 109.

¹⁵ 16 U.S.C. § 470 *et. seq.* For more information on the program of the Department of Housing and Urban Development, see their question and answers web page at (accessed April 2, 2000) <<http://www.hud.gov/qaintro.html>>.

limited appropriations by Congress have been used primarily to support the administrative infrastructure on the federal and state levels. Since 1980, only a relatively small amount has been awarded in grants, and these primarily to governmental entities.

The federal government also provides grants for other purposes to states and local governments that may be used for historic preservation. The Transportation Equity Act for the 21st Century (TEA-21) and its predecessor, the Intermodal Surface Transportation Act of 1991, authorized substantial grants for an "enhancements" program which has proven to be a major source of funding for preservation projects.¹⁶ States are required to set aside 10 percent of their federal surface transportation funds for projects historic preservation, landscaping, beautification and other projects related by function, proximity or impact to a transportation facility or intermodal system.¹⁷ A number of significant grant programs for state and local governments are funded under the Department of Housing and Urban Development (HUD) Act.¹⁸ Community Development Block Grants (CDBG) have been used extensively to help communities with economic development, job opportunities and housing rehabilitation. Funds under this program have been used not only for infrastructure improvements, but for direct rehabilitation grants for low income home owners.

A number of states make appropriations for direct grants to historic preservation projects. The best example is the State of Florida. Between 1985 and 1996, Florida appropriated \$82.3 million for local preservation projects, and when bond-financed monies are included, the total is more than \$250 million. Individual grants are made only to state agencies, local governments and private nonprofit organizations. However, economic incentives work in the public sector as well as the private sector by reducing the overall cost of the project.

In addition to general appropriations and bond issues, state governments have raised funds for preservation activities through lotteries, taxes on something else -- real estate, mortgage fees, gambling, cigarettes, hotels/motels, and limited partnership -- license plate revenues, and litigation proceeds¹⁹. In addition to programs directed specifically toward historic preservation, states offer a wide variety of local development programs whose resources can often be directed toward preservation activities.²⁰

Waiver of Fees - Governments can also reduce the costs of development by waiving certain fees, which can be significant in some jurisdictions. Development fees are often based on the additional costs local governments will incur to support new development -- roads, utilities, school, police and fire services. Where historic structures are reused, there is little additional infrastructure cost for government and those fees may be waived with little impact on the government, but a major benefit to the property owner.

Financing Incentives

Since most rehabilitation is financed with borrowed money, opportunities exist to provide financing incentives for preservation projects. One approach is to provide loans at a lower rate of interest than could generally be obtained from conventional financing arrangements. Subsidized loans were

¹⁶ JULIA H. MILLER, NATIONAL TRUST FOR HISTORIC PRESERVATION, A LAYPERSON'S GUIDE TO HISTORIC PRESERVATION LAW 32 (1997), *see also* the Internet site maintained by the Surface Transportation Policy Project (accessed April 2, 2000) <<http://www.istea.org/>>.

¹⁷ "Intermodal" refers to the connections between various transportation modes such as rail and bus.

¹⁸ 24 U.S.C. § 3532, *et. seq.*

¹⁹ BEAUMONT, *supra* note 13, at 71-76.

²⁰ One example is Georgia's Local Development Fund, administered by the Georgia Department of Community Affairs, which provides matching grants to communities for downtown development projects, historic preservation projects such as improvements to historic courthouses and city halls, tourism activities, and community facilities such as museums and community centers. *See* the Department's web page (accessed April 2, 2000) <<http://www.dca.state.ga.us/grants/developmentfund.html>>.

authorized by the 1980 amendments to the National Historic Preservation Act²¹, but Congress has not funded the program. However, under the proposed Homeowner Tax Credit, owners with insufficient tax liability could convert the credit to a mortgage credit certificate to obtain a mortgage interest rate reduction from their lender. In distressed areas, buyers could use the value of the credit toward down payment costs at the time of closing²².

An example of a state preservation loan program can be found in New Mexico. A self-sustaining revolving loan fund²³ was established "to provide owners of registered cultural properties in New Mexico with low-cost financial assistance in the restoration, rehabilitation and repair of properties listed in the state register of cultural places. . . ." The Office of Cultural Affairs makes or subsidizes loans jointly with lending institutions such as commercial banks, savings and loans, and credit unions. Receipts from the repayment of loans are re-deposited in the loan fund for future projects. Similar programs have been established on the local level. King County, Washington has established a revolving loan fund in partnership with the Washington Mutual Bank to help private property owners and non-profit organizations secure low-interest financing for the restorations and preservation of historic landmarks.²⁴

Operational Incentives

Tax Abatements - Property tax is one of the largest single expenses for building owners. Properties are taxed on value of the underlying land as well as the improvements such as buildings. The value of the land is tied to its potential for development, the so-called "highest and best use." This can often lead the owner to tear down an existing historic structure and replace it with a more intensive use. On the other hand, when buildings are rehabilitated or restored, their assessed value increases, thus increasing their taxes. This can discourage owners from maintaining or improving their properties.

Many state legislatures have addressed these problems by creating abatement programs, where the assessed value of a building is frozen at its pre-rehabilitation level for a certain number of years. Tax abatement programs have been discouraged in some states by constitutional provisions that require all real estate to be treated equally, with no disproportionate benefits for individual taxpayers. Constitutional amendments have been passed in several states, such as Florida, Georgia, and Texas, which specifically allow tax abatement for historic properties.

Although the details such as the type of properties that qualify, minimum investments requirements, and the length of the abatement period vary from state to state, the overall approach adopted in Georgia is typical²⁵. To qualify for the abatement, a property must be eligible for listing in the Georgia Register of Historic Places and undergo substantial rehabilitation. Substantial rehabilitation is defined as an increase in the fair market value of the building or structure by 55 percent for owner occupied residential property, 100 percent for income-producing properties, and 75 percent for income-producing property used primarily as residential property. Finally, the work must meet the rehabilitation standards promulgated by the Georgia Department of Natural Resources. Once the administrative process for certification is complete, the owner presents the certificate to county board of tax assessors and the assessed value of the property upon which taxes are based is frozen for eight consecutive years. In the ninth year, the assessment is adjusted to a point halfway between the frozen value and the current fair market value. In the tenth year, the assessment is placed at fair

²¹ 16 U.S.C. § 470 *et seq.*

²² See *supra* note 12.

²³ Historic Preservation Loan Act, NMSA §§ 18-6-18 to 18-6-23 (1978), also Historic Preservation Loan Fund rule, 4 NMAC 10.2.

²⁴ See the King County web site (accessed April 4, 2000)

<<http://www.metrokc.gov/exec/culture/heritage/loanfunds.htm>>.

²⁵ Rehabilitated Historic Property Act of 1989, O.C.G.A. Section 48-5-7.2.

market value. Should the property lose the historic or architectural features that made it eligible during the period of the abatement, the amount of the taxes which have been abated, along with interest, become due as a penalty.²⁶

In most areas of the country, property taxes are significantly higher than state income taxes. In such states, a property tax incentive is more useful than the state income tax incentive. A few states, such as Maryland and North Carolina, offer both approaches²⁷.

Sales Tax Exemptions – There is no national value added tax (VAT) in the United States, but states and local governments have the constitutional authority to impose taxes on the sale of goods (and in some cases, services). This represents a significant percentage of the revenue for these governmental units. While the rates are not as high as the European VAT, the added costs to a rehabilitation project, particularly a larger one, can be sizeable. One approach has been to grant a tax exemption to qualified organizations engaged in the restoration or operation of historic buildings. A typical example is that of Kentucky. Its statute exempts “gross receipts from the sales of materials, supplies, and services to a nonprofit corporation, society, or organization to be used to restore, maintain, or operate a historical site.”

In addition, Kentucky also exempts admission fees to historic sites operated by nonprofit organizations from the sales tax.²⁸ A number of other American states²⁹ also have statutes that exempt from sales tax both admissions to and sales by historic house museums. For example, Louisiana Rev. Stat. Ann. §305.14 provides that sales and use taxes, “Shall not apply to sales of tangible personal property at, or admissions charges for, events sponsored by ... historical organizations, which are nonprofit, when the entire proceeds, except for the necessary expense connected therewith, are used for educational, charitable, religious or historical restoration purposes.” Some states limit the admission and sales exemption to historic properties listed in the National Register of Historic Places.³⁰

Easements - Not only can easement donation bring economic benefits through a one-time income tax deduction, it can provide continuing property tax relief for the owner of the property subject to the preservation easement or development restriction. Georgia's Uniform Conservation Easement Act is typical. It provides that when a owner records the easement in the county land records, he is entitled to a revaluation of the property so as to reflect the existence of the encumbrance.³¹ A lower evaluation will result in reduced taxes in subsequent years.

Rent Subsidies - The Department of Housing and Urban Development and its state partner agencies, in addition to the direct grant programs mentioned above, also provide subsidized housing certificates or vouchers for low income households through its Section 8 program. Rent subsidies are used to pay owners the difference between what these tenants can pay and contract rents. Developers who rehabilitate older buildings in historic neighborhoods can obtain a return on their investment with structures which are fully occupied after completion at competitive rates.³²

Policy Incentives

Tax Increment Financing - Tax increment financing (TIF) is a mechanism used by local governments in many states to encourage redevelopment by making the targeted area more appealing to private investment through publicly financed improvements. Property values are

²⁶ Robert L. Zoeckler. "The Tax Abatement Program for Historic Properties in Georgia." 28 GEORGIA STATE BAR JOURNAL 129 (1992).

²⁷ BEAUMONT, *supra* note 13, at 93.

²⁸ Kentucky Rev. Stat. § 139.482

²⁹ These include Kentucky, Louisiana, Mississippi, New Jersey and South Carolina.

³⁰ S.C. Code Ann § 12-21-2420(9).

³¹ O.C.G.A. § 44-10-1 *et seq.*

³² Note 17, above and the HUD web site (accessed April 2, 2000) <<http://www.hud.gov/gaintro.html>>.

assessed and the sum of the assessed values in the TIF district becomes the baseline for further calculations. Public improvements are made in the area using funds derived from taxes or from the issuance of bonds. These expenditures are used as incentives to encourage private investment in the area. As public and private investments cause the value of property to rise, the additional taxes resulting from higher assessments are either put back into further improvements on a pay-as-you-go basis or used to pay off the bonds which generated funds for the initial public investment.³³

Building Codes - To protect the public from unsafe conditions, most jurisdictions have adopted codes and standards that specify how buildings are to be constructed and used. These codes focus on new construction and require up-to-date materials and construction techniques. The cost of fully complying with these codes when renovating historic properties can be significant, to the point of making their rehabilitation economically unfeasible. Similar rehabilitation projects in different jurisdictions can vary in cost by as much as a million dollars because of building code differences. To address this problem, professional associations of building code officials³⁴ and state governments have developed new code provisions which provide more flexibility in design, materials and construction systems that enable historic buildings to meet standards without reducing the overall level of safety.³⁵ States with representative legislation in this area include California, Massachusetts, Wisconsin and Georgia.³⁶ In New Jersey, rehabilitation of old buildings increased by 60% following the adoption of a new rehabilitation building code.³⁷

Location of Public Buildings in Historic Districts - By simply locating public agencies in historic buildings and districts, governmental entities can provide economic incentives for preservation. In 1976, Congress passed the Public Buildings Cooperative Use Act to encourage the General Services Administration (GSA) to "acquire and utilize space in suitable buildings of historical, architectural or cultural significance unless such space would not prove feasible and prudent".³⁸ The act, which proved to be less than effective, was supplemented by Executive Order 13006, issued by President Clinton in 1996. This order directs federal agencies to give first consideration to locating facilities in historic structures within historic districts, and requires that any rehabilitation or new construction be "architecturally compatible with the character of the surrounding historic district or properties."³⁹ Several governors have issued executive orders directing state agencies to do the same. At least six states -- Texas, Florida, New York, Arizona, Minnesota, and Connecticut -- have enacted laws requiring state agencies to first consider historic buildings when seeking new office space. While these state laws and executive orders have not proven effective on a large scale,

³³ BEAUMONT, *supra* note 13, at 80. For a Internet site which describes tax increment financing in the City of Chicago, see <<http://www.ci.chi.il.us/Planning/Programs/TaxIncrementFinancing.html>> (accessed February 26, 2000) and CITY OF CHICAGO DEPARTMENT OF PLANNING & DEVELOPMENT, REVIEW OF TAX INCREMENT FINANCING IN THE CITY OF CHICAGO (July, 1998). See also, William G. Seline, "Tax Increment Financing: A Key Preservation Tool", ECONOMIC BENEFITS OF PRESERVING OLD BUILDINGS 49 (Preservation Press, 1976).

³⁴ The Uniform Building code, published by the International Conference of Building Officials (ICBO); the Standard Building Code, published by the southern Building Code Congress (SBCG); the National Building code, published by the Building Officials and Code Administrators; and the Life Safety Code, published by the National Fire Protection Association.

³⁵ BEAUMONT, *supra* note 13, at 141-143. This approach has been called a "performance code", in contrast to a "prescriptive code" which requires the use of specific materials and methods, leaving little room for professional judgment.

³⁶ The Georgia legislation is found at O.C.G.A. § 8-2-200, *et seq.*; see also MARILYN E. KAPLAN, BUILDING CODES AND HISTORIC BUILDINGS (National Trust for Historic Preservation, 1996).

³⁷ National Trust for Historic Preservation, *New Jersey's Building Code Spurs Preservation*, 17 PRESERVATION ADVOCATE NEWS December 15, 1999.

³⁸ 40 U.S.C. § 601-616 (1976). Regulations implementing the Public Buildings Cooperative Use Act are set forth at 41 C.F.R. §§ 19.000 *et seq.*, and §§ 105-51.001 *et seq.* In 1978, Executive Order 12072 directed federal agencies to give first consideration to centralized community business areas. See 61 *Fed. Reg.* 9110 (Mar. 7, 1996) for the General Services Administration's interim regulations reaffirming the order's policies and goals.

³⁹ 61 *Fed. Reg.* 26,071 (1996).

actions of individual federal, state and local agencies have made a significant difference to specific historic buildings and districts around the country.⁴⁰

Protective Ordinances - It is a popular myth in the United States that land use regulation always reduces the value of individual properties. In fact, the absence of regulation may lower property values. Developers of new housing subdivisions and commercial properties recognize this fact and often impose rules on the use of property that are much stricter than government land-use regulations. Tightly regulated properties are frequently among the highest priced and highest tax-producing areas in America. The reason is that regulation -- imposed either by private developers or by government -- increases the property owner's certainty that his investment will not be destroyed by inappropriate or obtrusive development next door.⁴¹ Studies from a number of states have shown that historic listing programs and local protective ordinances tend to enhance property values. Four Georgia cities provide good examples: In Tifton, property values grew on average by almost 11 percent between 1983 and 1996 compared to over 9 percent for non-designated neighborhoods. In Rome, designated properties increased in value by 10 percent more than non-designated properties over a sixteen-year period. In Athens, between 1976 and 1996, average values in designated districts increased by 48 percent, while the values in non-designated districts lagged at 34 percent. Finally in Savannah, an historic neighborhood which was not included in the National Register listed Savannah Historic District saw an increase in property values of only 15 percent between 1974 and 1997 compared to increases of 603 percent and 279 percent in two similar neighborhoods which were listed.⁴² The experience of Fredericksburg, Virginia has been similar. Between 1971 and 1990, residential properties in historic districts increased by an average of 674 percent, while the increase was only 410 percent for residential properties elsewhere in the city. There was also a difference for commercial properties: 480 percent increase within historic districts, 281 percent outside historic districts.⁴³

National Main Street Program - In 1980, the National Trust for Historic Preservation established the National Main Street Center to address the decline many downtown areas experienced in the 1960s and 1970s as regional malls drew away economic activity. It is a comprehensive development program focusing on organization, economic structuring, promotion and design which encourages downtowns to retain their unique characteristics, including their historic buildings. State and local governments have together implemented the program in over 1,400 utilizing the overall framework provided by the National Center. The total public and private reinvestment in Main Street communities is \$10.9 billion, with an average investment per community of over \$5 million. Some 47,000 businesses have been generated, creating 174,000 jobs. Nearly 70,000 buildings have been rehabilitated. On average, \$35.43 have been reinvested for every \$1 spent on the program.⁴⁴

Recent studies from throughout the United States have shown that the economic impact from a wide variety of preservation activity is impressive. In Georgia during the period 1992-1996, construction activity to rehabilitate historic projects generated \$559 million in total economic activity including the creation of 7,500 jobs in the construction industry and other sectors of the state's economy and \$201 million in earnings, including wages for workers and profits for businesses.⁴⁵ In New Jersey, \$123 million of rehabilitation was done on designated historic buildings. The total economic impact was 4,607 new jobs, \$156 million in personal income, \$207 million in gross domestic product, and

⁴⁰ BEAUMONT, *supra* note 13, at 155-159.

⁴¹ The government similarly adds value to property through provision of roads, water and power systems, subways, schools and other services.

⁴² JONI L. LEITH AND PATRICIA TIGUE. PROFITING FROM THE PAST: THE ECONOMIC IMPACT OF HISTORIC PRESERVATION IN GEORGIA 8-9 (1999).

⁴³ DONOVAN D. RYPKEMA, THE ECONOMICS OF HISTORIC PRESERVATION: A COMMUNITY LEADER'S GUIDE 43 (National Trust for Historic Preservation, 1994).

⁴⁴ See BEAUMONT, *supra* note 13, at 191-200, and the web site for the National Main Street Center (accessed April 2, 2000) <<http://www.mainst.org/>>.

⁴⁵ LEITH AND TIGUE, *supra* note 39, at 7.

\$65 million in federal, state and local taxes. The state garnered about half of these benefits, some \$93 million, while the rest is distributed outside the state. The New Jersey study showed that the ration of job creation for historic rehabilitation was slightly higher than that produced for the same investment in highway infrastructure or new construction.⁴⁶ In Texas, rehabilitation of historic properties created 4,200 jobs in 1997 in diverse areas such as construction, manufacturing, transportation, utilities, retail and services. \$192 million in historic rehabilitation was spent that year, -- \$102 million in non-residential work, \$70 million in residential work, and another \$20 million in historic public building rehabilitation projects.⁴⁷

Historic resources are important generators of heritage tourism, an important component of many communities' economies. In Rhode Island, half of the state's \$1.2 billion annual tourist industry is driven focused on cultural and historic attractions.⁴⁸ Texas characterizes only 11 percent of all travelers as heritage travelers. However, they spend about \$1.43 billion annually -- approximately \$1.2 billion resulting from overnight stays and about \$230 million from day trips. The numbers of both travelers and trips are continuing to grow.⁴⁹ For every \$1 million expended by heritage travelers in Texas, 22 jobs are created in the state, \$480,000 of income is generated, \$49,000 in state taxes are generated, \$43,000 in local taxes are generated, and the Gross State Product is increased by \$825,000.⁵⁰ The impact from even a single significant landmark can be impressive. Visitors to the Frank Lloyd Wright Home and Studio generate \$5.5 million in annual economic activity for the city of Oak Park and a total of \$26 million in the grater Chicago area.⁵¹

All of these studies have shown that preservation activity is good for the economy, and the incentives provided by public programs have worked. The Mayor of Philadelphia has described how even the revenue "lost" from expanded rehabilitation tax credits more than pays for itself:

*While a \$1 million rehabilitation expenditure would cost the Treasury \$200,000 in lost tax revenues, it would at the same time generate an estimated \$779,478 in wages. Taxed at 28 percent, the investment would produce \$218, 254 in federal tax revenue. Corporate income, capital gains, and real estate taxes would further complement gains in household income tax. Thus. . . these offsetting factors make the historic rehabilitation tax credit a largely self-funding program. Best of all it would provide cities with much-needed private investment capital for redevelopment and housing.*⁵² Philadelphia Mayor Edward Rendell

A similar scenario can be posed for other preservation incentives. Given the recent success of preservation as an economic generator and incentives as important catalysts, the future of incentives appears bright.

⁴⁶ Harriette C. Hawkins, *Preservation Pays: Measuring the Economic Benefits of Historic Preservation in New Jersey*, ECONOMY OF CONSERVATION 53 (Proceedings of the XII Assembly ICOMOS, Mexico, 1999).

⁴⁷ THE TEXAS HISTORICAL COMMISSION, ET AL, "HISTORIC PRESERVATION AT WORK FOR THE TEXAS ECONOMY 8 (1999).

⁴⁸ RYPKEMA, *supra* note 40, at 79.

⁴⁹ *Id.* at 3.

⁵⁰ *Id.*, at 12.

⁵¹ RYPKEMA, *supra* note 40, at 83.

⁵² *Id.*, at 32.

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**ANNUAL MEETING OF THE ICOMOS INTERNATIONAL SCIENTIFIC COMMITTEE
ON LEGAL, ADMINISTRATIVE AND FINANCIAL ISSUES (ICLAFI)**

PLOVDIV, BULGARIA, MAY 2004

**TAX CONCESSIONS
IN THE FIELD OF PRESERVATION OF CULTURAL HERITAGE IN GERMANY**

Dr. Werner von Trützschler

I. The legal system of heritage protection

According to its constitution Germany has a federal structure. Besides the federal government (Bundesregierung) controlled by the Federal Parliament (Bundestag), there are 16 states (Länder) each having its own government with a prime minister at the top and its own parliament. Legal competences are divided between the Federation and the states. The area of culture, and thus heritage matters, falls under the responsibility of the federal states. Whereas the federal states participate in federal legislation through the Federal Council (Bundesrat) the Federation is not involved in state legislation.

Consequently, there are 16 different heritage laws in Germany, which however contain basically the same provisions. They all give a definition of a monument and regulate the procedures for identifying a monument and then entering it in a list of monuments or a "book of monuments", as the list is called in some states. Again, there are 16 different monument lists, as each state keeps its own list according to its own law. In some German states listing is a pre-condition for application of the appropriate provisions for protection; in other words, listing has a constitutive character as to the monument quality. In other German states listing has only a declaratory nature, meaning that the monument quality derives directly from the definition laid down in the law. In both cases the listing is proof of the monumental quality of a building and as such is accepted by the different authorities. Unlike the protection systems in other countries, France being the classic example, there are no legal categories of monuments. From a legal point of view all German monuments are equal. Especially in the practice of direct financing however, to say it as George Orwell, some monuments are more equal than others.

Besides individual monuments like historic buildings, the 16 German protection laws of course also contain regulations on archaeological monuments and on monument areas (ensembles) like historic districts. Monument areas usually contain a number of individual monuments of which both the exterior and interior are protected, as with all individual monuments, and further buildings which have no monument quality themselves but for which the exterior is protected as a part of the historic area. This differentiation is important for the extent of direct or indirect financial help given.

II. Indirect financial aid through tax concessions

German tax law is federal law. However the revenues from most taxes are split between the federal government, the federal states and the local authorities, as is the case with the two most important taxes, namely turnover tax and income tax. Other taxes are due in full either to the federal government or to the federal states. Basically, there is a different law for each tax and one law regulating taxation procedures (Abgabenordnung).

1. Income tax

1.1 Conservation expenditure

The complete costs of rehabilitating a historic building of monumental character (Herstellungskosten - building costs) can be deducted from taxes over a period of ten years. This is an advantage in comparison to non-protected or new buildings because normally building costs can be deducted at a rate of only two or 2 ½% per year, depending on the age of the building, over a period of 40 or 50 years compared to the ten-year deduction period for the rehabilitation costs of a monument. This tax concession is dependent on the following conditions:

- the building has to have monumental character,
- the building costs have to be necessary for preservation of the building or for its future use, which has to be suitable to the character of the historic building, and
- these conditions have to be certified by the relevant conservation authority of the federal state in which the building is situated, which is normally the State Conservation Office.

In practice, this means that there has to be proof of all the costs and they have to be controlled and attested to by the competent authority.

These deductions apply to rented property. They are not restricted to the income which is produced by the property, but are also relevant for the total taxable income. Or in other words, if the income from the historic property is negative the possible deductions reduce the other taxable income of the owner (§ 7 i Einkommenssteuergesetz).

The same ten-year deduction is also applicable on monumental property which is not rented but occupied by its owner (§ 10 f Einkommensteuergesetz). This is a double privilege for owner-used property because under German tax law, with a few small exceptions, an owner may not deduct expenses arising from the house he lives in. The second advantage of course is the extent of the deduction.

Finally, the ten-year deduction period for rehabilitation

costs also applies to historic buildings with monumental character which are neither rented nor used by their owners for living purposes if these buildings are opened to the public (for example a historic castle used as a museum) (§ 10 g Einkommensteuergesetz). The conditions for the application of these tax concessions are the same as in the case of a monument producing rental income.

The provisions cited also apply to buildings which do not by themselves possess monumental character but which form part of a monument area, if the building costs are necessary for preservation of the general appearance of the ensemble; in practice this generally means the costs of work on the façade and the roof of a building.

Maintenance costs incurred for a rented building, which are difficult to differentiate from rehabilitation or building costs and which usually mean smaller repairs, can be deducted from income tax in a period between two and five years instead of the normal deduction within one year (§ 11 b Einkommensteuergesetz). Maintenance costs occurring with owner-used buildings can be deducted in the same way as rehabilitation costs within a period of ten years.

Costs which are covered by non-repayable grants can, of course, not be deducted from taxes.

The loss of income tax due to these tax reliefs was estimated by federal government in 2001 to amount to 85 million Euro.

1.2 Donations for conservation

Donations made for the conservation and restoration of architectural and archaeological Heritage are recognised up to an amount of 10% of the total income as tax-deductible (§ 10 b Einkommensteuergesetz). Higher deduction amounts apply to donations made to foundations which include foundations working in the field of cultural heritage.

2. Other taxes

If the annual costs of a monument will regularly exceed the annual income from the property both real estate tax and inheritance tax can be reduced.

A complete exception from real estate tax is to be granted if costs exceed income consistently. Real estate tax is to be reduced if the income from the property is substantially lower than from a property with a building which is not protected (§ 32 Grundsteuergesetz).

Monuments are exempt from inheritance and donation tax if they have been within the owner's family for at least 20 years, if (again) the annual costs are higher than the income and if they are accessible to the public or, at least, to the scientific public for research. A tax reduction of 60% is granted for property which fulfills these conditions except for the 20 years of family ownership. These tax concessions are cancelled later with retroactive effect if the property is sold within 10 years after the date of inheritance or donation (§ 13 Erbschaftssteuer- und Schenkungssteuergesetz).

There used to be similar tax exceptions and reductions with property tax, as long as property tax was valid in Germany, which is no longer the case, although there is a political discussion of re-introducing property tax. With turnover tax there are no special regulations concerning monuments.

3. Value added tax (VAT)

Value Added Tax is a general tax applied to all commercial activities involving the provision of services and the production and distribution of goods. Ultimately it is borne by the final consumer as charge in percentage of the price of a good or a service. Because of this the height of VAT is a cost factor for the owner of a historic building when restoring such heritage.

In the European Union VAT is governed by European Law. It was introduced by First VAT Directive of April 11, 1967 (as amended) and has since then been shaped by a number of directives. Recently adopted VAT legislation includes Directive 2001/4/EC mandating that a minimum standard VAT rate set by member states must be 15%. Member states are obliged to transfer European Directives into national law. Thus each member state has its own VAT law and, given that the standard minimum VAT rate must be 15%, rates vary among member states. Also within the limitations of the Directives different rates may apply to different types of products and services.

In Germany the standard VAT rate is 16%, half the rate is applied to some products and services mainly those necessary for daily life like food, printed matters, cultural events etc. In 1999 VAT Directive 1999/85/EC allowed member states for a trial period of three years to introduce a reduced VAT rate on certain categories of labour intensive services, including the renovation and repair of private homes. In Germany (contrary to France where a reduced VAT of 5,5% was introduced) all efforts of conservationists and their lobby to reduce VAT for restoration work in the sense of the VAT Directive failed. Their main arguments that a reduced rate of VAT would stimulate an increase in repair activity which would not only be of incalculable benefit to the historic fabric of the land but also create additional job opportunities, reduce illicit or black labour and improve the housing stock did not convince the Federal Minister of Finance. He wanted first to see the results of the trial period. Now he

argues that the introduction of the reduced rate especially in France has shown that there was no positive effect on job creation and the reduction of illicit labour. As a result restoration and conservation work has been and will be taxed at the maximum German VAT rate i.e. 16%.

To conclude, let me say that I have given you the basics of the German tax regulations concerning monuments. I have omitted many details of these provisions, which make it complicated for an average tax payer to complete his tax return correctly. However, this system especially of income tax relief has proved very effective for the conservation and preservation of monuments, and it has been costly for the ministers of finance who regularly, that is within periods of 8 to 10 years, try to abolish these concessions. Of further help would be the reduction of VAT which however under the present strained condition of state finances will almost certainly not be introduced in the near future.

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Addendum

Single questions: Responses to specific requests for information on

1. State obligations

The administrative management and law enforcement lies within the responsibility of the Federal States. It is effected by a three tier administrative structure. The local monument authorities, located on county level or for self-governing cities on municipal level are primarily concerned with permit procedures for preservation measures involving a historic building and with establishing legal and necessary directives for monument protection in special cases. The intermediate monument authority is part of the State administrative office which is the appellate agency for cases involving permission or denial according to monument protection or building law. At the supreme level a ministry is the highest monument authority which is entrusted with general preservation politics. Besides this three tier structured administration in each State there are offices for the Preservation of Monuments which act as governmental expert authorities and which are involved in all procedures.

Some of the preservation laws of the German States contain general obligations for the State to give financial aid to monument owners. However, these obligations are subject to the annual State budget and the monument owner does not have a right to receive subventions. There are no fixed quotas of the State budgets for financial subsidies to monuments.

2. Mechanisms for preventing and sanctioning non-regulated interventions

The main mechanisms for preventing and sanctioning of non regulated interventions in cultural monuments and their environment are laid down in the State monument protection laws and in addition in the legislation for urban planning. A prerequisite for regulation interventions is the definition of monuments and their protected surroundings. Regulations for the listing of monuments are also found in the State monument protection laws. These laws also contain penalties in the form of fines for unlawful interventions.

3. Management and maintenance obligations and their enforcement

Regarding the management and maintenance of monuments the State monument protection laws enable the authorities to enforce the requirements of the law. The legal possibilities range from fining to expropriating an owner. However, in practice the enforcing obligations against an owner's will proves to be very difficult. Of course, an owner has the right to appeal against any measures taken by the authorities against him.

4. Mechanisms regulating conflicts between owners and governmental authorities

As with all measures taken by the State against a citizen citizens have the right to appeal against such acts. The appeal procedures are regulated by Federal Law and thus are the same for all sectors of governmental activities. The first appeal has to be addressed to the administrative authority responsible for the administrative act taken. If this appeal is unsuccessful the way is open to three instances of administrative courts.

5. Integrated conservation

Cultural heritage protection is integrated into a number of State and Federal laws, especially the legislation governing building and regional as well as urban planning, water ways, nature conservation, telecommunications etc.

6. Preservation and cultural tourism

There are neither general rules by which part of income from cultural tourism can be accumulated for conservation activities nor taxes on tourist activities for this purpose. However in individual cases state, communal or private owners use the revenues from tourists like entrance fees for the upkeep of historical buildings.

7. The role of NGOs in preservation

There are of course a number of NGOs active in the field of heritage in Germany like ICOMOS, Europa Nostra etc. Their status is that of non-profit making organisations and as such they are exempt from income tax. Their perception in public opinion and their influence is not too big. The reason for this is probably that almost all German states have their State Office for the Preservation of Monuments which is an independent expert authority practically acting as a lobby for the preservation of architectural heritage.

ANNUAL MEETING OF THE ICOMOS INTERNATIONAL SCIENTIFIC COMMITTEE
ON LEGAL, ADMINISTRATIVE AND FINANCIAL ISSUES (ICLAFI)

PLOVDIV, BULGARIA, MAY 2004

RESPONSE OF THE QUESTIONNAIRE
OF THE BULGARIAN COMMITTEE OF ICOMOS

P.L.Frier,
Professor of Public Law – France
Vice-president of the Legal Committee of ICOMOS

I FINANCING HERITAGE WORKS IN FRANCE

Besides the public expenses for cultural heritage, the main provisions relating to financing its protection and enhancement which originate from common law, stem from specific texts, many of which form part of the General Code of Taxes. It is important, here, to distinguish between "individual" historic monuments and ancient districts.

A/ HISTORIC MONUMENTS

French legislation (Code du patrimoine –Heritage Code- articles L. 611-1 et s) draws a distinction between **classified** monuments and **registered** monuments.

Monuments in the first category are in principle classified by the decision of the Minister of Culture. Classified monuments (of which there are some 14,000 in all) belong in two-thirds of cases to public bodies; they include a large number of religious buildings (more than half of the total), which are in general the property of the commune, except for cathedrals which are state property. All restoration work must be specially authorised by the ministerial department.

Monuments registered on the supplementary inventory of historical monuments are included as a result of a decision of the prefect of the region. There are around 26,000 such registered monuments (60% of which are privately owned), and in theory the only obligation incumbent on the owner is the declaration of any works to be performed 4 months in advance, while the only way of opposing the works open to the Ministry of Culture is to classify the property. However, a demolition permit is required for such registered monuments, and the permit can only be granted with the approval of the Department of Historical Monuments. In practice, works carried out on registered monuments are controlled quite effectively by the Ministry.

The financing of the maintenance and restoration of these monuments is based on two mechanisms.

1 Financing by public subsidies

First at all, there doesn't exist any obligation regarding the preservation of cultural monuments, neither in the constitution (which, until now, doesn't contain any regulation for environment policy), nor in the common law. The only solution is that Parliament adopts a "program-law", that means the State decides to spend some funds in the field, for example, of heritage, during 5 years. So certain amount of funds are allocated for the use by heritage during this period. For example, in 1988, Parliament voted in this kind of law. And, currently, a new draft is being prepared by the cultural administration.

There is, here, a very important difference in law between classified monuments and registered monuments.

1.1 Maintenance and repair works on state-owned classified or registered monuments are paid for directly by the Architecture & Heritage division of the Ministry of Culture, as regards the buildings placed under its responsibility (cathedrals and national palaces in particular).:

For the initial budget of 2003, the funds are 19 million Euros for maintenance (with a big effort to increase these credits) and 97 million Euros for restoration (with works on cathedrals accounting for a large proportion of this budget.), plus 42 million for exceptional operations for the Grand Palais, the Opera de Paris and Versailles.

In the case of monuments allocated to other ministries, or to other divisions of the Ministry of Culture, the amount corresponding to the restoration work performed under the control of the Historical Monuments Department is paid out of the repair and maintenance credits of the ministry or division in question.

1.2 But State intervenes also, helping the other owners for maintenance or restoration operations (private owners or municipalities property as, in the main case, churches) .

In the case of **classified monuments belonging to private individuals or public authorities** (communes, departments, regions, public institutions), maintenance and repair works may be performed directly by the owner with no state intervention other than the authorisation and control of works. In this case, no subsidy is given, although for private individuals, some tax breaks may be used (see below).

In most situations, however, the mechanism is as follows: the work is carried out with the state as the contracting authority (the Regional Conservancy of Historical Monuments, a state department, is in charge of the administrative and financial setting up of the operation, and awards the contracts, etc.); the works supervisor is, in the case of restoration works, the chief architect of the Historic Monuments Department (a civil servant architect, even though mainly remunerated by the owners who pay him a percentage of the amount corresponding to the works for which he holds the monopoly) or, in the case of maintenance works, the architect of the Buildings of France Department, a civil servant. In this case, the State may meet up to 80% of the cost (Decree of 17 March 1970), but in practice its financing is limited to 50% with part of the cost of the works being met by the local authorities (which is often the case for church restoration in small communes).

Works on **registered monuments** (Decree of 16 February 1969) are financed by their owner, with state aid of up to 40%. On average, state aid amounts to around 20% of the cost of the works.

In **2003**, the allocated budget is 13 million Euros for maintenance works and 102 million Euro for the restoration of classified or registered monuments which are not state property. But these subsidies (for registered or classified buildings) can be completed by other sums, for example from the region or the department (systematically in this case), or even by the European Community with some funds like Feoga, for the countryside, or Feder (fund for the regional development). So, for a private owner or a very small commune, the subsidies can reach around 80 % in the case of listed buildings.

The budget of the State (2003) for the maintenance and restoration of protected monuments (excluding operations paid for by State Ministries other than the Ministry of Culture) is thus in the order of 280 million Euros, with the spending of local authorities being around 80 % of this amount (240 million Euros), although no precise statistical data are available on this point. In total, a public budget in the order of 520 million (including archaeological operations and interventions in ancient districts, see below) is allocated to operations of this type in France.

If we add the expenses made by all the public bodies and the indirect costs (i.e. costs for civil service: 330 million Euros), the global effort of the nation for its building heritage is around one **billion Euros**. It represents 0.068 % of the national production. And, if we take only the State

expenses, that means 8 Euro per inhabitant, while the state spending for education is 1000 Euro per inhabitant, 489 for the social policy, 287 for security, etc.

2 Fiscal mechanisms

In the case of both classified and registered monuments, the regime under French law is identical as regards exceptional and derogatory tax mechanisms.

2.1 VAT

First at all, it's possible to examine the mechanisms of the **VAT regulation**. On this point of view, there doesn't exist a special system of VAT for works on historical buildings. For the last four years, we have, in France, a derogation, given by the commission of Bruxelles, for all the works of maintenance or restoration on housing. The VAT rate is only 5.5 %, and not, as for the normal rate, 19.6 %. But this derogation is not limited to historical buildings; it concerns all works on buildings which aren't new (more than two years). The French government has asked the commission of Bruxelles for the continuation of this derogation.

The only provisions, in the General Tax code, are for the works of conservation or restoration of the monument. The public subsidies received by public bodies, or by private juridical persons (if they are not profit-making) aren't submitted to VAT (articles 256 B et 261-7-1/b GTC). So this doesn't concern private owners and this solution isn't, actually, specific to this kind of funding: all the subsidies received by these bodies, even in other matters, are exempted.

But it exists some other provisions in the field of tax system

2.2 Personal income tax (General Code of Taxes, Articles 156, I, 3° and 156 II 1er ter, Articles 41 E to 41 J annex III).

The main mechanism concerns personal income tax, and thus applies to private owners.

This special tax regime is applicable in the same conditions to **both classified and registered historical monuments**.

Property-related expenses paid by the owner, after deduction of any subsidies granted by the Culture Ministry, are deductible from income. The expenses consist of the following:

- **maintenance** costs (for example heating expenses necessary for the conservation of wood panelling) and expenses incurred for the **repair or improvement of the monument**,
- guarding costs, local taxes, interest expense on loans, etc.

The following are excluded and are thus non-deductible: the cost of works which could be designated as construction, reconstruction or extension, such as the reconstruction of items which no longer exist, or the modification of the structures or carcass, etc. This solution obviously raises difficulties in that in some cases the restoration of the monument may involve conversions which return the building to its original state, or to a state deemed to be satisfactory from the viewpoint of art history, within the limits set by the Charter of Venice.

The tax advantages instituted by the General Code of Taxes are variable, depending on whether or not the property generates rental income for its owner.

A basic distinction must be drawn between two cases.

If the owner rents out his property, or if he has other property-related revenue (entrance fees), the cost of all works carried out with the agreement of the Historic Monuments Department may be deducted from the owner's rental income (which is the same solution as applies in common law for ordinary property). But the owner of the monument may also, if a deficit is made (the cost of works is greater than the rental income), deduct this deficit from his other income (which is not normally

possible in the case of ordinary property). Total taxable income is thus reduced by the amount of the works performed and of the costs borne.

It is in cases in which the **property is occupied by its owner, and generates no property-related or rental income** that the tax advantage is the greatest. In common law, an owner may not (other than within very small limits) deduct from his taxable income the expenses relating to works on properties which he occupies. In this case, on the contrary, he may deduct from his total taxable income all or part of the costs arising from the property in question:

- the net sums paid by the owner (excluding subsidies) for maintenance and repair works carried out or subsidised by the cultural affairs administration may be deducted in full.

The other property-related costs (unsubsidised works, guarding costs, interest on loans, etc.) are fully deductible from total revenue if the property is open to the public (50 days a year, including 25 legal holidays, from April to September, or for 40 days a year between the beginning of July and the end of September). If the monument is not open to the public, only half of the expenses incurred may be deducted from taxable income.

The total reduction in tax receipts resulting from the special regimes applying to the different cases is estimated at about 30 million Euro a year. This mechanism has been criticised as it only benefits owners who pay income tax (half of the French population), and its effect is proportionately greater if the owner's income is large. On the other hand, it enables a remarkable level of involvement on the part of owners, and means that public authorities don't have to bear alone the costs of protecting the heritage.

2.3 Corporation tax (Art. 39-4 General Code of Taxes, derived from the Law of 23 July 1987 concerning cultural patronage)

The legislation on historic monuments also includes some tax advantages for companies which are entitled by the law to include in their costs (thereby correspondingly reducing their taxable income for corporation tax purposes) expenses relating to "*operational needs and resulting from the purchase, rental, or maintenance of historical residences which are classified or registered (...)*". Thus a company can restore or rent historic buildings in order to use them as offices, for customer reception, or for the organisation of seminars or congresses.

2.4 Estate duties

Article 795 A of the General Code of Taxes (derived from the "Loi-programme" relating to the monumental heritage of 5 January 1988, completed by Decree no. 88-389 of 21 April 1988) stipulates that the owners of what are essentially classified or registered properties and of the personal goods which forms their historic or artistic complement are exempted from estate duties. The heirs must subscribe together with the Ministers of Culture and Finance to an agreement of unlimited validity which stipulates the maintenance inside the property of the exempted personal goods and the conditions of access of the public, maintenance and presentation of these personal goods. Thus, in the case of the most important chateaux, this mechanism prevents the **sale of monuments, the dispersion of collections and the dismantling of decoration**, which would otherwise have been necessary to meet very substantial estate duties. This is therefore another important fiscal derogation.

B/ PROTECTED ANCIENT DISTRICTS

The protection of historic districts is mainly based on two laws. Articles L.313-1 et seq. of the Town Planning Code, thus enabling the state to delimit **protected sectors** in the ancient districts with the richest heritage. In this case, the policy applied is a combination of protection and enhancement. For it is not only a matter of protecting properties but also of restoring these districts so that the inhabitants can live there in satisfactory conditions, while respecting the value of the

district in heritage terms. To this end, the state, after recommendation by the commune, draws up a protection and enhancement plan which specifies the properties to be conserved (thus also enabling the checking of works carried out inside the buildings) and sets out the general conditions for the evolution of the sector (protected properties and the applicable rules of restoration, which may even stipulate the demolition of certain parts to reconstitute gardens which no longer exist, or the lowering of roofs to return them to the original form, the organisation of public spaces, traffic and parking, etc.). Furthermore, provision is made for specific financing mechanisms.

The protected sectors, of which there are 95, covering over 6000 hectares in 2003, consist of the historic centres of the main cities of France (Nantes, Rennes, Lyon, Strasbourg, Lille, etc.) and smaller towns which have a particularly rich heritage (Vézelay, Pézenas, etc.)

Provision for **Architectural, Urban and Landscape Heritage Protection Zones (ZPPAUP)** was made by Heritage Code (art. L. 642-1 et seq). The original feature here is that the zones are set up by a joint decision by the state and by the commune: the two partners must reach an agreement on this point. For these Heritage Protection Zones, the state and the commune agree to adopt a graphic document which sets out the main evolution zones, and in this case also a set of regulations specify the constructional and aesthetic rules (for the external part of the properties only), and the organisation of space, in a manner complementary to the development plan established by the local authority. The Heritage Protection Zone concept is not principally associated with restoration operations, although there have been some recent developments in this direction.

There are around 400 such zones (covering over 17 000 hectares in 2003), most of them in smaller towns whose heritage is less rich than in the protected sectors, although some communes prefer to adopt this mechanism, as it is less complex than the sector approach.

The financing operates as follows:

1 Subsidies

State subsidies for one-off operations (refacing, partial restoration of a property not forming part of an OPAH program: Opah is an Habitat improvement operation with some subsidies by ministry of housing and local public bodies). On average, the 8 million Euro paid by year are very limited, because the special state spending (around 2.5 million Euro in 2003) are essentially used for studies of the protected sector, i.e. inventory of the ancient building and preparation of the protection and enhancement plan. On the other hand, local authorities - communes, or even departments or regions - often give aid (though no precise statistics are available) for works such as the restoration of facades, allowing for the extra costs made necessary by architectural considerations.

2 Fiscal mechanisms

The mechanism here is similar to that which applies to historic monuments. According to Article 156-I of the General Code of Taxes, an owner who rents out a property for a minimum period of 6 years (owner-occupiers are therefore not concerned) can deduct from his taxable income the property-related deficit resulting from a property restoration operation which he carries out or which he entrusts to specialist organisations. The property-related deficits correspond to the difference between the cost of the works carried out, as required by the protection plan or the declaration of public utility (see below), together with the other costs incurred in renting out the property, on the one hand, and the rental payments collected on the other hand.

Once this common base is established, there are differences in the mechanisms applied.

In protected sectors, once the protection plan has been made public (and is opposable to third parties) the owner may deduct from his taxable income, after obtaining a special authorisation issued by the state and distinct from the building permit which is normally issued by the commune, all the works carried out on his property, provided that they form part of the property's complete restoration and comply with the protection plan.

In Heritage Protection Zones (ZPPAUP) and in protected sectors, during the period from the delimitation of the sector up to the publication of the plan, the only costs which may be deducted are those for works which have been specially authorised and comply with the detailed programme of works declared to be of public utility by the state, in the frame of "property restoration perimeter". This declaration sets out, property by property, the complete set of restoration operations, which must be carried out.

These fiscal mechanisms therefore benefit only those owners who rent out a property, and their efficiency is all the greater if the owners have a large income. This approach has led to criticism for two reasons: should the mechanisms not be extended to include owner-occupants (often of modest means and elderly, who are unable despite certain aids to restore their dwelling), and should not other fiscal mechanisms be found, as around half of the French population does not pay any income tax?

However this mechanism (which can only operate in towns where the market for rented property enables the renting out of apartments at prices high enough to make this a profitable proposition for private investors) does play a major role: remarkably effective schemes have been carried out in Bayonne, and a major rehabilitation of ancient districts of Marseilles is now under way. The cost of the loss in tax revenue has been variously estimated at between (i.e. between 30m and 80m Euro, no precise statistics given by ministry of budget are available).

At the present time, there are some drafts for reforming these fiscal mechanisms, which seem to be very complicated. The Architecture and Heritage Division of the Ministry of Culture proposes, for example, to enlarge the fiscal mechanism in the ancient districts to the owner-occupiers because, in many towns, this sort of owners is the majority. The ministry also wants modify some of the local tax systems, for example to exempt from business tax classified or registered monuments, or reduce housing tax for private owners or business tax for companies in ancient districts. But these modifications are possible only with the agreement of the Ministry of Budget, due to the fact as this obviously entails receipt loss.

II OTHER QUESTIONS

A Questions 2 to 4

To respond to these questions, two mechanisms exist in France, at the present time.

It's often very difficult - even if many changes in the behaviour can be seen now - to convince the owner of an historic building or a building situated in an ancient district to maintain or restore his dwelling. For example, the owner can let his property fall in ruins or, on the contrary, carry out works on windows without respecting the use of the ancient materials: it means old wooden windows with old glass are replaced with plastic windows. It's very difficult to fight against this kind of problem.

However, for this kind of behaviour, the Heritage code or the criminal code does have provisions to reprimand these facts. When a person - it can be a private owner, or a company or even a public body - doesn't respect the Heritage code, fines can be imposed by law. For example the Heritage Code sanctions by a fine of 3.750 € the person who modifies without declaration or authorisation given by the Ministry of Culture a registered or a classified building. And the article 322-2 Criminal Code can punish, by a fine of 45. 000 E, someone who degrades or destroys an historical building (classified or registered). The fine can reach the sum of 300. 000 Euros (article L. 480-4 Urban Planning Code) when works are carried out without authorisation in the environment of a listed or a registered building. The same fine is imposed for works made, by infraction, in a protected sector or in a heritage protection zone (ZPPAUP).

But the fines aren't the most important thing: they are either not enough, or, on the contrary, too large sum. So courts hesitate to hand out these sanctions. Civil servants can, also, ask the criminal court to oblige the person who contravened to return building to its original state, or to carry out the work necessary to respect the character of the ancient house. For example, in the protected sector Faubourg Saint-Germain in Paris, some owners have been forced to destroy a lift made in the stair well in infringement and to reconstitute the original stair well.

On the other hand, if the conservation of a classified monument (and only classified monument) is seriously threatened by a lack of maintenance or repair, the ministerial department may issue the owner with formal notice to have the works carried out within a fixed period, with at least half the cost of the works being compulsorily met by the state. If no agreement is reached, the decision is taken by the administrative court, which determines the proportion each party must finance, with the share of the state not falling below 50% (Article L. 621-12 Heritage Code).

B Question n° 5

There exists, as we have seen before, many links between heritage law and other laws.

The schemes for the **territorial and economic development** must take into consideration the heritage protection easements, so it is impossible for example to decide to implant an industrial zone in the surroundings of an ancient protected building. In the frame of SCOT (territorial coherence Schemes), the public entity (group of communes) which it is made up of, cannot take measures which are a risk for cultural heritage because the prefect has some powers to impeach this kind of decision.

The heritage code is, also, in relation with the **environment code**, which concerns principally the protection of natural heritage. However, in some cases, the legal tool works for both cultural and natural heritage. For example, articles L. 341-1 and seq. of the environment code protect the sites, which can be natural sites such as the Mont Blanc, "mixed" sites like the Mont Saint Michel Bay (with protection of the abbey and its surroundings), or, even, only cultural heritage (like the 8 first "arrondissements" in Paris). In the same frame, the legislation on the regional natural parks permits the protection of landscape and the countryside but also of the significant elements of cultural heritage (like farms, mills, wash-houses, etc). So, for many zones, called in France "espaces protégés" (that means protected areas) the Ministry of Culture must work with the Ministry of Environment. Moreover, at the local level, the architect of the Buildings of France department intervenes for both Ministries.

For the links with **taxation, state budget and criminal law**, see above. In some cases, the heritage code recalls the main dispositions of other laws, so someone can find out all the articles which can be applied in the field of heritage. See for example article L. 623-1 Heritage Code which refers to the General code of Taxes: " The fiscal rules applied to movable or immovable goods are fixed by articles 32, 39, 156 et 795 A General code of Taxes ".

C Additional questions

1

There exists three mechanisms on this matter.

In *protected sectors*, especially, there is a very successful system of integrated conservation. In fact, the protection and enhancement plan is an urban plan, for the whole quarter, which takes into consideration all the data of an ancient city. That means this plan contains, obviously, regulations for the protection of historic buildings (destruction forbidden for example) but also regulations for the traffic, car parks, commercial policy and so on. This special plan fills replaces of the ordinary urban plan in the communes.

In a second case, the situation is quite different. In the *ZPPAUP*, the municipality adopts an ordinary urban plan but the regulation of the *ZPPAUP* is qualified as public interest easement. That means the ordinary urban plan cannot derogate these provisions. So the integrated conservation carried out by this co-ordination between the two tools.

In the last case, there isn't a specific plan on regulation for heritage. The only rules are the *easement for the environment of historic buildings* (within a radius of 500 meters around the monument). So the rules for urban planning are set up only by the local urban plan. But, at the level of the delivery of the building permit by the mayor, the architect of the Buildings of France department has to agree with the draft. So, he has a lot of power to control and protect the heritage. Due to this fact, the ordinary local urban plan has to take into consideration the protection of heritage, even it doesn't exist, at this level, the appropriate tool for integrated conservation.

2

There are, as you can imagine, many economic relations between preservation and cultural tourism, particularly in France which is the main touristic destination in the world (number of days spent in the country). However, there aren't any possibilities by which a part of tourism income can be given to the conservation activities. Often, the heritage department of the Ministry of Culture asks that some income should be given to enhance cultural heritage which plays a very important part in the success of French tourism, but without any effect. In the Environment Code, there is a kind of handing over of the money generated by tourism: every person who wants to go to a natural protected area (classified or registered natural site, or part of a national park, etc) located on an island close to the French coast has to pay a tax of 1,5 E. This sum is given to the public manager of the site for the preservation of natural heritage, or to the commune (article L. 321-12 Environment Code).

3

NGO's play a very important role in the mechanism of preservation, even we don't have as efficient a system as in England with the National Trust.

On one hand, the NGO's are represented in historical commissions, at both national and regional levels, which give to administrative authorities some advice for protecting or working on heritage. They are also consulted during the process of elaboration of the protection and enhancement plan in the protected sectors.

On the other hand, there are some fiscal mechanisms to help the NGO's and to direct some private funds to them. For example, in the General Code of taxes (article 238 bis) a company can have a tax reduction of 60 % of its payment within the limit of 5 % of its turnover when an NGO intervenes in the cultural or heritage field. For individual (article 200), the reduction can reach 60 % of its donation within the limit of 20% of the taxable income. So this kind of sponsoring can be very efficient for some operations on the unmovable or movable heritage.

To round up, there is the Heritage Trust (article L. 143-1 Heritage Code). Some companies give thus sums for it, and it is possible, with funds, generated especially by these tax reductions, for works carried out on, for example, restoration of convents or of small buildings disseminated on the Saint Jacques pilgrimage ways or along the Loire River (It can award a label to certain buildings, which are interesting from a heritage point of view, but which are neither classified, nor registered. In this case, with the agreement of tax administration, the owner can use the tax mechanism described above.

ANNUAL MEETING OF THE ICOMOS INTERNATIONAL SCIENTIFIC COMMITTEE
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P.L.Frier,
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For the initial budget of 2003, the funds are 19 million Euros for maintenance (with a big effort to increase these credits) and 97 million Euros for restoration (with works on cathedrals accounting for a large proportion of this budget.), plus 42 million for exceptional operations for the Grand Palais, the Opera de Paris and Versailles.

In the case of monuments allocated to other ministries, or to other divisions of the Ministry of Culture, the amount corresponding to the restoration work performed under the control of the Historical Monuments Department is paid out of the repair and maintenance credits of the ministry or division in question.

1.2 But State intervenes also, helping the other owners for maintenance or restoration operations (private owners or municipalities property as, in the main case, churches) .

In the case of **classified monuments belonging to private individuals or public authorities** (communes, departments, regions, public institutions), maintenance and repair works may be performed directly by the owner with no state intervention other than the authorisation and control of works. In this case, no subsidy is given, although for private individuals, some tax breaks may be used (see below).

In most situations, however, the mechanism is as follows: the work is carried out with the state as the contracting authority (the Regional Conservancy of Historical Monuments, a state department, is in charge of the administrative and financial setting up of the operation, and awards the contracts, etc.); the works supervisor is, in the case of restoration works, the chief architect of the Historic Monuments Department (a civil servant architect, even though mainly remunerated by the owners who pay him a percentage of the amount corresponding to the works for which he holds the monopoly) or, in the case of maintenance works, the architect of the Buildings of France Department, a civil servant. In this case, the State may meet up to 80% of the cost (Decree of 17 March 1970), but in practice its financing is limited to 50% with part of the cost of the works being met by the local authorities (which is often the case for church restoration in small communes).

Works on **registered monuments** (Decree of 16 February 1969) are financed by their owner, with state aid of up to 40%. On average, state aid amounts to around 20% of the cost of the works.

In **2003**, the allocated budget is 13 million Euros for maintenance works and 102 million Euro for the restoration of classified or registered monuments which are not state property. But these subsidies (for registered or classified buildings) can be completed by other sums, for example from the region or the department (systematically in this case), or even by the European Community with some funds like Feoga, for the countryside, or Feder (fund for the regional development). So, for a private owner or a very small commune, the subsidies can reach around 80 % in the case of listed buildings.

The budget of the State (2003) for the maintenance and restoration of protected monuments (excluding operations paid for by State Ministries other than the Ministry of Culture) is thus in the order of 280 million Euros, with the spending of local authorities being around 80 % of this amount (240 million Euros), although no precise statistical data are available on this point. In total, a public budget in the order of 520 million (including archaeological operations and interventions in ancient districts, see below) is allocated to operations of this type in France.

If we add the expenses made by all the public bodies and the indirect costs (i.e. costs for civil service: 330 million Euros), the global effort of the nation for its building heritage is around one **billion Euros**. It represents 0.068 % of the national production. And, if we take only the State

expenses, that means 8 Euro per inhabitant, while the state spending for education is 1000 Euro per inhabitant, 489 for the social policy, 287 for security, etc.

2 *Fiscal mechanisms*

In the case of both classified and registered monuments, the regime under French law is identical as regards exceptional and derogatory tax mechanisms.

2.1 VAT

First at all, it's possible to examine the mechanisms of the **VAT regulation**. On this point of view, there doesn't exist a special system of VAT for works on historical buildings. For the last four years, we have, in France, a derogation, given by the commission of Bruxelles, for all the works of maintenance or restoration on housing. The VAT rate is only 5.5 %, and not, as for the normal rate, 19.6 %. But this derogation is not limited to historical buildings; it concerns all works on buildings which aren't new (more than two years). The French government has asked the commission of Bruxelles for the continuation of this derogation.

The only provisions, in the General Tax code, are for the works of conservation or restoration of the monument. The public subsidies received by public bodies, or by private juridical persons (if they are not profit-making) aren't submitted to VAT (articles 256 B et 261-7-1/b GTC). So this doesn't concern private owners and this solution isn't, actually, specific to this kind of funding: all the subsidies received by these bodies, even in other matters, are exempted.

But it exists some other provisions in the field of tax system

2.2 **Personal income tax** (General Code of Taxes, Articles 156, I, 3° and 156 II 1er ter, Articles 41 E to 41 J annex III).

The main mechanism concerns personal income tax, and thus applies to private owners.

This special tax regime is applicable in the same conditions to **both classified and registered historical monuments**.

Property-related expenses paid by the owner, after deduction of any subsidies granted by the Culture Ministry, are deductible from income. The expenses consist of the following:

- **maintenance** costs (for example heating expenses necessary for the conservation of wood panelling) and expenses incurred for the **repair or improvement of the monument**,
- guarding costs, local taxes, interest expense on loans, etc.

The following are excluded and are thus non-deductible: the cost of works which could be designated as construction, reconstruction or extension, such as the reconstruction of items which no longer exist, or the modification of the structures or carcass, etc. This solution obviously raises difficulties in that in some cases the restoration of the monument may involve conversions which return the building to its original state, or to a state deemed to be satisfactory from the viewpoint of art history, within the limits set by the Charter of Venice.

The tax advantages instituted by the General Code of Taxes are variable, depending on whether or not the property generates rental income for its owner.

A basic distinction must be drawn between two cases.

If the owner rents out his property, or if he has other property-related revenue (entrance fees), the cost of all works carried out with the agreement of the Historic Monuments Department may be deducted from the owner's rental income (which is the same solution as applies in common law for ordinary property). But the owner of the monument may also, if a deficit is made (the cost of works is greater than the rental income), deduct this deficit from his other income (which is not normally

possible in the case of ordinary property). Total taxable income is thus reduced by the amount of the works performed and of the costs borne.

It is in cases in which the **property is occupied by its owner, and generates no property-related or rental income** that the tax advantage is the greatest. In common law, an owner may not (other than within very small limits) deduct from his taxable income the expenses relating to works on properties which he occupies. In this case, on the contrary, he may deduct from his total taxable income all or part of the costs arising from the property in question:

- the net sums paid by the owner (excluding subsidies) for maintenance and repair works carried out or subsidised by the cultural affairs administration may be deducted in full.

The other property-related costs (unsubsidised works, guarding costs, interest on loans, etc.) are fully deductible from total revenue if the property is open to the public (50 days a year, including 25 legal holidays, from April to September, or for 40 days a year between the beginning of July and the end of September). If the monument is not open to the public, only half of the expenses incurred may be deducted from taxable income.

The total reduction in tax receipts resulting from the special regimes applying to the different cases is estimated at about 30 million Euro a year. This mechanism has been criticised as it only benefits owners who pay income tax (half of the French population), and its effect is proportionately greater if the owner's income is large. On the other hand, it enables a remarkable level of involvement on the part of owners, and means that public authorities don't have to bear alone the costs of protecting the heritage.

2.3 Corporation tax (Art. 39-4 General Code of Taxes, derived from the Law of 23 July 1987 concerning cultural **patronage**)

The legislation on historic monuments also includes some tax advantages for companies which are entitled by the law to include in their costs (thereby correspondingly reducing their taxable income for corporation tax purposes) expenses relating to *"operational needs and resulting from the purchase, rental, or maintenance of historical residences which are classified or registered (...)".* Thus a company can restore or rent historic buildings in order to use them as offices, for customer reception, or for the organisation of seminars or congresses.

2.4 Estate duties

Article 795 A of the General Code of Taxes (derived from the "Loi-programme" relating to the monumental heritage of 5 January 1988, completed by Decree no. 88-389 of 21 April 1988) stipulates that the owners of what are essentially classified or registered properties and of the personal goods which forms their historic or artistic complement are exempted from estate duties. The heirs must subscribe together with the Ministers of Culture and Finance to an agreement of unlimited validity which stipulates the maintenance inside the property of the exempted personal goods and the conditions of access of the public, maintenance and presentation of these personal goods. Thus, in the case of the most important chateaux, this mechanism prevents the **sale of monuments, the dispersion of collections and the dismantling of decoration**, which would otherwise have been necessary to meet very substantial estate duties. This is therefore another important fiscal derogation.

B/ PROTECTED ANCIENT DISTRICTS

The protection of historic districts is mainly based on two laws. Articles L.313-1 et seq. of the Town Planning Code, thus enabling the state to delimit **protected sectors** in the ancient districts with the richest heritage. In this case, the policy applied is a combination of protection and enhancement. For it is not only a matter of protecting properties but also of restoring these districts so that the inhabitants can live there in satisfactory conditions, while respecting the value of the

district in heritage terms. To this end, the state, after recommendation by the commune, draws up a protection and enhancement plan which specifies the properties to be conserved (thus also enabling the checking of works carried out inside the buildings) and sets out the general conditions for the evolution of the sector (protected properties and the applicable rules of restoration, which may even stipulate the demolition of certain parts to reconstitute gardens which no longer exist, or the lowering of roofs to return them to the original form, the organisation of public spaces, traffic and parking, etc.). Furthermore, provision is made for specific financing mechanisms.

The protected sectors, of which there are 95, covering over 6000 hectares in 2003, consist of the historic centres of the main cities of France (Nantes, Rennes, Lyon, Strasbourg, Lille, etc.) and smaller towns which have a particularly rich heritage (Vézelay, Pézenas, etc.)

Provision for **Architectural, Urban and Landscape Heritage Protection Zones (ZPPAUP)** was made by Heritage Code (art. L. 642-1 et seq). The original feature here is that the zones are set up by a joint decision by the state and by the commune: the two partners must reach an agreement on this point. For these Heritage Protection Zones, the state and the commune agree to adopt a graphic document which sets out the main evolution zones, and in this case also a set of regulations specifying the constructional and aesthetic rules (for the external part of the properties only), and the organisation of space, in a manner complementary to the development plan established by the local authority. The Heritage Protection Zone concept is not principally associated with restoration operations, although there have been some recent developments in this direction.

There are around 400 such zones (covering over 17 000 hectares in 2003), most of them in smaller towns whose heritage is less rich than in the protected sectors, although some communes prefer to adopt this mechanism, as it is less complex than the sector approach.

The financing operates as follows:

1 Subsidies

State subsidies for one-off operations (refacing, partial restoration of a property not forming part of an OPAH program: Opah is an Habitat improvement operation with some subsidies by ministry of housing and local public bodies). On average, the 8 million Euro paid by year are very limited, because the special state spending (around 2.5 million Euro in 2003) are essentially used for studies of the protected sector, i.e. inventory of the ancient building and preparation of the protection and enhancement plan. On the other hand, local authorities - communes, or even departments or regions - often give aid (though no precise statistics are available) for works such as the restoration of facades, allowing for the extra costs made necessary by architectural considerations.

2 Fiscal mechanisms

The mechanism here is similar to that which applies to historic monuments. According to Article 156-I of the General Code of Taxes, an owner who rents out a property for a minimum period of 6 years (owner-occupiers are therefore not concerned) can deduct from his taxable income the property-related deficit resulting from a property restoration operation which he carries out or which he entrusts to specialist organisations. The property-related deficits correspond to the difference between the cost of the works carried out, as required by the protection plan or the declaration of public utility (see below), together with the other costs incurred in renting out the property, on the one hand, and the rental payments collected on the other hand.

Once this common base is established, there are differences in the mechanisms applied.

In protected sectors, once the protection plan has been made public (and is opposable to third parties) the owner may deduct from his taxable income, after obtaining a special authorisation issued by the state and distinct from the building permit which is normally issued by the commune, all the works carried out on his property, provided that they form part of the property's complete restoration and comply with the protection plan.

In Heritage Protection Zones (ZPPAUP) and in protected sectors, during the period from the delimitation of the sector up to the publication of the plan, the only costs which may be deducted are those for works which have been specially authorised and comply with the detailed programme of works declared to be of public utility by the state, in the frame of "property restoration perimeter". This declaration sets out, property by property, the complete set of restoration operations, which must be carried out.

These fiscal mechanisms therefore benefit only those owners who rent out a property, and their efficiency is all the greater if the owners have a large income. This approach has led to criticism for two reasons: should the mechanisms not be extended to include owner-occupants (often of modest means and elderly, who are unable despite certain aids to restore their dwelling), and should not other fiscal mechanisms be found, as around half of the French population does not pay any income tax?

However this mechanism (which can only operate in towns where the market for rented property enables the renting out of apartments at prices high enough to make this a profitable proposition for private investors) does play a major role: remarkably effective schemes have been carried out in Bayonne, and a major rehabilitation of ancient districts of Marseilles is now under way. The cost of the loss in tax revenue has been variously estimated at between (i.e. between 30m and 80m Euro, no precise statistics given by ministry of budget are available).

At the present time, there are some drafts for reforming these fiscal mechanisms, which seem to be very complicated. The Architecture and Heritage Division of the Ministry of Culture proposes, for example, to enlarge the fiscal mechanism in the ancient districts to the owner-occupiers because, in many towns, this sort of owners is the majority. The ministry also wants modify some of the local tax systems, for example to exempt from business tax classified or registered monuments, or reduce housing tax for private owners or business tax for companies in ancient districts. But these modifications are possible only with the agreement of the Ministry of Budget, due to the fact as this obviously entails receipt loss.

II OTHER QUESTIONS

A Questions 2 to 4

To respond to these questions, two mechanisms exist in France, at the present time.

It's often very difficult - even if many changes in the behaviour can be seen now - to convince the owner of an historic building or a building situated in an ancient district to maintain or restore his dwelling. For example, the owner can let his property fall in ruins or, on the contrary, carry out works on windows without respecting the use of the ancient materials: it means old wooden windows with old glass are replaced with plastic windows. It's very difficult to fight against this kind of problem.

However, for this kind of behaviour, the Heritage code or the criminal code does have provisions to reprimand these facts. When a person - it can be a private owner, or a company or even a public body - doesn't respect the Heritage code, fines can be imposed by law. For example the Heritage Code sanctions by a fine of 3.750 € the person who modifies without declaration or authorisation given by the Ministry of Culture a registered or a classified building. And the article 322-2 Criminal Code can punish, by a fine of 45. 000 E, someone who degrades or destroys an historical building (classified or registered). The fine can reach the sum of 300. 000 Euros (article L. 480-4 Urban Planning Code) when works are carried out without authorisation in the environment of a listed or a registered building. The same fine is imposed for works made, by infraction, in a protected sector or in a heritage protection zone (ZPPAUP).

But the fines aren't the most important thing: they are either not enough, or, on the contrary, too large sum. So courts hesitate to hand out these sanctions. Civil servants can, also, ask the criminal court to oblige the person who contravened to return building to its original state, or to carry out the work necessary to respect the character of the ancient house. For example, in the protected sector Faubourg Saint-Germain in Paris, some owners have been forced to destroy a lift made in the stair well in infringement and to reconstitute the original stair well.

On the other hand, if the conservation of a classified monument (and only classified monument) is seriously threatened by a lack of maintenance or repair, the ministerial department may issue the owner with formal notice to have the works carried out within a fixed period, with at least half the cost of the works being compulsorily met by the state. If no agreement is reached, the decision is taken by the administrative court, which determines the proportion each party must finance, with the share of the state not falling below 50% (Article L. 621-12 Heritage Code).

B Question n° 5

There exists, as we have seen before, many links between heritage law and other laws.

The schemes for the **territorial and economic development** must take into consideration the heritage protection easements, so it is impossible for example to decide to implant an industrial zone in the surroundings of an ancient protected building. In the frame of SCOT (territorial coherence Schemes), the public entity (group of communes) which it is made up of, cannot take measures which are a risk for cultural heritage because the prefect has some powers to impeach this kind of decision.

The heritage code is, also, in relation with the **environment code**, which concerns principally the protection of natural heritage. However, in some cases, the legal tool works for both cultural and natural heritage. For example, articles L. 341-1 and seq. of the environment code protect the sites, which can be natural sites such as the Mont Blanc, "mixed" sites like the Mont Saint Michel Bay (with protection of the abbey and its surroundings), or, even, only cultural heritage (like the 8 first "arrondissements" in Paris). In the same frame, the legislation on the regional natural parks permits the protection of landscape and the countryside but also of the significant elements of cultural heritage (like farms, mills, wash-houses, etc). So, for many zones, called in France "espaces protégés" (that means protected areas) the Ministry of Culture must work with the Ministry of Environment. Moreover, at the local level, the architect of the Buildings of France department intervenes for both Ministries.

For the links with **taxation, state budget and criminal law**, see above. In some cases, the heritage code recalls the main dispositions of other laws, so someone can find out all the articles which can be applied in the field of heritage. See for example article L. 623-1 Heritage Code which refers to the General code of Taxes: " The fiscal rules applied to movable or immovable goods are fixed by articles 32, 39, 156 et 795 A General code of Taxes "

C Additional questions

1

There exists three mechanisms on this matter.

In *protected sectors*, especially, there is a very successful system of integrated conservation. In fact, the protection and enhancement plan is an urban plan, for the whole quarter, which takes into consideration all the data of an ancient city. That means this plan contains, obviously, regulations for the protection of historic buildings (destruction forbidden for example) but also regulations for the traffic, car parks, commercial policy and so on. This special plan fills replaces of the ordinary urban plan in the communes.

In a second case, the situation is quite different. In the *ZPPAUP*, the municipality adopts an ordinary urban plan but the regulation of the *ZPPAUP* is qualified as public interest easement. That means the ordinary urban plan cannot derogate these provisions. So the integrated conservation carried out by this co-ordination between the two tools.

In the last case, there isn't a specific plan on regulation for heritage. The only rules are the *easement for the environment of historic buildings* (within a radius of 500 meters around the monument). So the rules for urban planning are set up only by the local urban plan. But, at the level of the delivery of the building permit by the mayor, the architect of the Buildings of France department has to agree with the draft. So, he has a lot of power to control and protect the heritage. Due to this fact, the ordinary local urban plan has to take into consideration the protection of heritage, even it doesn't exist, at this level, the appropriate tool for integrated conservation.

2

There are, as you can imagine, many economic relations between preservation and cultural tourism, particularly in France which is the main touristic destination in the world (number of days spent in the country). However, there aren't any possibilities by which a part of tourism income can be given to the conservation activities. Often, the heritage department of the Ministry of Culture asks that some income should be given to enhance cultural heritage which plays a very important part in the success of French tourism, but without any effect. In the Environment Code, there is a kind of handing over of the money generated by tourism: every person who wants to go to a natural protected area (classified or registered natural site, or part of a national park, etc) located on an island close to the French coast has to pay a tax of 1,5 E. This sum is given to the public manager of the site for the preservation of natural heritage, or to the commune (article L. 321-12 Environment Code).

3

NGO's play a very important role in the mechanism of preservation, even we don't have as efficient a system as in England with the National Trust.

On one hand, the NGO's are represented in historical commissions, at both national and regional levels, which give to administrative authorities some advice for protecting or working on heritage. They are also consulted during the process of elaboration of the protection and enhancement plan in the protected sectors.

On the other hand, there are some fiscal mechanisms to help the NGO's and to direct some private funds to them. For example, in the General Code of taxes (article 238 bis) a company can have a tax reduction of 60 % of its payment within the limit of 5 % of its turnover when an NGO intervenes in the cultural or heritage field. For individual (article 200), the reduction can reach 60 % of its donation within the limit of 20% of the taxable income. So this kind of sponsoring can be very efficient for some operations on the unmovable or movable heritage.

To round up, there is the Heritage Trust (article L. 143-1 Heritage Code). Some companies give thus sums for it, and it is possible, with funds, generated especially by these tax reductions, for works carried out on, for example, restoration of convents or of small buildings disseminated on the Saint Jacques pilgrimage ways or along the Loire River (It can award a label to certain buildings, which are interesting from a heritage point of view, but which are neither classified, nor registered. In this case, with the agreement of tax administration, the owner can use the tax mechanism described above.

ANNUAL MEETING OF THE ICOMOS INTERNATIONAL SCIENTIFIC COMMITTEE
ON LEGAL, ADMINISTRATIVE AND FINANCIAL ISSUES (ICLAFI)

PLOVDIV, BULGARIA, MAY 2004

TAX CONCESSIONS IN THE FIELD OF PRESERVATION
OF CULTURAL HERITAGE IN ROMANIA

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I. The legal system of heritage protection

The legal system of cultural heritage protection consists of several domains:

- The domain of the protection of movable cultural heritage (national cultural heritage as used in legal texts)
- The domain of the protection of immovable cultural heritage (historic monuments as used in legal texts)
- The domain of the protection of documentary heritage (archives).

In what concerns international regulations in the field of cultural heritage ratified, approved or accessed by Romania the situation is the following:

UNESCO Conventions:

- The 1954 Hague Convention (including it's IInd Protocole) – since 1958
- The Paris 1970 Convention for the prevention and forbidding of the illegal export, import and transfer of cultural property, since 1993
- The 1972 Convention for the protection of World Heritage, natural and cultural, since 1990
- The UNIDROIT Convention, since 1997, and

European Conventions:

- The Cultural Convention, since 1993
- The Granada Convention for the protection of the European architectural heritage, since 1997
- The La Valetta revised Convention for the protection of the European archaeological heritage, since 1997
- The European Landscape Convention, since 2003.

The protection of cultural heritage is enforced by legal texts on three levels: laws (L) and similar (Governmental Ordinances – OG's or Emergency Governmental Ordinances - OUG's), governmental decisions (HG) and ministerial orders (OM). In the Romanian Constitution revised (2003) the protection of cultural heritage is not specifically mentioned but it's constitutionally backed up by Art. 44 par.1, 3, 5 and 7, reffering to the conditions of enjoying the property.

The main laws governing the cultural heritage preservation and enhancement are:

For the field of movable cultural heritage:

Law 182/2000 for the protection of national cultural heritage, modified by OG 16/2003 in order to comply with the EU regulation referring to cultural property export, complemented with Law 311/2003 of Museums and Collections, and GO 44/2000 approved thru Law 143/2001 for the establishment of insurance procedures for cultural property exported temporarily.

For the field of documentary heritage: Law 16/1996 of Archives.

For the field of immovable cultural heritage (historic monuments and archaeology):

Law 422/2001 for the protection of the historic monuments complemented with the OG 47/2000 for specific measures for the protection of Cultural World Heritage Sites in Romania approved thru Law 564/2001, and

Law 378/2001 for the protection of the archaeological heritage modified by Law 462/2003.

A specificity of the Romanian legislation related to historic monuments is the existence of several laws approving Governmental Ordinances referring to special measures to be taken for the rehabilitation of the cultural heritage of urban and rural areas, such as:

Law 203/2001 – Sibiu and neighboring rural area rehabilitation, Law 345/2001 – Sulina and neighboring rural and natural area rehabilitation, Law 344/2001 – Alba Iulia City Centre rehabilitation.

One might notice that due to the recent historic development of the Romanian democracy, the laws referring to the cultural heritage preservation are extremely recent. This is only partial true, as for example the first Law for the Conservation of Public Monuments dates back to 1892 and the first modern law protecting historic monuments was voted in 1919. Socialism issued it's own regulations in respect to the protection of artistic heritage and national cultural heritage based upon the principle of public ownership for almost everything. After the 1989 Revolution the socialist legislation was no longer complying with the new political reality so it has to be replaced by new instruments. Unfortunately the economic and social priorities, combined with a lack of experience in establishing new institutional structures for the preservation and enhancement of the cultural heritage lead to an important delay in issuing a new framework for the protection of cultural property.

II. Indirect financial aid through tax concessions

After the approval of the new Fiscal Code (December 2003) few of the tax incentives existing before that in Romania (or at least being mentioned by the legal texts concerning cultural property protection) are still operating.

Tax concessions to historic monuments apply in Romania in respect to the following taxes:

Inheritance Tax / Property Tax (0% for those inheriting or being donated a historic monument in need for restoration work and committing themselves to start the repairs in the 12 month to come).

Local taxes: Building Tax (0% for the historic monument having no commercial use).

The following tax incentives were operating until the approval of the new Fiscal Code:

1. Taxes feeding the Central Budget

0% VAT for restoration work to historic monuments (from 01.06.2002)

0% Inheritance Tax / Property Tax, since 1992

Income Tax: Deductibility of 100% of restoration costs from the fiscal income base for private owners of non-commercial used historic monuments (on a 5 year scheme of 20% deductibility), since 2001.

2. Local Taxes:

Land Tax: 0% for the area occupied by an historic monument, reduced up to 50% for the rest of the non-built area of the historic parcel, since 1992

Building Permit Tax: 0% for all repair and restoration work to historic monuments, since 1992

Building Permit Tax: reduced by 50% in the protection areas of historic monuments, since 2001

A new provision encouraging sponsorship towards cultural heritage preservation NGO's is established by the Fiscal Code: any individual can direct 1% of its income tax to an NGO.

Addendum

1. State obligations

The State and the local communities are obliged to conserve and maintain their properties listed as historic monuments. The state has no obligation to compensate the owner of a listed building for the supposed losses the listing might lead to.

2. Mechanisms for preventing and sanctioning non-regulated interventions

For preventing the illegal interventions law considers that non-regulated intervention at a listed building as a criminal offence (up to 3 years of imprisonment). The Penal Code sanctions the destruction of cultural properties with a penalty of up to 10 years of imprisonment.

Important fines are stipulated for offences related to archaeological sites (up to 12.000 Euro). The illegal destruction of archaeological remains is sanctioned with up to 5 years imprisonment.

The institutional mechanism of preventing and sanctioning illegal interventions on historic monuments or archaeological sites lies upon the monitoring and control of the State Inspection for Construction (county institutions under the authority of the Ministry of Communications, Tourism and Construction) and of the County Direction for the National Cultural Heritage (under the authority of the Ministry of Culture and Cults).

3. Management and maintenance obligations and their enforcement

The owners of historic monuments are obliged to properly maintain and conserve their property. The failure of assuring proper maintenance might lead to fines or, in extreme situations, to compulsory purchase of the property. There are no examples of compulsory purchase decided lately in this respect. In order to insure that the owner has the necessary information about how to manage and maintain his property, the County Direction for the National Cultural Heritage issues for every monument a document called "Duties for the proper use of the monument". The content of the "Duties..." was recently established by a Ministerial Order nr. 2684/2003, so there is no enough experience on that to comment.

4. Mechanisms regulating conflicts between owners and governmental authorities

The recuperation of nationalized properties lead to an important number of historic monuments being again in private ownership. The original owners wherefrom the State has nationalized the property are either dead or abroad. The economic interest of the new owners lead in many cases to

the request for either substantial alterations or even de-listing. Without causing many open conflicts (only up to ten cases are or were on trial today all around the country) the situation reaches a certain dimension as more and more request for de-listing in view of demolition are registered. The institutional mechanism of regulating the conflicts between owners and authorities lies upon the administrative appeal and upon the administrative court (when the plaintiff is the citizen) or upon criminal or civil courts (when the State is the plaintiff).

5. Integrated conservation

Integrated conservation is still an empty concept for many communities and local authorities in Romania. The term integrated conservation is to be found in several strategic documents related to planning, is preached at seminars or in regional strategies related to regional sustainable development whereas in the majority of places and communities there is no co-ordination between conservation, planning, social and economic policies (where such policies exist and are implemented). An important number of legal instruments containing the principles of integrated conservation were issued: Law 5/2000 for the approval of the protected areas of national natural and cultural interest, Law 350/2001 on Urbanism, Law 378/2001 on the Protection of the archaeological heritage, Law 203/2001 about Sibiu and neighbouring rural area rehabilitation, Law 345/2001 about Sulina and neighbouring rural and natural area rehabilitation. The link between the natural and cultural heritage is also present in the provisions of Law 462/2001 upon Protected Natural Areas.

The recent signing of the European Landscape Convention (2003) witnesses that at the top legislative level integrated conservation has numerous valuable provisions. The problem is that integrated conservation principles are valuable and useful as methodological approaches when conservation really happens. Or besides examples like Sibiu City Centre Rehabilitation Program, Oradea High Street Revitalization Project or Baia Mare Millennium Business Centre there are no other medium or large-scale projects in which integrated conservation should play any role at all.

The central authorities didn't succeed in pushing integrated conservation ahead by actually supporting local authorities in central/local partnerships in which the objectives assumed thru planning and the opportunities of the cultural heritage to attract businesses and improve the quality of life. The continuous decrease of public expenditure in historic building conservation (3 times less in 2003 than in 2000) affects the Ministry of Culture and Cults credibility in promoting initiatives or maintaining the momentum of the local initiatives in cultural heritage rehabilitation.

Moreover, the backing by the Minister of Culture and Cults of dubious initiatives like Dracula Park, Rosia Montana/Alburnus Maior Mining Project or recently the Bucharest Carol Park Cathedral Project leaves no much hope that at administrative top level integrated conservation is ahead political interest. This is proved by the lack of results in the rehabilitation of Bucharest historic core or by the very few local initiatives to promote the local cultural heritage, where there is no foreign push towards that. Small town initiatives for making the most of their cultural heritage in a perspective of sustainable development like the initiatives of Giurgiu, Calarasi, Ramnicu Valcea receives very little support from the central authorities.

6. Preservation and cultural tourism

Recently a wide partnership was established between the National Association for Rural, Cultural and Ecological Tourism and the Ministry of Culture and Cults, from one side, and a number of NGO's working in the field of cultural heritage preservation in Transylvania. There is no much experience on that co-operation so conclusions are hasty. The consciousness of the importance of the cultural heritage for tourism is often mentioned by authorities but no study was ever made upon how and how much the cultural heritage brings to tourism.

7. The role of NGOs in preservation

An interesting phenomenon about the involvement of NGOs in preservation is to be mentioned from the start: the decrease of the financial and fiscal involvement of the State and especially of the Ministry of Culture and Cults makes more visible the real dimension of the NGOs' activity in the field. In the last years the number of conservation projects ran by NGOs was steadily increasing and the financial means employed by heritage trusts or associations reached a figure of almost 30% of the state expenditure in conservation, meaning some 1 Milion Euros. There are some areas, like the SE Transylvanian Saxon Villages near Sighisoara, where important cultural heritage sites are actually managed, maintained, revitalized and restored by several NGOs with important foreign support and very little State contribution. In this respect, the new Fiscal Code provision about the possibility of each taxpayer to direct 1% of its income tax to NGOs will surely improve the situation.

ANNUAL MEETING OF THE ICOMOS INTERNATIONAL SCIENTIFIC COMMITTEE ON
LEGAL, ADMINISTRATIVE AND FINANCIAL ISSUES (ICLAFI)

PLOVDIV, BULGARIA, MAY 2004

RESPONSE OF THE QUESTIONNAIRE

 Thomas Adlercreutz
Sweden

I. Tax concessions and VAT

In general there are no tax concessions geared to the preservation of cultural heritage items in Sweden. Public economic assistance to owners of such items is distributed by authorities through a grant programme, available mainly to holders of *protected historic buildings* and – to a lesser extent - to rescue archaeology and maintenance of archaeological sites. However, there are some tax rules which may be used to mitigate unusually high maintenance costs, and there are also other tax devices which – though this is not the main objective - in certain cases may serve heritage properties favourably.

Income tax

Income tax rules differ according to source of income: employment, commercial enterprise or capital. For property which generates commercial income, e.g. rental fees, all costs related to acquiring the income may be deducted. Someone who lets a historic property may thus deduct costs for maintaining it, e.g. replacing a faulty slate roof, even to the extent a modern material may be cheaper. Depreciation is also deductible.

A private home, however, is under another tax regime. As no income is supposed to be generated from a private home, there is nothing to deduct from. To the extent there is also capital income, interest rates on mortgage may be deducted, but not costs for maintenance and repair. The owner therefore is compelled to cover these costs with already taxed income.

In order to help defraying costs for the upkeep of some excessively maintenance demanding private homes, special provisions were introduced in 1995. These make it optional to treat a private home as a commercial rental property, meaning that maintenance costs and depreciation may be deducted. The prerequisites are that the building in question for tax purposes has been classified as a private home on an agricultural estate, that the building was erected prior to 1930 and that its dwelling space exceeds 400 m². Certain other prerequisites have to be met as well. If the owner wants to be taxed under these provisions, he will also have to declare a fictive income corresponding to the assessed rental value. It is up to the owner to choose which rules are favourable to him, and he may also change back the next year. When the property is sold, however, certain corrective measures will have to be taken in order to assess taxable capital gain.

Wealth and Property Tax

Sweden operates a dual taxation system with regard to assets in real property. The foundation is a schedule for assessing – based on real market transactions - and officially determining for each property its taxable value (corresponding to 75 % of market value). The taxable value serves as a basis for property tax (1 % on dwellings, 0,5 % on commercial properties) and will also – together with other

forms of taxable wealth – be subject to wealth tax (1,5 % of taxable net assets). Debts related to taxable assets are deductible. Commercial properties are exempt from wealth tax, but many Swedes with a private house will find that the taxable value – minus mortgage – will still be high enough to induce wealth tax, which – when property tax gets added – will cause an annual outlay of 2,5 % of the value (without any income having been generated off the property)!

The system for assessing taxable property values makes some allowance for the fact that protected properties will encounter unusually high maintenance costs due to e.g. an obligation to preserve original building materials and techniques. A decrease in the market value resulting from such high maintenance obligations, should influence the taxable value.

The system for determining taxable values also makes an exception for properties which serve certain public functions. Among the exempted properties are churches, school buildings, theatre buildings, communication buildings, museum buildings and buildings for public administration. Many of the exempted properties harbour heritage qualities, and may thus be said to enjoy a more favourable tax status than others. This, however, is not the directly intended effect of the tax system.

Value Added Tax

The Swedish VAT system falls under the same general directives as apply to all other European Union member states. This means that turnover for residential purpose is not under VAT. Therefore input tax on maintenance costs cannot be deducted from any output tax. Sweden has not opted for applying a low VAT rate to cultural heritage buildings.

Not-for-profit associations are exempt from VAT. To a certain extent this is to the detriment of any business operation they may choose to run in order to finance their activities, as input VAT on goods and services for the operation will not be deductible.

II Legislation

Statutory protection of historic vestiges has long standing in Sweden. In 1666 a royal proclamation with the force of law placed under royal prerogative "old monuments and antiquities". It became prohibited to interfere with vestiges, such as they could then be perceived, which reminded of the greatness of the forebears, particularly those of royal ascent. Graves, stones with runic inscriptions, ruined buildings and similar obvious remains of the past became forbidden to tamper with.

A number of legal instruments have since been developed and replaced by others, but the core of the legal message has survived: The physical elements of the cultural heritage should be preserved. If necessity dictates interference with a monument, then the extent of alterations should be determined and monitored by the authorities and the vanishing elements carefully recorded. To a great extent these principles have been adhered to. There has been, however, a difference in attitude towards remains of what has already been abandoned and has lost economic importance, and structures which still have a viable function in society. The former have been easier to preserve. Rules protecting the archaeological heritage have therefore been adopted earlier than rules protecting architectural values. The architectural values of church buildings have, however, enjoyed supervision of the secular authorities even before the days of the royal proclamation.

The safeguarding of the cultural heritage has primarily been a responsibility for the State, today the government (Ministry of Culture) and its agencies. These agencies are the National Heritage Board and the cultural heritage departments of the twenty-one County Administrations. Local governments gradually have been entrusted with - and become interested in - legal responsibilities, particularly with regard to the architectural values of the built environment.

The statutory framework for protection of heritage values consists of several acts of Parliament, supplemented by government regulations. The main statutory instrument is the *Cultural Monuments (etc.) Act* (SFS 1988:950). This act covers archaeological monuments and sites, listed historical buildings, ecclesiastical heritage, and cultural objects (export/restitution).

The *Environmental Code* (SFS 1998:808) - in force as of 1 January, 1999 - proclaims as one its aims the protection and care of valuable natural and cultural areas. It provides inter alia for the establishment of cultural reserves.

The *Planning and Building Act* (SFS 1987:10) provides legal tools for primarily the local governments (290 local government districts) in looking after cultural values. This act contains rules as to how the cultural heritage should be identified and safeguarded in planning procedures and in the screening of planning applications.

Cultural Monuments per se

The *Cultural Monuments Act's* introductory provision holds that protecting and caring for Sweden's cultural environment is a responsibility to be shared by everyone. Primarily it is the County Administrations, which have to fulfil this task within their respective twenty-one regions. Surveillance at the national level is entrusted to the National Heritage Board, a central government agency. The act covers archaeological monuments and sites, listed historical buildings, ecclesiastical heritage, and cultural objects (export/restitution).

Archaeological monuments and sites are protected directly by law. No administrative order is necessary. The extent of protection is determined in the act by a list of protected categories of archaeological remains. Following this list, a comprehensive inventory of the country has resulted in a nationwide register of ancient remains kept by the National Heritage Board and available at each Country Administration. Most monuments in the register have also been noted on official maps, now under successive digitalisation.

Anyone with the intention of using land where archaeological remains may be affected must consult the County Administration as to extent and importance of protected remains. All physical interference with protected remains needs permission by the County Administration. If permission is given, it is generally on condition that the applicant pays for archaeological investigation and documentation. If the protected remains were entirely unknown at the start of the operation; the State bears responsibility for archaeological costs. An applicant may appeal refusals to grant permission to the Government, and may contest decisions regarding archaeological costs in a court of law.

The Act also covers *portable archaeological finds*. These are defined as objects which have no owner when found, and 1. are discovered in or near an ancient or site and are connected with it, or 2. are found in other circumstances and are presumably at least one hundred years old. The former accrue to the State when found; the latter accrue to the finder. A finder, however, must invite the State to acquire objects which consist 1. wholly or partially of gold, silver, copper, bronze or other copper alloy, or 2. of two or several objects, which may be presumed to have been deposited together. The National Heritage Board determines matters of how much should be paid. Compensation must be reasonable and cover at least the value of the metal plus one-eighth of that value, i.e. 112,5 percent. The Board's decision may be appealed in an administrative court of law.

The use of *metal detectors* is generally banned, and not just on ancient monuments and sites. There are, however, exemptions, e.g. for the National Heritage Board. Military and public authorities may use detectors in the course of their activities when searching for objects other than ancient finds. The

County Administrations may also license individual use, e.g. in the search for lost objects, for hobby purposes, and to amateur archaeologists.

Offences may render ~~penalties~~, ranging from a maximum of four years' imprisonment to fines. In addition to penalties, offenders may have to pay damages for repair, reconstruction or archaeological investigations necessitated by the offence.

Under the Cultural Monuments Act, *historic buildings* can be protected by listing, done by the County Administrations. Parks and gardens and other amenities of historic interest can also be protected. Examples of such amenities are mines, jetties, walls, ramparts, moats, lime or iron ore kilns, mills, wells and bridges. In recent years a railroad and a canal have been added to the list of historic 'buildings'.

Only the 'elite' of culturally important buildings etc. should be protected under the Cultural Monuments Act. Other buildings of cultural eminence can be protected under the Planning and Building Act.

The Cultural Monuments Act is not applicable to buildings owned by the State, but with that exception, the question of who owns a historic building is not relevant to whether it may be listed. Thus buildings held by local governments may also be listed. State owned buildings and other structures could be protected on order of the Government under a special regulation (SFS 1988:1229), issued by the Government. The National Heritage Board is responsible for the administration of this regulation.

Protective orders will specify what provisions apply to a listed building with regard to demolition, alteration and upkeep.

If necessary, the protective order may cover an area adjoining the building to ensure that this area be kept in such a condition that the appearance and the character of the building will not be jeopardised.

The County Administration may try an issue whether a building ought to be listed as a historic building either on application, or *ex officio*. The right to apply for a listing is open to everyone.

Pending listing, the County Administration may prohibit temporarily any measures that might lessen the cultural value of a building; most notably it may stop an imminent demolition. Even before a listing procedure has started the County Administration may also order a owner of a culturally valuable building to notify the Administration of any plans that he may have of demolishing the building or change it in a way that seriously might jeopardise the cultural values. After having been notified by the owner of such plans, the County Administration has a month to decide whether to act or not on the issue of listing. During this time, the owner may not go through with his plans.

Owners and other holders of buildings to be listed will have to be consulted and the protective order should as far as possible take into consideration to the use of the building and holders' reasonable designs for the building. The protective order must not overly burden the holder with obligations that are not intrinsically necessary to safeguard the cultural value of the building. However, a listing can be done regardless of holders' consent.

Non-consenting property holders may claim compensation for adverse effects of listing, but there is a threshold of economic damage that must be passed before owners become eligible for indemnification. Very serious restrictions to the use of property caused by the listing of a building, gives the owner the right to call for expropriation of the property. He will the receive compensation for its market value, and will also have his own costs for litigation in a real property court covered by the State.

Once a building has been listed the protective order is meant to govern its continuing upkeep and care. However, it is possible for the holder to apply for permission by the County Administration to make

changes to the building contrary to the protective order, if he can claim special reasons. Permission may be granted on condition that the change is made in accordance with specific directions and that the owner records the state of the building before and during the work that will change it. If listing causes an obstacle, inconvenience or costs out of proportion to the importance of the building, the County Administration may change the protective order or revoke protection altogether.

A breach of the protective rules for historic buildings may lead to consequences of different kinds. The County Administration may issue injunctions for restoring damaged buildings, enforced by contingent fines. There could also be penalties. These, however, could not exceed a fine.

It should be noted that great architectural value *per se* of a building does not make it eligible for protection according to the Cultural Monuments Act. In the preparatory works it has been pointed out that architectural value may influence on the applicability of the Act, if fitted into a historical context. Some time ought to elapse before this context becomes apparent. Thus it is virtually out of the question to list a very recent building, regardless of its outstanding architectural qualities as judged contemporaneously.

The local governments have a greater range of action, through the planning legislation. They may protect recent buildings with great architectural value. On the other hand, the importance of age should not be overestimated. Bauhaus-architecture as well as the more prominent building features of the 1940's and 50's are now beginning to be considered eligible for listing.

The ecclesiastical heritage is regulated in the Cultural Monuments Act insofar as it belongs to the Church of Sweden (formerly the established national church). An earlier system of general State control of all construction works on church buildings has been replaced by a system in which the act is applicable only to 1. church buildings and church sites built or laid out before 1940, or later if listed by the National Heritage Board, 2. cemeteries laid out before 1940, or later if listed, and 3. furnishings of historic value of a church or a cemetery regardless of age. The concept of a cemetery includes secular cemeteries and cemeteries of other denominations than the Church of Sweden. It also includes buildings on a cemetery and other immovables or movables. Protection is *ipso lege* and no further administrative action need be taken.

No church building or church site may be changed in any considerable way without the County Administration's permission. Normal or urgent repair may, however, be carried out without approval. The act states that material and methods are to be chosen with regard to the cultural values in question. Furnishings must be kept safe and in good repair. Every parish has to keep a list of all furnishings with cultural value. If an object belongs to, or is kept by somebody else, it shall be noted in the list. A listed item - which is not in private ownership - must not be disposed of, deleted from the inventory, repaired or altered, or removed from a place where it has been for long without the County Administration's permission. The County Administration is also authorised to inspect furnishings and add them to the list, and to take into custody furnishings in order to protect and care for them.

The Cultural Heritage in Planning Law

Whereas the aims for preservation of the built heritage and all procedural rules regarding planning, building permission and demolition permission are to be found in the *Planning and Building Act*, the *Environmental Code* is superior in the sense that it contains material rules for determining the use of land and water areas, so as to maintain the environmental standards laid down in the code. This code encompasses provisions for most activities that may affect the environment. It lays down general rules of consideration, which have to be respected by individuals as well as by the public administration. Cultural values are protected by the code in several ways.

The code catalogues fundamental requirements for the use of land and water areas. Areas, which are of importance owing to natural or cultural values or to outdoor recreation, shall, as far as possible, be protected against measures which may be substantially damaging to these values. If an area harbours values of *national* importance, the requirement is stricter: then the area *shall* be protected. In addition, the code contains certain geographical delimitation of large zones, especially along the coastline and around lakes and rivers, where the natural and cultural values are defined to be of national importance.

The effect of these provisions is that not just individuals, but also the public authorities, e.g. a local government in applying its planning powers, *must* refrain from taking damaging measures in an area of national importance. Decisions contrary to this can be cancelled.

The *Planning and Building Act* also contains material rules for the use of land and water areas, rules which have to be implemented in the broader framework of the Environmental Code. The Planning and Building Act gives local governments a wide degree of autonomy in regulating planning and development within their respective 290 districts. One of the aspects of which the Act is subordinate to the Environmental Code is that the State – represented by the 21 County Administrations – may intervene in planning procedures, e.g. if an issue of *national importance* according to the Environmental Code has not been duly considered. Areas delimited to be of such importance due to cultural value should therefore be safeguarded from damaging development.

The Planning and Building Act provides for protection of cultural values in several modes. It contains *general requirements* for buildings and other structures and for sites and public spaces. These state that alteration to existing buildings and structures shall be carried out with care so that characteristics are preserved and constructional, historical, environmental and architectural values are taken into consideration. Buildings which are particularly valuable from a historical, environmental or artistic viewpoint, or which are a part of an area of this kind, may not be disfigured. All buildings should be kept to preserve their characteristics as far as possible. Buildings, which are particularly valuable, shall be maintained in such a way that their characteristics will be preserved. These general requirements should be met in all decision-making under the Act.

There is no explicit rule in the Act that forces the local governments to identify which buildings fall into the category of being 'particularly valuable'. It is, however, inherent in the whole planning system that the local governments should try to sort this question out, so that various planning devices become effective and owners alerted.

To further this and other ends the act holds that every local government must adopt a *comprehensive plan*, covering its entire district. A comprehensive plan shall note the main aspects of the proposed use of land and water areas, the local government's view on how the built environment should be developed and preserved. It should further describe how the local government intends to take into consideration national interests and qualitative norms under the Environmental Code. A comprehensive plan, however, is not binding on either public authorities or individuals.

Binding regulation of land use and of development is done through *detailed development plans*. Alternatively, *area regulations* may be adopted, if needed to achieve the purpose of the comprehensive plan or to safeguard national interests. With these two planning instruments a local government can regulate how new development should be implemented and to what extent existing structures may be changed. It can rule on building heights, materials, exterior designs and colours etc. The local government may also adopt provisions, which in several respects affect the preservation of cultural values. It may e.g. decide to what extent building permission and demolition permission is needed for individual projects. It may further prohibit demolition of buildings and structures altogether, and lay down provisions for how buildings of particular cultural value shall be preserved.

Regardless of whether a demolition prohibition has been decided upon in advance in a plan or an area regulation, the local government may refuse applications to demolish buildings, which are particularly valuable. It could even be claimed that a local government must not grant permission for the demolition of buildings with these qualities.

Decisions under the Planning and Building Act can be appealed against to the County Administration, and further either to the government or to an administrative court of law.

Historic Landscapes

The *Environmental Code* introduced a legal concept parallel to nature reserves: the *cultural reserves*. These can be set aside by the a County Administration or - subject to delegation - by a local government in order to protect areas which are valuable due to cultural influence. Use restrictions necessary to ensure the purpose of the reserve may be issued, such as prohibitions to erecting buildings, fences, storage etc., or against digging, mining, felling etc. A property holder may also be bound to endure the construction of roads, parking facilities, public footpaths, sanitary installations etc. within the reserve. The fact that an area may contain buildings or other elements already protected by the Cultural Monuments Act does not prevent the area from being set aside as a cultural reserve.

Decisions to set up cultural reserves can be appealed, either to the County Administration or to the government.

Property holders whose current use of land is affected by a cultural reserve are entitled to compensation from the State or local government provided their rights are considerably impeded thereby. Compensation is, however, not payable for damage to the extent it falls below the threshold. If restrictions are severe, an owner could also call for expropriation at market value of the property. Unresolved questions regarding compensation can be tried by a real property court.

Offences against restrictions imposed in cultural reserve may render a penalty of a fine or up to two years' imprisonment.

III Additional

The mechanisms for *integrating conservation* of a heritage entity with planning or other land use schedules have been described above. The fact remains that the system is far from flawless or easy to work with. The acts in question raise – as rightly they should – various concerns, which under each one of them may be satisfied a bit differently. Different agencies execute public responsibilities, e.g. the scrutiny of applications for permission and issuing of grants. The agencies may have to make different choices, and will also have to take into account possible economic consequences of their decisions. Local governments do not have access to a grant programme for preservation of the built heritage or historic landscapes. They may, however, have to face claims from owners seeking compensation for excess economic damages which may result from the use of otherwise lawful authority. The fact that the County administrations do have recourse to grants makes their preservation tasks somewhat easier, but they must take into account other circumstances which may be adverse to the cause of preservation. There is a lack of co-ordination in the screening procedures provided for in the three acts. A project, which for the landowner or developer seems integrated enough, may need permission from several authorities. For instance, a project which gets permission for its environmental effects under the Environmental Code or gets a go-ahead from the local governments building commission could be blocked by a refusal to grant permission under the Cultural Monuments Act. In many cases the fact that a project is rejected could be for the better from a heritage standpoint, but in the long run a smoother, more integrated procedure would command better respect and probably create greater resources for rehabilitating heritage properties.

A greater mode of integration between planning and heritage authorities has been examined many times in Sweden, and various proposals have fallen idly on the rock. For the time being a further enquiry is being conducted. Yet another enquiry has recently resulted in a proposal to co-ordinate the appeal procedures under the Planning and Building Act with corresponding procedures under the Environmental Code. Such co-ordination can only smoothen the running of the administrative mill, and will probably be enacted in a couple of years' time.

Like all business, *cultural tourism*, is also local. There is no national programme for the promotion or co-ordination of cultural tourism *per se*, although there is some monitoring at the National Heritage Board. However, there are very many local tourism projects around heritage sites and entities. These are often being supported by local or regional governments, but seldom run by them. Private associations and private sponsors are also vital factors in the promotion of heritage sites as magnets for tourism. The National Heritage Board runs a few sites of its own, and is also active as publisher of heritage guidebooks or other books or leaflets with the aim of interpreting the past of various sites.

There is no legislation in Sweden pertaining to *non-government organisations*, or not-for-profit associations as a somewhat more literal translation would have it. Any persons can set one up, and there is no registration. The prerequisites for having a not-for-profit association recognised as a legal person, rather than just loose partnership between a number of individuals, are few, viz. the following: There must be a charter, establishing basic rules, such as provisions for a board representing the association. There must in fact also be a board, consisting of living persons, or at least one.

With such simple pre-conditions it is not surprising that there are very many associations active for the promotion of various public good causes. Within the field of preservation the Swedish Association for Building Conservation should probably be mentioned first, both because of its breadth – it has many hundreds of members – its lobbying skills and its training programmes. This association enjoys some government grant-in-aid.

Many foundations also promote heritage matters. For foundations there is legislation, which regulates how a foundation must be set up and run in order to create security for endowed capital.

As has been stated before, there are no tax concessions for not-for-profit associations or foundations. Many causes which they promote are exempt from gift tax, but the donors are not, i.e. they cannot deduct gifts from taxable income.

ANNUAL MEETING OF THE ICOMOS INTERNATIONAL SCIENTIFIC COMMITTEE
ON LEGAL, ADMINISTRATIVE AND FINANCIAL ISSUES (ICLAFI)

PLOVDIV, BULGARIA, MAY 2004

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**I. PERUVIAN CULTURAL HERITAGE PROTECTION:
ADMINISTRATIVE AND LEGAL FRAMEWORK**

1. Administrative framework

The National Institute for Culture (INC) is the Peruvian institution in charge of both the promotion of arts and related manifestations and the preservation of Cultural Heritage in general. It includes the process of identification, researching, declaration, conservation and general management of cultural assets.

Peru has traditionally had a very centralized administrative system. INC, since created in 1971 had jurisdiction over the entire national territory. Formally it is qualified as a decentralized organism of the Education Sector, with technical, administrative, economic and financial autonomy. It had "departmental representations" at least in each one of the capital cities. These representations have been answerable in all aspects to the central offices, with seat in Lima, the Peruvian Capital city.

The Peruvian Constitution of 1993 establishes a new organizational system based on "Regional Governments" with *politic, economic and administrative autonomy in those issues under their competence*. This new political structure of Peru is being implemented. The process began in 2003. 24 Regional Governments were formalized and the first electoral process for Regional President has been held last year.

The administrative territorial unit is called "Region". Article 28 of Law 27783, *Ley de bases de la descentralización* (Foundations Law for Decentralization) defines regions as geo-economic territorial units, with a diversity of natural, social and institutional resources, integrated by historic, economical, administrative, environmental and cultural factors.

The Peruvian Constitution does not establish the competences of the new regional governments. It is the Organic Law for Regional Governments (27867) that establishes which competences are of exclusive regional level and which are shared between the central and regional government. Cultural diffusion and promotion correspond to the second group. However, there is not any specific reference to Cultural Heritage preservation. It has generated a national debate, still opened.

There are two different positions under discussion: the first one is represented by the current central administration of INC. In opinion of the main responsible of INC, culture is a key issue for national identity. It should be kept under the authority of a central power, with national capacities. It is presented as a necessity to guarantee the cultural understanding between different Peruvian cultural nations.

Mainly representatives of regional governments defend the second position. They sustain that being cultural manifestations inherent to each cultural group, the decision on those measures that have repercussion on cultural issues implies the dialogue with the actors and a very well founded knowledge of the cultural reality.

There is a tendency in favor of this second position. In fact, during the last month the management of the most famous Peruvian World Heritage Site, Machu Picchu, has been transferred to the Regional Government of the Inca's Region, jointly to the project COPESCO (promoted by UNESCO in 1970, COPESCO was initially a project devoted to South Peruvian cultural sites of tourist interest and currently continues as a general plan for tourist development in the region).

The central office of INC in Lima, and the Regional Institute for Culture in Cusco have always disputed the management of Machu Picchu, because of the importance of revenues generated by the tourist use of the Sanctuary.

As it was explained in the paper I presented in our last scientific meeting held in Paris, there are two factors to take into account: it is necessary to guarantee the technical and scientific management of Cultural Heritage property, and it is also necessary to have an efficient and well informed staff to taking decisions.

Because of its experience and its organic norms, INC counts with well-capacitated technicians and Scientifics, but not as much as necessary to attend all national problems. Furthermore, in many occasions their decisions have been disturbed by political reasons. It is also clear that the Peruvian geography makes necessary a decentralized management system. The central office in Lima has not the capacity to know by itself all the problematic of conservation.

However the new Regional Governments do not offer enough guaranties on their suitability to deal with cultural heritage issues. The former departmental representations of INC faced up serious problems related to insufficient staff and possibilities for contracting, budgetary limitations, and so on. The regionalization should be an opportunity to overcome this situation. Nevertheless, there is not reason to suppose that the new Regional Governments will be in conditions to overcome such situation in short-term. In our opinion, it would be necessary a progressive transference process, beginning with the qualification of the staff in charge of heritage management. It would be also necessary to establish competences to be kept by national government, such as those related to World Heritage Sites technical decisions. It is the State that assumes an international compromise when a cultural site is inscribed on the World Heritage List, and it is a state responsibility to accomplish the international guidelines. It does not mean that all decisions related to WHS should be centralized in Lima. But it is necessary to count with a national institution supervising the regional decisions.

In general terms, it should be always necessary to create a fluent coordination system.

2. Legal framework

- Peruvian Constitution of 1993. Article 21°. Contains a basic definition on cultural heritage and establishes as a public duty its general preservation, conservation and promotion.
- Law 24047. General Law for Cultural Heritage Protection. The purpose of this law is to protect national cultural heritage and cultural property in general against illegal destruction, modification, alteration, excavation, alienation, exportation or importation. However, it is necessary to say that this Law has been seriously discussed and criticized by specialists since its very beginning. In our opinion, it is a deficient legal text.

There has been presented numerous bills aimed on the necessity of a new and efficient legal system in substitution of Law 24047. We worked since 1995 to 2000 a proposal of Law. Nevertheless, political reasons have blocked initiatives until now. Currently there is a bill under discussion that will be commented in this paper.

- Law 24293: modifying articles of General Law 24047.
- Legal Decree number 25644: modifying articles of General Law 24047.
- Law 26576: modifying articles of the General Law 24047.

- Legal Decree number 635: Peruvian Penal Code. Articles 228-231 on Criminal Offenses against Cultural Heritage.
- Law 27244: Modifying articles 228-231 of the Peruvian Penal Code.
- Law 27580: Measures to be implemented by INC to protect cultural properties in case of public works or construction works.
- Law 27173: Forbidding that human remains so as cultural objects belonging to the archaeological complexes of "Sipan" and "Sican" be moved out of the national territory.
- Law 27721: Declaring of national interest the inventory, register, conservation, protection and diffusion of archaeological sites and zones.
- National Rules for Construction (Title IV: architectural heritage)
- Supreme Resolution 004-2000-ED: Rules of procedure for archaeological researches.
- National Directorial Resolution 047/INC, February 20, 1998. Rules for the application of fines and sanctions by damages against immovable historic or artistic heritage goods and not authorized works.

II. FINANCING CULTURAL HERITAGE CONSERVATION

To finance cultural heritage conservation is not a priority in non-developed countries in general. Peru is not an exception. The annual budget of INC is not enough to affront all the necessities and even the urgent interventions. Culture is not seen as a factor to promote development or to fight against poorness. Notwithstanding, the real participation of culture in the national budget of many countries is significant and tends to increase. So, there is evidence of the importance of culture for a sound economy. Cultural Heritage is the focal attraction to many tourists around the world, and now it is of universal acceptance that tourism is a key factor for sustainable development and economic growing.

The INC budget is considered among the budget of the Ministry of Education. Following the legal dispositions, the INC supply sources are: allotments assigned by the National Treasury; those assigned by special legal dispositions; bequests, donations and gifts; those incomes considered in national and international cooperation agreements; interests to bank deposit and any other incomes.

For the year 2001, the budget of INC was of 38 millions of Soles (aproximadely 6 million US dollars). 17 millions directly assigned in the National Budget and 21 millions.

It is of interest to underline that the main source of these funds is the Region of Cusco and its archaeological remains. It is because of the tourism visiting this famous city and the monuments of the region, including the Sanctuary of Machu Picchu.

The budget of INC is mainly used to cover fixed costs like personnel salaries and maintenance costs. Funds for researching works, restoration, and other activities are not enough.

Tax-relief and tax-exemption systems and cultural heritage

It is evident that one of the public ways to promote conservationism is through tax-relief or exemptions systems. By this way public responsibilities related to cultural heritage protection can be shared by civil collectivity. Tax-relieves can be addressed to help to the owners facing with conservation costs. This kind of benefits can also be an instrument to encourage enterprises and private institutions to assume direct or indirect responsibilities for cultural heritage and cultural development in general. It means a social compromise and help to consolidate social awareness. Public institutions working to protect heritage get by this way to share some of its tasks with civil society. So, it is possible to address public efforts to face with the most important cases, counting with private initiatives to promote conservation of other goods. It is also possible to get additional support to public efforts for most important monuments.

When evaluating the costs of tax-relief systems, it is necessary to weight up that benefits are not only for taxpayers. Taken into account the cost of works in cultural heritage that are assumed by private sector, and that in other way should be done by public institutions, it is possible to affirm that there is also an economical benefice for State. Furthermore, it is necessary to understand that, in situations where State is not in conditions of protecting cultural heritage, the loose of these goods is very sensible both in social and economic terms. Private action is an alternative to save them.

However, it is necessary that the specialized public services take care of controlling private participation. Tax allowance or exemptions must have the goal of improving conservation and not generating a privilege to cultural heritage holders or owners by themselves. It is clear that tax-benefit system must be inspired in social welfare and not private interests.

Peru has not a clear system of promotion of cultural activities and heritage conservation trough tax-deductions or a similar measure in its general taxation-system. Peru has counted with some specific dispositions tending to promote culture by mean of tax profits. However, this kind of rules has not been applied in an effective way and has been revoked principally following general economical politic guidelines given by the Ministry of Economical Affairs.

As the main issue of this scientific symposium is referred to "*Tax incentives and the VAT problems regarding financial initiatives in the field of preservation of cultural heritage*", we will try to make a presentation of Peruvian case following the next order:

Firstly, we will refer to the articles related to tax-deductions contained in Law 24047 (repealed)

As the second point, we will analyze other related normative text of interest.

Finally, we will present the related articles contained on the bill for substituting Law 24047, currently under revision in the Peruvian Parliament.

Law 24047

Tax-benefits contained in Law 24047 have been repealed in 1995. Additionally, the tax-benefits established by the said Law were planed to be in force only until December 31, 1999. So, even that if these dispositions would have not been repealed, it would not be in force nowadays.

The system contained in Law 24047 does not really seams to be a system designed to promote heritage conservation and its adequate management, but linked to some particular interests like those of private collectors and owners of cultural heritage goods. This miss-orientation makes difficult to defend the necessity of establishing a taxation-system for cultural heritage protection, or cultural promotion in general. A new scheme is to be inspired in the general interest of Peruvian society, promoting conservation actions and public access to cultural heritage as signal of identity.

Article 24 of Law 24047 was referred to general tax-benefits in favor of natural or juridical owner of movable and immovable cultural assets. It establishes:

- a) Exemption of any tax applicable to assets belonging to the national cultural heritage, even those requiring express exception.
- b) Deduction of 100% of restoration, management or maintenance costs in assets belonging to the national cultural heritage, as expenditures to calculate their net taxable incomes for Personal Incomes Tax. It is required a constancy of INC to apply for this deduction.
- c) Exemption of 50% of any tax applicable to the transference of property rights of assets belonging to the Peruvian Cultural Heritage, including sales tax or any other tax in force or future.
- d) Cultural assets will not be considered as sign of enrichment or asset increasing, so as to be exempted of taxes applicable to property, even those requiring express exemption.

- e) Buildings allocated to public museums or art expositions will pay the minimum tariff for public services.

Only item b, (and partially e), of the above transcribed could be understood as a tax deduction oriented to promote conservationism. The other ones did not imply any kind of duty of the owner of cultural assets benefited with the system.

However, article 24 of the same legal text, was well oriented when establishing that amount of gifts, donations and contributions for cultural heritage conservation, restoration and diffusion of its values, made by natural or juridical persons in favor of Central Government or Municipalities, were to be considered as expenditure to effect of calculating their net taxable incomes for Personal Incomes Tax.

Article 25 established a general exemption of any tax or tariff to cultural assets importation. As Peru is a Member State of the UNESCO Convention on the *Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property*, it is mandatory to fulfill all the disposal and compromises contained in this international text.

Article 7.i of the referred Convention establishes that the States Parties undertake: *to prohibit the import of cultural property stolen from a museum or a religious or secular public monument or similar institution in another State Party to this Convention after the entry into force of this Convention for the States concerned, provided that such property is documented as appertaining to the inventory of that institution.*

Article 27 of Law 24047 established a special regimen of preferential access to credit from public banks or associated banks for restoration of cultural immovable goods. However this disposition has not been putted into practice.

“Cultural centers” had a special tax regime. Article 28 of Law 24047 established the right of museums and private collections of cultural goods to be qualified by INC as cultural centers accomplishing the next requirements:

- a) To be recognized and authorized by the INC.
- b) To be opened periodical and frequently to public visitation
- c) To count with adequate means for cultural goods conservation
- d) To work on cultural diffusion and development

Supreme Decree 054-99-EF. Incomes tax

Supreme Decree 054-99-EF approves the ordered text of the Incomes Tax Law, regulating both the Personal Incomes Tax and the Corporate Incomes Tax. Its Chapter 4 contains the regime of exemptions and “unafectations”.

Foundations exclusively consecrated to activities of social interest, including culture, are enlisted among institutions that are not subject to Incomes Tax. Those foundations bound to pay Incomes Tax, will not pay it by funds exclusively allocated, among others, to cultural purposes.

Finally, incomes obtained from cultural performances, previously recognized by INC as of cultural interest, are not bound to Tax Incomes payments.



Legislative Decree 776. Municipal taxation system

Legislative Decree 776 contains the whole Peruvian Municipal Taxation System. Chapter I is referred to Property Taxes, including both rural and urban properties among the jurisdiction of each municipal government.

Article 17 establishes which institutions or persons are not bound to pay property tax and the conditions for being beneficiary of exemptions. Among these institutions are considered:

Religious organizations: are not bound to pay for those properties used as churches, monasteries and museums. In some cases those properties have heritage values.

Universities and educational centers officially recognized: are not bound to pay for its properties used for educational and cultural activities.

Additionally, Municipal Property Tax is not to be applied to those assets belonging to the Peruvian cultural heritage, allocated to housing or used as seat of nonprofit institutions, properly registered in the Municipal register of nonprofit institutions.

Bill: "New general law for cultural heritage protection"

Analyzing 15 different bills aimed in the necessity of a new legal system for Peruvian Cultural Heritage, the Peruvian Congress is working in a "New General Law for Cultural Heritage Protection".

We will make a brief reference to those articles proposing tax-benefits to promote cultural heritage conservation.

Article 38 of the bill propose the next measures:

- a) Costs of restoration and maintenance of assets belonging to the cultural heritage of the nation will be deducted in a 100% to effect of determining net taxable incomes for Income tax.
- b) Exemption of 100% of any tax applicable to the transference of property rights of assets belonging to the Peruvian Cultural Heritage, made in favor of INC, National Library or National General Record Office.

Both proposals seems to be in accordance to tax-benefits system goals. The second one is better than the one contained in Law 24047. It is logic that to transfer cultural goods in favor of public specialized institutions is very positive for national interests.

Notwithstanding, these proposals are not enough. It is necessary to include other criteria to promote cultural heritage preservation. I.e. a system to deduce amount of donations or gifts made to promote cultural heritage preservation from Incomes Tax should be included.

It is into force the Law 27889 creating a special Fund and Extraordinary Tax for Promotion of Tourism Development. This system is supported by the extraordinary tax of 15 US Dollars per traveler arriving to Peruvian Airports from outside of the country. We are referring to it, because this kind of initiatives promote developing and generate special funds for certain areas. Tourism is a key factor for Peruvian development. However, cultural heritage is a key factor for tourism in Peru. Tourism promotion implies first to guarantee cultural preservation.

The situation of cultural properties in Peru is really worrying. We have denounced it in different occasions. None of the Peruvian Governments during at least the last 15 years seems to be conscious of the importance of cultural heritage for Peruvian sustainable development. We are proposing that Peruvian Heritage should be declared under emergency. It would imply a very serious national and international planning to save Peruvian heritage. The destination of, at least an important percentage of the funds created by Law 27889 should be managed by INC or other specialized institutions on cultural heritage preservation. It is necessary also to guarantee the specialization for cultural goods management. So, those work related to cultural goods being promoted by the Ministry for Tourism should be in hands of cultural and not tourism institutions.

III. ADDITIONAL ITEMS

Mechanisms for preventing and sanctioning non-regulated intervention in cultural heritage

The Peruvian General Law for Cultural Heritage, 24047, disposes specifically that any kind of intervention directly or indirectly related to cultural goods declared as national heritage, shall be authorized previously by the National Institute for Culture. Any kind of permission authorizing such interventions, which has not been previously approved by INC, is null and void. The INC shall dispose the fines to be applied. It shall present penal denounces if there is evidence of the commitment of a crime against Peruvian cultural heritage.

Urban and rural development projects, those related to public works and private constructions or restorations, one way or another, related to cultural immovable assets shall be submitted by the entity in charge of said construction to the previous authorization of the National Institute of Culture.

Law 27580 on "Measures to be implemented by INC for the protection for cultural goods in case of publics or construction works". It establishes that INC shall authorize any kind of works directly or indirectly related to cultural heritage goods. Municipal license granted without this requirement are null and void.

The INC approval is necessarily prior to the beginning of works. Without exception, no license will be granted in a regularization way. INC shall initiate criminal actions against responsible of offenses to Law 27580.

INC is empowered to detain illegal works or those that are being executed without observing technical disposals made by INC when approving a project.

The Peruvian Criminal Code contains a special chapter typifying crimes and offences against cultural heritage.

Articles 226 typify as crimes not authorized exploration, dig or removal of archaeological pre-Hispanic sites. Custodial sentence from 3 to 6 years should be applied to the responsible of such acts. Article 227 is referred to those intellectual responsible or promoters of the said acts.

Articles 228 and 230 typify as crime acts of destruction, alteration, and illegal exportation or not authorized commercialization of cultural goods belonging to national cultural heritage. It is also typified the act of failing to return those cultural goods exported under temporal permission. The legal protection is applicable to all pre-Hispanic cultural goods. Cultural goods of other historical periods are under Criminal Code protection if they have been previously declared as belonging to Peruvian cultural heritage.

Mechanism for application of legal requirement to the owners of monuments of culture

Duties of cultural heritage owners or holders are not clearly established in current Peruvian legislation. It is a very old issue being discussed in academical and political spheres. Some specialist considerer that all cultural heritage goods are of public property. They only recognize limited rights to holders of heritage goods.

From a strict point of view, private property of cultural heritage goods is consecrated in the constitutional level. Law 24047 establishes some duties to private owners of cultural heritage properties. I.e. when transferring property rights of goods of a collection it is not allowed to subdivide such collection. Transference will include the entire collection or be not approved.

It is hereby declared as a public necessity to expropriate private cultural assets, whether movable or immovable, when being in serious risk of lost due to their abandonment, pillage, substantial deterioration or clandestine export.

**ANNUAL MEETING OF THE ICOMOS INTERNATIONAL SCIENTIFIC COMMITTEE
ON LEGAL, ADMINISTRATIVE AND FINANCIAL ISSUES (ICLAFI)**

PLOVDIV, BULGARIA, MAY 2004

**RESPONSE TO THE GENERAL SYMPOSIUM REQUEST FOR INFORMATION:
TAX CONCESSIONS, VAT PROBLEMS AND FINANCIAL INITIATIVES**

**Satu-Kaarina Virtala
Finland**

Concessions

Finland's building stock is young in European terms. More than 80 per cent of the buildings have been built since 1945 and only around 5 per cent of all building stock date back to before 1921. The most common building material is wood. The majority of Finland's built heritage is owned by private citizens. It is the owner's responsibility to take care of the condition and maintenance of his building, regardless of its value or age. As the obligations to the owners are the same for modern and heritage properties, the government has so far been very reluctant to grant any tax concessions to owners of heritage properties. The Finnish Government, supported by the Ministry of Finance, is of the opinion that taxation should be as neutral as possible and that economic decision-making should be supplemented with concessions only in exceptional circumstances. The taxation laws were passed with the purpose that the tax amount is not determined on whether the property is a heritage building or not, but whether it is a residential building or not. In some cases the principle of neutrality in taxation has been compromised for the purposes of public utility.

There are also few practical obstacles, the main one being that it is very difficult to define what kinds of buildings should be entitled to tax concessions. This problem arises because of the variety of inventories and the different levels of knowledge of the built heritage and the state of the heritage. The National Board of Antiquities makes inventories of historical buildings and sites, and municipalities also make inventories of buildings and sites, but mostly for urban planning purposes. In addition, regional councils make inventories, especially of the national and regional built heritage. These inventories are extensive and they form the bases for planning. The actual preservation of buildings is determined in the planning procedure. Thus in Finland, the built heritage is not listed in the same sense that it is, for instance, in Britain.

In the government's opinion, tax concessions should not be used for funding the maintenance or repair of the built heritage. Concessions would be against the general principle of taxation. Furthermore, experience has taught us to doubt the intended effects of concessions. Especially the benefits of deductions may be inexact and difficult to estimate and may not help the parties intended. The Ministry of Finance feels that the Finnish system is more modern than the systems which try to solve various problems in society with tax deductions. If the government wants to support the built heritage, the support should be directed to subsidies. Subsidies can be better estimated, controlled and monitored by experts and, consequently, the results of the overall use of government funds are optimal. Besides that, the advantage of direct support to the built heritage is that the amount of government resources used is known exactly. The money used for either subsidies or tax concessions is government money, or, in other words, taxpayer's money, and its use must be adequately controlled.

However, there are a few exceptions to the strict non-concession attitude. Subsidies for the built heritage granted by the government or a municipality are tax free according to the Income Tax Act.

The so-called donation deduction is also tax free if it exceeds 850 euros. Usually the recipient of this kind of deduction is a foundation whose purpose is to support the built heritage. There is also a new and quite functional system that allows households to deduct 1 150 euros per year from their income tax for repair and maintenance work on their residence. For a family with two incomes, the deduction is 2 300 euros. As the deduction is made from the tax owed and not from income before taxation, its effect is somewhat larger than it sounds. For minor repairs this system has worked well and it encourages people to do repairs in time and thus to better preserve the heritage and its authenticity. The government has plans to increase the deduction amount for the next year. The right to make deductions has been extensively applied, as it can be used for other domestic works as well. Originally, this deduction was created to increase employment.

A few years ago the European Union encouraged an experiment to use VAT deductions for maintaining the built heritage, among other things, but the Finnish government decided not to adopt this method.

A case study of concessions

During recent years unemployment has been a considerable problem in Finland. It is well known that building renovation is very labour-intensive. The Ministry of the Environment made a study of how tax concessions would influence the preservation of the built heritage and tax revenues. The study concentrated on two taxes, namely, real property tax, collected by municipalities, and VAT, collected by the state.

Under the current system, when an owner renovates a building the real property tax increases. The municipalities could, however, lower the real property tax for heritage property either temporarily or permanently, but they do not. The study's conclusion was that concessions in real estate taxes would have almost no influence on the preservation of the built heritage. This conclusion could be argued: unused outbuildings with heritage features are often demolished because the owners are reluctant to pay real estate taxes, no matter how low, on the buildings. The study showed that the real estate tax influences the cost of renovation by only about one per cent, which cannot be considered significant.

VAT for renovations is 22 per cent. The influence of a tax concession depends on the per cent of VAT, and would mainly effect prices of building materials and customer prices. The study came to the conclusion that even if VAT would be cut totally on minor buildings, which make up most of the built heritage buildings, the revenue loss would be low. On the other hand, a concession would mean that the loss of heritage properties per year would be cut in half as compared to the present situation.

Unfortunately, the study was somewhat limited in scope and several assumptions had to be made because of insufficient available data. For this reason, the study mainly addresses the question of revenue losses and does not discuss how the heritage property owners are likely to react to these losses. One of the assumptions in the study was that the owner considers demolition of the building in a situation when it should be renovated and is willing to use his building even if it is a little inconvenient for its intended use.

State Obligations

According to the Finnish constitution everybody has responsibility for the nation's cultural heritage. Additionally, people have the right to a healthy environment and the possibility to influence the decisions that concern their own environment; efforts to guarantee these rights are the responsibility of the public authorities. Primarily, urban planning is used to preserve the built heritage. The Land Use and Building Act regulates urban planning and construction. The government has approved national guidelines for land use that support and strengthen the general goals stated in the above-mentioned act. The guidelines are aimed at ensuring that issues of national interest are taken into

account in plans and projects at all levels and at implementing international conventions and commitments in Finland. The term monument is not used in the context of the built heritage and the focus of preservation is not monuments as such.

State-owned buildings are maintained in proper order based on budget allocations. The state owns only such buildings as are needed for its functions, except those owned by the National Board of Antiquities which are of historical interest. The expert authority on all matters concerning the built heritage is the National Board of Antiquities and its opinion must be obtained for any planning procedure affecting the built heritage. Additionally, its opinion is necessary for repairing the built heritage that is protected by a special act on the protection of buildings.

Mechanisms for preventing and sanctioning of non-regulated intervention

The Finnish legislation obligates government, local authorities and owners to take proper care of heritage properties. However, what is proper care is not always quite clear. Especially the local supervision authorities are in doubt whether to follow the regulations in the National Building Code strictly or to make amendments to the requirements concerning the built heritage. The Building Code itself allows amendments but supervision authorities are often hesitant to apply them and, more often, the owners are reluctant to use them as they feel that the modern code is easier to apply and has proven to be more economical.

The Ministry of the Environment is preparing to give regulations applying specially to the built heritage in the Building Code, but the work is just about to start and it will take some time to complete. There are questions concerning energy-saving building and repair work as well as insulating and ventilating the built property. Once again the problem is the lack of a clear definition of the built heritage.

A new feature in legislation is the system of demolition permits. A building cannot be demolished without a permit. The local authorities grant the permit on condition that the demolition will not destroy values pertaining to the heritage. The permit application must explain how the demolition work will be organized.

The state authority can, when a decision on the protection of a building is pending, prohibit any measures which may endanger the historical value of the building. The Act on the Protection of Buildings stipulates that the owner is not entitled to compensation for possible inconveniences or losses during that time. However, this year the Supreme Court decided that the Act violates the constitution and that the owner has the right to compensation even during the time the decision on protection is pending.

Mechanisms regulating management and maintenance

Buildings worthy of protection are for the most part owned by private citizens and firms. As is the case for all buildings, the management and maintenance rest with the owner. When the maintenance includes building activities, these activities are controlled by the municipal building committee which performs inspections to ensure that the building process fulfils the requirements of the legislation and which grants building permits. The building activities may be such that the opinion of the National Board of Antiquities is needed before the work is begun. Most often this requirement is mentioned in the urban plan, but, even if it is not, the municipal building committee can ask for the opinion of the National Board of Antiquities.

All building owners are responsible for maintaining buildings and their surroundings in a condition that meets the standards of health, safety and fitness for use at all times and does not cause environmental harm or damage to the beauty of the environment. In the use and maintenance of buildings protected under an urban plan or under the Act on the Protection of Buildings, the purpose of building conservation must also be taken into account.

If the proper maintenance is neglected, the local building supervision authority may order that the building be repaired or its surroundings cleared and cleaned. The local authority may also issue a decision requiring the owner to rectify the negligence within a specified period. This decision may be reinforced by a conditional fine or a threat that the action not taken will be taken at the expense of the owner. This also applies if the provisions or regulations issued by law are neglected.

Mechanisms regulating the relations between owners and the state

Urban planning is done by local authorities. The system is meant to be participatory, where all interested parties who may be affected by a plan are allowed to take part in the process. The state has no part in this. The state is the actor when buildings are protected under the Act on the Protection of Buildings, although the request for protection may come from the owner of the building or from a national or local interest group. The state authority may also start the process on its own initiative. The state's decision in favour of protection or not can be appealed to a court of law.

While the decision to protect the building under the special act is pending, the state authority can prohibit any measures which may endanger the historical value of the building.

When a building is protected under the special act and the owner is not interested in maintaining it properly, the state authority can order him to take the necessary measures to do so. The state authority can also have the necessary measures taken and require the owner to pay the expenses afterwards. During the last 20 years this has happened only once.

If the owner of a protected building cannot use it in a normal way or in a manner in which he gains reasonable benefit because of a protection order following a protection decision, he is entitled to receive full compensation from the state for any inconvenience or loss which is not of a minor significance. On the other hand, if the owner has to take separate measures to preserve the historical value of a building as a result of a protection order, such expenses are refunded from state funds. During the last 20 years the state has paid compensation twice.

This spring the Supreme Court gave decision that an owner has a constitutional right to full compensation for any inconvenience or loss that he has suffered during the time when a matter is pending with a state authority or in a court of law. At the moment, the Ministry of the Environment is in the process of amending the Act on the Protection of Buildings and this Supreme Court decision will also be taken into account.

Co-ordination with other laws

The Land Use and Building Act and the Act on the Protection of Buildings are the main acts to preserve cultural environments and the built heritage. The special act is usually applied in rural areas without land use planning and when land use planning cannot protect a building sufficiently. This situation may arise, for instance, when a building has considerable national importance or has valuable interior fittings.

Immovable archaeological remains are protected automatically, without special decision, by the Antiquities Act. This means that ruins and unused sites dating before the 20th century are protected. Churches of the Evangelical Lutheran Church of Finland are protected by the Church Act and all churches built before 1917 are protected by under this act. Additionally, the Church Council has protected about 50 other churches.

Furthermore, legislation on infrastructure and environmental and nature conservation and protection contain specific regulations aimed at protecting environmental and cultural values.

There is hardly any link to be seen between economic development and taxation, at least not any that is advantageous to the built heritage.

Under criminal law, offences against the built heritage are punishable.

Regulation of the management and establishment of integrated conservation

As mentioned above, the main instrument for preservation is spatial planning. Planning regulations define much of the way a building and its site are maintained and what permits are required for conservation work. The opinion of an expert body, like the National Board of Antiquities, is also often obligatory. If the building is protected by law, it has protection regulations given in the permit decision. The local authorities who are authorized to give a building permit for the conservation work also supervise the work. Conservation work is supervised by an expert body, if the building is state-owned or conservation work requires expert knowledge.

Economic relations in cultural tourism

In Finland cultural tourism is relatively minor and is not yet seen as a positive asset. Lately, however, the importance of cultural tourism has increased and its value on the national level has been recognised. Cultural tourism has been promoted on the regional and local levels through various programmes and projects. The economic results of these activities have encouraged some owners to improve their cultural properties and use part of their income for the work.

The role of NGO's in the preservation process

In Finland there are more than 400 local authorities who independently plan land use on a local scale through local master plans, which define land use patterns, and local detailed plans, which control construction. Special participation and assessment procedures are drawn up whenever a planning process is begun. Well-publicised open meetings must be organised as a part of the planning process, and these meetings give individuals and interest groups better opportunities for participation. Additionally, during the planning process inventories of the built heritage are being updated. The authorities have also set up web sites on the built heritage.

A local or national interest group can request the authorities to start the protection procedure for a building of cultural value. If a group has done so, it also has the right to appeal the protection decision.

NGOs –are active participants in the European Heritage Days celebrations and they arrange various events from walking tours to demonstrations of skill and lectures on maintaining the built heritage. The number of participants has increased every year.

During the last couple of years the government has given one interest group the task of granting subsidies from the state budget to community halls that are part of the built heritage.

ANNUAL MEETING OF THE ICOMOS INTERNATIONAL SCIENTIFIC COMMITTEE
ON LEGAL, ADMINISTRATIVE AND FINANCIAL ISSUES (ICLAFI)

PLOVDIV, BULGARIA, MAY 2004

RESPONSE OF THE QUESTIONNAIRE

Athina Christofidou
Greece

La Constitution Hellénique de 1975 (art. 24) impose à l'Etat de protéger l'environnement naturel et culturel et de prendre toutes mesures préventives ou répressives nécessaires pour sa sauvegarde. En ce qui concerne la protection des monuments, elle prévoit des mesures restrictives du droit de propriété, moyennant une indemnité des propriétaires.

Le Ministère de la Culture est l'organisme principal de protection de l'ensemble des biens culturels de la Grèce, immeubles, objets mobiliers et biens immatériels. D'après les dispositions de la loi 3028 de 2002 «Pour la protection des Antiquités et en général du Patrimoine Culturel», le Patrimoine culturel consiste en monuments anciens, monuments plus récents, sites archéologiques, sites historiques et biens culturels immatériels.

- On considère comme **monuments anciens** tous les biens culturels des époques préhistoriques, antiques, byzantines et post-byzantines datés jusqu'en 1830, y compris les grottes et les restes paléontologiques qui portent des indices de l'existence humaine. Les monuments anciens sont protégés par la loi, sans qu'il soit exigé de publication d'acte d'administration quel qu'il soit.
- On considère comme **monuments plus récents** les biens culturels datés après 1830, classés sur décision du Ministre de la Culture, qui est publiée au Journal Officiel.
- Par **sites archéologiques** on entend des étendues sur la terre ou sous la mer qui contiennent des monuments anciens ou qui présentent des indices de leur existence ou des étendues qui étaient des ensembles monumentaux, urbains ou des tombes, depuis l'Antiquité jusqu'en 1830, ou il y a des indices qui le montrent. Les sites archéologiques comprennent aussi l'environnement libre nécessaire entre les monuments conservés, leur permettant de s'inscrire dans une composition d'une unité historique, esthétique et fonctionnelle. Les sites archéologiques sont classés et délimités après décision du Ministre de la Culture, qui est publiée au Journal Officiel avec un plan topographique.
- On considère comme **sites historiques** des étendues sur la terre ou sous la mer, qui ont été le lieu d'événements historiques ou mythiques extraordinaires ou qui présentent des indices le faisant croire ou alors des étendues qui contiennent des monuments postérieures à 1830 ou qui présentent des indices montrant leurs existence, ainsi que des œuvres combinées de l'homme et de la nature. Les sites historiques sont classés après décision du Ministre de la Culture.

Pour la protection des monuments, au sein du Ministère de la Culture il y a des Directions Centrales à Athènes et un réseau de 86 Services Régionaux, qui se partagent la responsabilité de la protection du Patrimoine Culturel Grec selon des critères chronologiques et topographiques. Pour l'organisation des Services du Ministère de la Culture, les monuments sont divisés en trois grandes périodes historiques:

1. Les monuments de la préhistoire et de l'antiquité

2. Les monuments paléochrétiens, byzantins et post-byzantins jusqu'à la fondation du nouvel Etat Hellénique, à 1830
3. Les monuments postérieurs à 1830, qu'on appelle des monuments plus récents.

Les Services Régionaux chargés du patrimoine culturel ne dépendent d'aucun degré d'Administration Locale, mais directement du Ministère de la Culture.

Chaque intervention portant sur un monument immeuble ou sur ses abords, ainsi que tout ouvrage et tout activité dans un ensemble architectural conservé, un site archéologique ou un site historique est soumise à contrôle. Le Service compétent Central ou Régional du Ministère de la Culture donne l'autorisation de travaux, après consultation du Conseil des Monuments. L'autorisation paraît avant le permis de construire et ses éléments sont inscrits sur le permis sous peine d'annulation.

Parallèlement au Ministère de la Culture et en application de l'article 4 du Code de l'Urbanisme, le Ministère de l'Environnement, de l'Aménagement du Territoire et des Travaux Publics a la responsabilité d'une partie du Patrimoine Architectural. Dans ce cadre, il s'occupe d'un grand nombre d'ensembles architecturaux et de sites, ainsi que de certains bâtiments ayant une valeur historique, urbaine, architecturale, traditionnelle et esthétique. Il peut aussi sauvegarder des éléments du milieu bâti, comme ceux de l'équipement d'urbanisme ou l'usage d'un immeuble avec ou sans construction. Au sein du Ministère de l'Environnement, le Service Central responsable du Patrimoine Architectural est la Section des Villages Traditionnels, qui appartient à la Direction pour la Planification Urbaine. Au niveau local c'est le bureau d'urbanisme, fonctionnant au sein de la Préfecture ou de la Municipalité, qui donne l'autorisation d'interventions à un bien immeuble protégé, après consultation de la Commission de Contrôle Urbain et Architectural. Cette autorisation est liée au permis de construire.

De plus, le Centre de Préservation du Patrimoine du Mont Athos, personne morale de droit public contrôlée par le Ministère de la Macédoine et de la Thrace, est chargé de la protection des monuments du Mont Athos, tandis que le Ministère de la Mer Egée contribue à la protection des villages traditionnels de cette région maritime.

L'Etat Grec et l'Union Européenne au travers du Cadre d'Appui Communautaire financent les travaux sur les monuments historiques qui appartiennent à l'état, qui sont nombreux, étant donné que tous les biens immeubles antérieurs à 1453 appartiennent à l'Etat.

Mais une grande partie du Patrimoine Architectural (monuments anciens après 1453 et monuments plus récents) appartiennent aux propriétaires privés. Il s'agit surtout des immeubles d'habitation, dont le financement des travaux est presque exclusivement à la charge de leurs propriétaires. Les propriétaires sont obligés de s'occuper de la réalisation immédiate des travaux de conservation, de consolidation ou de protection d'un monument délabré sous l'inspection du Service compétent. S'ils n'agissent pas, le Service peut prendre les mesures nécessaires et leur imputer la totalité ou une partie de la dépense adéquate. Le secteur public ou les divisions d'administration locale sont obligés de couvrir la totalité ou une partie des dépenses ci-dessus lorsque:

- a. il s'agit d'un monument qui sera ouvert au public,
- b. son propriétaire ou possesseur n'est pas responsable des dommages subis par le monument,
- c. la situation économique du propriétaire ou du possesseur du monument ne lui permet pas de payer cette dépense.

Pour les travaux de conservation, de consolidation et de protection, les propriétaires des immeubles peuvent emprunter aux banques à des taux avantageux. De plus, la loi 3028/2002 « Pour la protection des Antiquités et en général du Patrimoine Culturel » prévoit la publication d'un décret présidentiel dans lequel on fixera les clauses, la procédure et les conditions préalables aux versements de subventions, de prestations ou d'autres aides économiques aux propriétaires ou aux

possesseurs d'immeubles qui ont été classés comme monuments par les dispositions des lois 3028/2002 et 1577/1985 «Règlement général de la Construction ». Ces dispositions ne concernent pas seulement les monuments indépendants, mais aussi les bâtiments qui appartiennent aux ensembles architecturaux classés, aux sites archéologiques et historiques.

Un régime spécial sur le plan fiscal existe pour les immeubles qui se trouvent dans la zone de protection d'un monument, d'un site archéologique ou d'un site historique, à laquelle la construction de nouveaux bâtiments est interdite. 50% de la valeur de ces immeubles est exonéré d'impôt.

Le 15% des taux des prêts pour des travaux de restauration, conservation ou mis en valeur d'un immeuble protégé, est soustrait du montant de l'impôt sur le revenu imposable de son propriétaire.

En plus, la loi extrait du revenu imposable:

- le somme payé pour l'assurance contre l'incendie ou autres risques, aussi que les dépenses faites pour l'entretien, la conservation ou la restauration d'un immeuble protégé, jusqu'au 30% de sa valeur locative.
- les sommes des donations à des Personnes Morales du droit Privé non spéculatives, qui travaillent au domaine de la Culture, jusqu' au 10% du revenu imposable total.

En ce qui concerne la T.V.A., la législation grecque ne prévoit pas des restrictions pour les travaux de consolidation, conservation et mis en valeur des monuments. Eux aussi sont chargés du pourcentage général 18%. Aux régions qui se trouvent aux frontières du pays ce pourcentage diminue en 13%.

Dans un pays riche aux vestiges du passé les sacrifices économiques demandés aux propriétaires des immeubles protégés sont graves. La législation prévoit le dédommagement du propriétaire pour la restriction de l'usage d'un immeuble protégé ou l'expropriation d'un monument pour des raisons archéologiques. Mais les avantages économiques accordés aux propriétaires des biens immeubles conservés, pour affronter les dépenses de leur restauration, sont insuffisants, ce qui entraîne une protection incomplète des bâtiments d'habitation, ainsi qu'un changement social en cas d'opérations globales dans les ensembles architecturaux. En conséquence, beaucoup des bâtiments d'habitation protégés par la loi se ruinent et quelques-uns d'entre eux «sont aidés» à se ruiner. Le changement d'usage a sauvé beaucoup de ces monuments. Des immeubles d'habitation sont transformés en petits restaurants ou en bistrots. Certains théâtres utilisent des immeubles néoclassiques ou des vieux lieux industriels pour leurs représentations. Des Compagnies du secteur privé ont installé leurs bureaux dans des monuments plus récents et un grand nombre des Services du Ministère de la Culture se logent dans des immeubles protégés. Il y a aussi des hôtels installés dans des espaces monumentaux. La loi pour le développement économique favorise la transformation des bâtiments protégés en logements touristiques et reconnaît les dépenses de consolidation, de conservation et de transformation du bâtiment protégé en hôtel, aussi que ceux des travaux nécessaires dans son milieu environnant.

Tous les cas cités ci-dessus entraînent le changement de l'usage initial et affectent la dimension immatérielle du monument. Mais en même temps ils conservent la «coquille» matérielle et l'image de l'ensemble. Pour un pays qui possède un Patrimoine de plus de 4.000 ans c'est peut-être la seule solution.

PROBLEMS RELATED TO THE NECESSITY TO DEVELOP NEW LEGISLATION REGULATIONS

1. **Formulating the State obligations regarding the preservation of the monuments of culture – administrative (a strictly defined national system for management and control, with its subjects and their respective functions and interrelations) and financial (with a fixed quota of the national budget).**

La Constitution Hellénique de 1975 (art.24) impose à l'Etat de protéger l'environnement naturel et culturel et de prendre toutes mesures préventives ou répressives nécessaires pour sa sauvegarde. En ce qui concerne la protection des monuments, elle prévoit des mesures restrictives du droit de propriété, moyennant une indemnité des propriétaires.

Le Ministère de la Culture est l'organisme principal de protection de l'ensemble des biens culturels du pays: immeubles, objets mobiliers et biens immatériels. Pour la protection des monuments, au sein du Ministère de la Culture il y a des Directions Centrales à Athènes et un réseau des 86 Services Régionaux, qui se partagent la responsabilité de la protection du Patrimoine Culturel Grec selon des critères chronologiques et topographiques. Pour l'organisation des Services du Ministère de la Culture, les monuments sont divisés en trois grandes périodes historiques:

- Monuments de la préhistoire et de l'antiquité («monuments anciens»).
- Monuments paléochrétiens, byzantins et post-byzantins jusqu'à la fondation du nouvel Etat Hellénique à 1830 («monuments anciens»).
- Monuments postérieurs à 1830 («monuments plus récents»).

Les Services régionaux chargés du patrimoine culturel ne dépendent d'aucun degré d'administration locale, mais directement du Ministère de la Culture. Il existe aussi des Conseils des Monuments, qui ont un rôle consultatif au niveau local pour toutes les questions qui concernent les monuments de leur région. Au niveau central il y a deux Conseils, qui ont aussi un rôle consultatif pour le ministre: le Conseil Archéologique Central, pour les monuments des deux premières périodes, et le Conseil Central des Monuments Plus Récents, pour les biens de la dernière période.

Parallèlement aux Services du Ministère de la Culture, le Ministère de l'Environnement, de l'Aménagement du Territoire et des Travaux Publics est, quant à lui, responsable du classement et de la protection d'une partie du patrimoine architectural, qui comprend principalement des ensembles architecturaux, des sites, ainsi que certains bâtiments conservés. Au niveau central la responsabilité est donnée à la Section des villages traditionnels de la Direction pour la Planification Urbaine, tandis que les services compétents locaux fonctionnent au niveau de la Préfecture ou de la Commune.

Les lois principales, qui assurent le classement et la protection du Patrimoine Architectural, sont:

1. La loi 3028/2002 «Pour la protection des Antiquités et en général du Patrimoine Culturel», qui concerne tous les biens meubles, immeubles et immatériels protégés par le Ministère de la Culture. D'après les dispositions de cette loi, le Patrimoine culturel consiste en monuments anciens, monuments plus récents, sites archéologiques, sites historiques et biens culturels immatériels.
2. Le Règlement Général de la Construction (L.1577/1985) qui concerne les biens immeubles protégés par le Ministère de l'Environnement, de l'Aménagement du Territoire et des Travaux Publics. Cette loi détermine les règles, les restrictions et les conditions de construire dans tous le pays, afin que l'environnement naturel, bâti et culturel soit protégé et que l'intérêt social soit servi. Son 4ème article, modifié par l'article 3 de la loi 2831/12/13-6-2000, est consacré à la sauvegarde du Patrimoine Architectural. Selon ses dispositions, les suivants biens immeubles, présentant un intérêt historique, architectural, folklorique, social et artistique, peuvent être protégés:

- des ensembles architecturaux et leurs abords
- des sites
- des bâtiments, des parties de bâtiments, des groupes de bâtiments, des éléments de leur environnement naturel ou bâti, ainsi que des éléments du milieu urbain
- de l'usage d'un immeuble bâti ou nu.

De plus, le Ministère de la mer Egée contribue à la protection des villages traditionnels de la mer Egée, tandis que le Centre de Préservation du Patrimoine du Mont Athos, personne morale de droit public contrôlée par le Ministère de la Macédoine et de la Thrace, est chargé de la protection des monuments du Mont Athos.

Il n'y a pas un fixe pourcentage du budget national accordé à la protection du Patrimoine. La sauvegarde, la restauration et la mise en valeur des biens immeubles protégés qui appartiennent à l'Etat sont financés par:

- le Budget National
- le Programme des Investissements Publics
- l'Union Européenne au travers du Cadre d'Appui Communautaire
- autres programmes européennes
- les revenus de la Caisse des Ressources Archéologiques (billets d'entrée aux monuments, aux sites archéologiques et aux musées, revenu de vente des magasins des sites archéologiques et des musées, droits de publications et de photographies etc.)
- 15% des revenus des loteries «LOTTO» et «PROTO».

D'autres organismes comme les collectivités locales, les évêchés, les conseils ecclésiastiques, les monastères, certaines associations culturelles, ainsi que des entreprises du secteur privé, peuvent aussi apporter une aide financière.

2. Development of mechanisms for preventing and sanctioning of non-regulated intervention in the monuments of culture and their environment, including also possible official offence during this intervention.

Toute personne qui découvre un monument ancien immeuble doit le déclarer sans retard à la plus proche autorité archéologique, policière ou portuaire. La déclaration doit préciser l'emplacement exact du monument et tout autre détail utile. La loi prévoit une récompense pécuniaire, dont la valeur est fixée en fonction de l'importance du monument, de la contribution de celui qui le déclare à sa découverte et à sa sauvegarde.

Chaque intervention portant sur un monument immeuble ou sur l'espace environnant est soumise à contrôle, comme:

- la conservation, la consolidation, la reconstitution, la restauration
- la formation de l'espace environnant
- la réorganisation ou le changement de l'usage
- la mise en place d'une toiture de protection (en cas de ruines archéologiques)
- l'enfouissement (dans le cas de ruines découvertes après des fouilles)
- le déplacement de tout ou partie d'un monument
- le prélèvement des sculptures, des peintures murales, des mosaïques ou d'autres éléments d'un monument immeuble qui sont indissociables, lorsqu'on estime que c'est absolument nécessaire pour leur sauvegarde matérielle

- la restauration des sculptures, des peintures murales ou d'autres éléments décoratifs faisant partie intégrante d'un monument immeuble
- la démolition totale ou partielle. Elle concerne des cas exceptionnels, lorsque la conservation du monument dans son ensemble ou en partie est estimée irréalisable par un Comité de cinq personnes
- la démolition des bâtiments qui sont antérieurs aux 100 dernières années ou l'exécution de travaux, pour lesquels il est exigé un permis de construire, même si ces immeubles n'ont pas été classés monuments
- les activités de construction ou tout autre travail exécuté aux abords d'un monument, comme l'exploitation d'une carrière, l'acquisition de matériaux de construction, les opérations de recherche de minerais, l'exploitation des mines, la délimitation des zones d'extraction à ciel ouvert, l'installation d'industries, la mise en place d'installation de télécommunication ou autres.

Tout ouvrage et toute activité sur un ensemble architectural conservé, sur un site archéologique ou sur un site historique est soumis à contrôle. Il en est ainsi pour:

- la construction de nouveaux bâtiments
- la reconstitution de bâtiments délabrés
- la démolition des bâtiments existants, qui ont été caractérisés délabrés
- la réalisation de tout ouvrage sur des bâtiments existants, dans les espaces libres privés et dans les espaces communs
- l'utilisation d'un bâtiment ou des espaces libres
- l'exploitation d'une carrière, l'acquisition de matériaux de construction, les opérations de recherche de minerais, l'exploitation des mines, la délimitation des zones d'extraction à ciel ouvert, l'installation d'industries, d'artisanat ou d'entreprises commerciales, la mise en place d'installations de télécommunication ou d'autres activités de ce type
- la culture de la terre, l'élevage, la chasse et d'autres activités de ce type
- la pêche, le mouillage, les activités sous-marines, l'exécution de tout sorte de travail portuaire en cas de sites archéologiques maritimes.

Le Ministre de la Culture, après consultation du Conseil des Monuments compétent, donne les autorisations concernant la réalisation des travaux ci-dessus aux monuments, aux ensembles architecturaux et aux sites, qui sont régis par les dispositions de la loi 3028/2002. Ces autorisations précèdent et constituent la condition préalable à la publication du permis de construire.

Le Service qui donne son autorisation peut intervenir au cas où la conservation du bien protégé paraît compromise et peut arrêter les travaux immédiatement en alertant les autorités policières locales. En cas de violation des dispositions de la loi les autorités policières, ainsi que toute autre autorité publique, de même que la Municipalité, sont tenus de fournir toute l'aide nécessaire aux Services du Ministère de la Culture pour appliquer la loi et pour imposer des sanctions.

En cas de besoin urgent pour éviter un danger immédiat et grave, le propriétaire d'un monument classé peut réparer les dégâts sans l'approbation prévue par la loi, à la condition que les travaux nécessaires ne modifient pas les structures de construction et l'esthétique du monument et que le Service compétent du Ministère de la Culture soit immédiatement et entièrement informé. Le Service compétent peut interrompre les travaux, si les clauses citées ci-dessus ne sont pas respectées.

La loi 3028/2002 prévoit des amendes ou des peines d'emprisonnement, selon la gravité de cas, pour les personnes qui exécutent des travaux illégaux sur des monuments, à leurs abords ou dans des sites protégés.

Pour les monuments qui sont protégés par la loi 1577/1985 «Règlement général de la construction» les travaux sont approuvés par les Services du Ministère de l'Environnement, de l'Aménagement du Territoire et des Travaux Publics, qui fonctionnent au niveau de préfecture ou de municipalité. Les approbations citées ci-dessus sont liées au permis de construire. Avant son édition le sujet est transmis à la Commission locale de Contrôle Urbain et Architectural pour approbation, le critère étant la protection et la mise en valeur de la physionomie architecturale de l'immeuble conservé.

3. Development of mechanisms for the strict application of the requirements of the law to the owners of monuments of culture regarding the management and maintenance of the monuments.

Les propriétaires sont obligés de s'occuper de la réalisation immédiate des travaux de conservation, de consolidation ou de protection d'un monument délabré sous l'inspection du Service compétent. La loi prévoit la peine de prison jusqu'à trois ans pour le propriétaire ou le possesseur qui exerce ses obligations défectueusement.

En cas de destruction des éléments de l'ossature porteuse d'un bâtiment protégé par la loi 1577/1985, un délai raisonnable est donné par le Service compétent au propriétaire de l'immeuble pour la réalisation des travaux nécessaires. S'il n'agit pas, les travaux sont immédiatement exécutés par le secteur public ou par la municipalité.

4. Development of mechanisms regulating the relations between the owners of monuments of culture and the State in all cases of conflict between the personal interest of the owners (impossibility or unwillingness to overtake the obligations and responsibilities, assumed by the law) and the public interest in the preservation of these monuments.

Si les propriétaires négligent leurs obligations citées ci-dessus, le Service peut prendre les mesures nécessaires et leur imputer la totalité ou une partie de la dépense adéquate.

En accord avec la loi 3028/2002 le secteur public ou les collectivités locales sont obligés de couvrir la totalité ou une partie des dépenses de conservation, de consolidation ou de protection du monument lorsque:

- a. il s'agit d'un monument qui sera ouvert au public,
- b. son propriétaire ou possesseur n'est pas responsable des dommages subis par le monument,
- c. la situation économique du propriétaire ou du possesseur du monument ne lui permet pas de payer cette dépense.

Il y a la possibilité de l'expropriation d'un immeuble pour des raisons de protection du Patrimoine après une décision commune des ministres de l'Economie Nationale, des Finances et de la Culture. Cette décision est communiquée à la personne intéressée, qui peut, pour sa part, faire objection dans les 30 jours.

5. Various forms and ways for co-ordination of the specific law for the monuments with the other laws – in the sphere of the territorial and economic development, ecology, taxation, state budget, criminal law, etc.

Selon la loi 3028/2002 «Pour la protection des Antiquités et en général du Patrimoine Culturel» le Ministre de la Culture collabore avec le Ministre de l'Environnement, de l'Aménagement du Territoire et des Travaux Publics et, au cas échéant, avec le ministre concerné:

- pour la reconnaissance des sites archéologiques et des sites historiques. Avant la publication de la décision du Ministre de la Culture pour le classement et la délimitation des sites archéologiques et des sites historiques, on exige l'avis du ministre concerné pour les activités existant sur place, afin que soient déterminées les possibilités de continuité de leur fonctionnement (par exemple carrières, mines, installations industrielles, activités de construction etc.).
- pour la fixation des clauses spéciales de construction et d'usage:
 - a. Pour la définition des clauses spéciales de construction et d'usage ayant pour but la protection des monuments, il est exigé un décret présidentiel publié après proposition du ministre de l'Environnement, de l'Aménagement du Territoire et des Travaux Publics et du Ministre de la Culture.
 - b. Avec la décision commune du Ministre de la Culture et du ministre concerné dans chaque cas, les clauses spéciales de construction, l'occupation des sols, les activités permises, ainsi que les possibilités et les conditions de continuité du fonctionnement des activités existantes légales, sont déterminées dans des secteurs appartenant à des sites archéologiques ou des sites historiques, ainsi qu'aux abords des monuments (Zones de Protection B).
 - c. Dans les agglomérations habitées, qui ont été classées comme sites archéologiques ou sites historiques, des clauses spéciales sont déterminées en ce qui concerne l'utilisation des sols ou des bâtiments, la construction ou les activités permises, par un décret présidentiel publié après proposition du Ministre de la Culture, du Ministre de l'Environnement, de l'Aménagement du Territoire et des Travaux Publics et, au cas échéant, du ministre concerné dans chaque cas.
- pour la protection des sites archéologiques sous-marines. Les clauses concernant la pêche, le mouillage et les activités sous-marines sont déterminées après décision du Ministre de la Culture et au cas échéant du ministre concerné.
- lors de l'expropriation d'un immeuble pour des raisons de protection des monuments, on exige la décision en commun des ministres de l'Economie Nationale, des Finances et de la Culture. Cette décision est communiquée à la personne intéressée, qui peut, pour sa part, faire objection dans les 30 jours.
- lors des séances des Conseils:
 - a. Des représentants du Ministère de l'Environnement, de l'Aménagement du Territoire et des Travaux Publics et de la Municipalité participent aux Conseils Locaux des Monuments.
 - b. Un représentant du Ministère de l'Environnement, de l'Aménagement du Territoire et des Travaux Publics participe au Conseil Archéologique Central.
 - c. Des représentants du Ministère de l'Environnement, de l'Aménagement du Territoire et des Travaux Publics et de la Chambre Technique de la Grèce participent au Conseil Central des Monuments Plus Récents.

En plus, la loi 1337/1983 pour le développement urbain interdit l'extension d'un espace urbain, quand elle est contraire aux règles de la protection de l'environnement naturel et culturel.

ADDITIONAL QUESTIONS

1. Regulation of the management and establishment of "integrated conservation", including the development of all necessary instruments – specific plans for preservation to set the relation between the conservation and the planning activities.

La loi 3028/2002 «Pour la protection des Antiquités et en général du Patrimoine Culturel» inclut dans le contenu de la protection du Patrimoine sa mise en valeur et son intégration à la vie contemporaine, à l'Enseignement et à l'éducation esthétique des citoyens. Elle place, aussi, la protection des monuments, des sites archéologiques et des sites historiques parmi les objectifs de l'aménagement du territoire, de l'urbanisme et du développement économique. En outre, il y a des dispositions spécifiques concernant la relation entre la protection du Patrimoine et le développement urbain et économique:

A. À l'intérieur des sites archéologiques et des sites historiques et aux abords des monuments, il est possible de fixer des zones de protection comme:

- Zone de protection A. Il s'agit d'une région où la construction est interdite. Dans cette région la construction de bâtiments ou l'ajout à des bâtiments existants sont permis seulement pour la mise en valeur des monuments ou des sites ou pour permettre leur utilisation. Dans ce cas on exige une décision justifiée du Ministre de la Culture, après avis du Conseil des Monuments compétent.
- Zone de protection B. Il s'agit d'une région où un régime spécial est en vigueur concernant les clauses de construction, l'occupation des sols et les activités permises, après décision commune des Ministres de la Culture et de l'Environnement, de l'Aménagement du Territoire et des Travaux Publics ou du ministre concerné à chaque cas.

B. Dans les ensembles architecturaux et les sites, qui sont protégés par la Loi 1577/1985, des clauses spéciales et des conditions de construction et d'usage peuvent être déterminées par Décret Présidentiel. Après décision du Ministre de l'Environnement, de l'Aménagement du Territoire et des Travaux Publics, l'autorisation des permis de construire peut être suspendue pour deux ans dans des agglomérations en vue d'établir une étude d'urbanisme ou un règlement spécial de construction pour la protection du patrimoine culturel.

2. Economic relation between preservation and cultural tourism; mechanisms through which part of the incomes from tourism could be accumulated for conservation activities.

La Caisse des Ressources Archéologiques gère les revenus des monuments, des sites et des musées (billets d'entrée, revenu de vente des magasins des sites archéologiques et des musées, droits de publications et de photographies etc.) et finance des différentes activités qui concernent la sauvegarde du Patrimoine et l'expropriation des immeubles pour la protection des monuments et des sites.

L'Organisme du Tourisme Grec a, lui aussi, réalisé des opérations globales sur des ensembles architecturaux, lors de la transformation de villages traditionnels en logements touristiques comme Vathia à Mani, Mesta à Chios etc.

3. The role of NGO in the process of preservation. Public mechanisms for stimulation of the NGO in this process.

En Grèce il y a des Organismes non Gouvernementaux qui travaillent dans ce domaine, comme ICOMOS, ICOM, la Société Grecque pour la protection de l'environnement et du patrimoine culturel etc. La loi donne la possibilité à leurs représentants, ainsi qu'à des personnes physiques, au cas d'intérêt légitime, d'assister à la séance du conseil compétent des monuments et défendre leur opinion.

**ANNUAL MEETING OF THE ICOMOS INTERNATIONAL SCIENTIFIC COMMITTEE
ON LEGAL, ADMINISTRATIVE AND FINANCIAL ISSUES (ICLAFI)**

PLOVDIV, BULGARIA, MAY 2004

RESPONSE OF THE QUESTIONNAIRE

**Prof. Dr Anne Mie Draye
Belgium**

I. General information

Belgium is a federal state, composed by three communities and three regions. As far as our subject is concerned, it is important to notice that the regions are competent for immovable heritage, the communities for movable heritage. This division of competence leads to many practical problems.

Federal authorities are still competent for some tax laws dealing with heritage protection.

This report is going to focus on immovable heritage, as it is protected in the Flemish Region. If useful, information out of decrees and implementing orders adopted by the other two regions will be added.

II. Tax concessions and VAT-problems.

The most important tax incentive in the field of immovable heritage that exists in Belgium, was adopted by the federal authorities, which means that it is valid in the three Regions.

Private owners of definitively protected monuments, or of definitively protected goods located in an urban or rural site or in a landscape, can deduct of their annual taxable income, within certain limitations, the cost they exposed to maintain or to restore their protected good.

Some conditions are imposed: the good may not be rented, and it must be open for a large public a few times a year. Public authorities and private owners agree on the practical arrangements in a contract. Public authorities are also controlling the quality of the works that were carried out.

The amount that can be deducted is 50% of the money that was spent, with an absolute maximum of about 30.000 euros a year (The amount varies with the index/ 30.460 euros tax year 2005).

Owners can combine this tax incentive with the different premiums/subsidies granted by the public authorities for maintenance or restoration; double use is not allowed.

The tax advantage can be granted every year, and is considered to encourage regular maintenance, rather than important restoration works for which the maximum amount of money is anyhow not sufficient.

This tax incentive is inscribed in the income tax regulations and thus limited to private owners.

Companies maintaining or restoring f.i. their protected office building, can also deduct the cost of that works from their taxable income, but in the same way as they would do for a contemporary building that is not protected. There is no specific regime in company tax legislation for protected goods.

Local public authorities are not paying taxes: in order to assist them in protecting their heritage, only subsidies or premiums can be used.

Also the federal legislation offers to private persons and to companies the possibility of making tax free gifts to specific NGO's involved in heritage protection.

Again some limits as to the maximum amount of the donation are imposed.

Sponsorship is quite common in Belgium, although gifts are made to a very large scale of associations, involved in various subjects: welfare, nature conservation, animal protection... Heritage protection is certainly not the most popular item in this regard!

More specifically in the Region of Brussels Capital, two supplementary tax incentives were adopted.

The first one deals with the so called real estate tax: owners of protected goods located in that region, not being rented or exploited, are exempt from that tax. As this real estate taxes can be quite high, especially for large buildings, this exemption is considered to be an important advantage for owners of protected goods (monuments, goods located in protected urban sites and landscapes).

The second specific tax incentive is linked to inheritance taxes. In case of donation of a protected good to the Region or to a foundation or institution located within the territory of the Region of Brussels Capital; there is exemption of succession duty.

The conditions imposed for this last exemption are rather complicated and severe, which means that the system is seldom used.

There are no specific VAT-regulations in favour of cultural heritage. In some cases however, the general rule that maintenance and renovation works, carried out to houses older than fifteen years are submitted to a lower VAT, can be very useful for heritage protection. This lower VAT-rate of 6% instead of 21%, is unfortunately limited to protected goods used for housing. This is quite regrettable.

VAT-regulations are at the moment also dealt with by the European Union; among other governments and associations, ICOMOS is lobbying in favour of the inscription of a lower VAT-rate for protected goods.

III. Problems related to new legislation

1 State obligations

Belgium became an independent state only in 1830. Our first king, Leopold I, created already in 1835 an independent advisory board: the later Royal Commission for Monuments and Sites which did wonderful work for the preservation of historic monuments during the 19th century. Only, the first law on the preservation of monuments and sites was adopted about 100 years later: in 1931. From that moment on, it was possible to protect goods, to put them under the special protection of the public authorities and to enforce respect from all persons concerned for the legal consequences of the protection, constructed as easements.

In this law, a specific procedure for protection was inscribed: public authorities had to respect this procedure, including the demand of several advices, the opinion of the owner... into all details. Legal protections were formalized in royal decrees.

This first heritage law was replaced later on in the three Belgian Regions by so called decrees, "regional laws". In the Flemish Region, the responsibility for the protection of valuable heritage belongs to the Flemish, "central" government. By delegation, the Minister in charge of immovable heritage can start the protection procedure. He can do this at his own initiative, on demand of his administration, the Royal Commission for Monuments and Sites, the owner of the good, a local heritage association, any citizen.... In any case, the Minister takes the decision to start or not to start the procedure. According to a decision of the Council of State, There is no obligation for him to do so even if f.i. a few thousand citizens or the owner ask for protection.

At the moment, quite a large number of monuments are protected every year (about 500 in 2002). This is the result of a systematic inventory that was carried out the last years and of public awareness, having a positive impact on the decision makers.

We only have a few protections of larger built ensembles: the legal consequences of those protections for the owners of goods located in such areas, are beyond all proportion and there are no premiums available.

There are also very few landscape protections: in this domain, we meet complicated procedures and important interferences with nature conservation.

A new evolution in this regard is the protection mechanism on "heritage landscapes" that is being developed for larger areas: the protection of those areas will be assured by means of urban development plans.

2. Preventing and sanctioning non-regulated interventions.

The decrees dealing with the protection of built heritage (monuments and urban and rural sites) on the one hand and the protection of non-built heritage (landscapes) on the other hand, foresee different mechanisms in order to enforce the obligations imposed by the protection (maintenance obligation and prohibition to alliterate a protected good without a previous permission).

First of all, works carried out in or to a protected good without previous permission, can be stopped by different regional and local authorities.

Enforcement before court is also possible: owners can be condemned to a (relatively low) fine. However at the moment of the condemnation, the judge is obliged to order also the restoration of the good into its former condition. This supplementary condemnation is very useful in case of new constructions added to the monument, but what to do when f.i. a building was demolished?

In case of non-respect of the maintenance duty, an owner can be condemned to carry out maintenance works. Enforcement of restoration works is not possible.

If an owner is not respecting the obligation to restore the good into the former condition or to carry out maintenance works, public authorities can do so in his place and let him pay for the costs.

In case of extreme negligence of a protected monument, compulsory purchase by the regional or the local authorities is possible.

Those two last possibilities are seldom used in practice.

An offence against heritage law can be in the same time an offence against town and country planning legislation. Enforcement can in this case also be organised by means of this legal system.

3. Application of legal requirements by owners.

As pointed out sub 2, owners are obliged to maintain their protected good in a good condition. Enforcement of maintenance is possible.

Control is however, like in many other countries, a problem in the Belgian regions. Only a limited number of civil servants must control an increasing number of protected goods, and eventually prepare a case before court.

In the Flemish region control on the concrete use that is made of a protected good, is not foreseen. For alteration of such a use, no previous permission is needed. In the Region of Brussels Capital, such a permission is requested.

In none of the regions, owners can be forced to open their protected good to the public, unless they obtained premiums or tax advantages.

4. Relations between owners and authorities-conflicts.

The way in which conflicts are settled before court, is described sub 2. This is of course an ultimate solution, only used in extreme situations. Before being brought to court, the owner is contacted by the competent administration, gets formal notice... By this occasions, he is informed about premiums, tax advantages, in order to reach a positive solution without a judicial procedure.

If an owner can't possibly assume his obligations, a transfer to a public authority can be examined. Compulsory purchase is possible, but not on demand of the owner. Only in the Walloon region, this last possibility exists.

There is one important judgement, by which the owner of a protected mill was discharged of not maintaining his good: not having enough money to keep the mill that he inherited in a good condition, he pleaded, with success, force major.

5. *Heritage law and other legal rules.*

The relation between heritage law and other legislations concerning the use of soil were very problematic in the past: there was no coordination. Only the last decade, some improvement occurred.

We notice that in several legal texts, adopted recently, the link between built heritage and development plans is reinforced. Protected goods are getting an own place in those plans. Even specific plans for protected goods can be adopted.

When a building permit is needed for a protected good, this -unique- permit can only be delivered after binding advice of the administration in charge of heritage protection.

As far as landscapes are concerned, a better coordination between landscape plans and nature conservation plans was worked out. So when f.i. a nature conservation plan already exists, it can be completed with some requirements out of heritage legislation in order to be accepted as a landscape plan.

Permits- if not included in the acceptance of a plan- are not yet integrated.

IV. Additional questions

The role of NGO in the process of preservation

Heritage protection in Belgium is characterized by a very long tradition of volunteering. Some associations, created at the beginning of the 19th century, are still active nowadays. Almost every small village has got an own monument, archeological or historic society.

The last decade however, the situation in Flanders was characterized by an important evolution towards a limited number of powerful associations, hereby briefly described.

- ★ *The Flemish Forum for Heritage Associations*, is the partner of countless many local associations which are active in monument and landscape conservation. It informs and supports them and acts as their "spokesman" towards public authorities, sponsors...

Flanders Monument Watch carries out preventive controls and small repairs to protected monuments, in order to avoid expensive restorations. Monument Watch specialists report on shortcomings or damage and carry out instantly minor urgent repairs. They look for possible causes of damage and make recommendations for maintenance or restoration works. They survey results into a status report, which may serve as a guideline for the owner and/or his architect.

Flanders Heritage supports the government in the conservation of 'troublesome monuments', monuments in danger. This association already took over the property rights of some important monuments, restored them and opened them for the public. It is very active in organising guided visits, exhibitions...

This association aims to be the "Flemish National Trust".

Flemish Heritage Day is in charge of the organisation of the "Open Heritage Day" that takes place every year during the month of September. This association is working together in a very close way with many local authorities;

ICOMOS is, last but not least, responsible for the implementation of the principles of ICOMOS International.

**ANNUAL MEETING OF THE ICOMOS INTERNATIONAL SCIENTIFIC COMMITTEE
ON LEGAL, ADMINISTRATIVE AND FINANCIAL ISSUES (ICLAFI)**

PLOVDIV, BULGARIA, MAY 2004

CHP'S THREE-YEAR PLAN

**Beijing Cultural Heritage Protection Research Center (CHP)*
China**

1. Introduction and Summary:

Chinese cultural heritage protection laws clearly embody the Chinese government's policy to preserve and protect its national cultural heritage. As in many policy areas, however, there is a large gap between policy and rhetoric at the national level, on the one hand, and understanding and implementation in the provinces and districts of this vast country. The government is, on a cautious and selective basis, encouraging the emergence of civil society and NGOs, and it hopes that civil society can improve vertical communication on policy issues and implementation between the government and society at large. Beijing Cultural Heritage Protection Research Center (CHP) was established as a civil society organization to foster conservation of the nation's cultural heritage.

CHP was established in 1998 as Cultural Heritage Watch by a small group of volunteers to raise the awareness of Chinese communities and government authorities about the importance of protecting the nation's rich cultural heritage, and to provide them with knowledge and tools, particularly in legal matters, to translate awareness into constructive action. CHP enjoys the de facto support of the National Administration of Cultural Heritage and other government entities, and it seeks in its work to bring about better implementation and enforcement of Chinese laws and national policies with regard to cultural heritage protection. Staffed entirely with volunteers and operating with miniscule budget, in the five years since its establishment it has conducted extensive training exercises in different parts of the country, operated an effective free consultancy for communities seeking advice on cultural preservation, and assisted government units in upgrading their understanding of cultural preservation. In 2003, its founder, He Shuzhong was named the recipient of the Archaeological Institute of America's Annual Outstanding Public Service Award, thus providing international professional recognition of CHP's work.

In May 2003, CHP was registered as an NGO with the Beijing Bureau of Civil Affairs, changed its name from Cultural Heritage Watch to Beijing Cultural Heritage Protection Research Center, and acquired premises on the outskirts of Beijing. With legal registration accomplished, and premises established, it now sets forth the following three-year plan for expansion of its programs, and for the development of its organizational capabilities and outreach capacity. It seeks donor funding for both core operating expenses and for program funding, without which it will be unable to move forward.

* <http://www.culturalheritagewatch.org>

2. Background:

The Chinese government has a clear policy to conserve and protect its rich cultural heritage, including its archaeological sites, historic buildings, and cultural relics. In support of its policy of cultural preservation, the government has enacted a series of laws and promulgated supporting decrees, with the most recent being the China Law on Cultural Heritage Protection, passed in 2002. It has also signed several key international agreements relating to cultural protection and promulgated 42 regulations on cultural heritage at provincial government level. In addition, a total of 1500 museums have been established at national and provincial level.

However, as in many developing countries, there is a gap between the clear national policies and actual practice. Lack of public awareness, inadequate understanding of officials concerning the issues involved, insufficient training of the enforcement authorities, and weaknesses of the judicial system result in continuous loss of cultural heritage. Moreover, the nature of China's distributed political system means that local governments have wide latitude in how they implement national policies and laws. Often, lack of understanding, financial constraints, and greater priority attached by local authorities to the achievement of tangible economic performance, result in only lip service being accorded to the achievement of cultural protection goals.

The resources of the government are not by themselves sufficient to carry out the national policies relating to cultural heritage protection, and they need to be augmented by civil society. Furthermore, cultural protection, like natural environment protection, can only be effectively carried out with the active participation, understanding, and support of the population at large.

Fortunately, at this time civil society is beginning to play an active role in China, and the positive contribution which well-constituted NGOs can make is now acknowledged by the government. On October 25 of 1998, the State Council approved "Regulations for Registration and Management of Social Organizations" and "Provisional Regulations for the Registration and Management of Popular Non-enterprise Work Units". On September 1 of 1999, the National People's Congress adopted "China Public Welfare Donation Law". In accordance with these laws, a few NGOs have been registered, particularly in the areas of environmental protection, minority affairs, and assistance to disadvantaged sectors of society. To date, however, the complexity of the registration procedure has meant that the majority of the NGOs consist in a gray area outside of the NGO legal framework.

Unfortunately, to date, there has been almost no significant NGO activity in China in the cultural protection area. CHP was established to fill that gap. In the scope of its work and record of achievement, it is within the cultural sphere in China a unique organization.

3. Description of organization:

CHP was established in Beijing in 1998 with the following objectives:

1. To increase awareness of the people at large of the importance of protection of cultural heritage, based on the "Law of China on the Protection of Cultural Heritage".
2. To provide communities with the knowledge and tools to protect cultural heritage in their own localities.
3. To increase the level of understanding and capabilities in protection of cultural heritage of government authorities at all levels.
4. To promote people's cultural rights to enjoy and conserve their cultural heritage in accordance with international conventions and national regulations.

5. To promote cultural diversity by providing necessary help to minority peoples on conservation and protection of their cultures.
6. To offer legal aid for cultural heritage protection.

All members of CHP are volunteers, of which there are three core members. There are also two consultants outside China: Dr. Lyndel V. Prott (Former Director of Cultural Heritage Department, UNESCO) and Dr. P. J. O'Keefe (Former Chairman of Cultural Heritage Law Committee, International Law Society).

The three core members are:

* Mr. He Shuzhong, Founder and Director of CHP, Deputy Director, Division of Legislation and Policies, National Administration of Cultural Heritage. Mr. He began to study cultural heritage law in 1986 when he was a lecturer of comparative law in China University of Political Science and Law. In 1991, he entered the National Administration on Cultural Heritage (NACH) and established the law department in NACH. Now he is acknowledged as an international expert on cultural heritage, and has lectured under UNESCO sponsorship at several international forums on cultural heritage preservation. In May of 2003, He Shuzhong was named the recipient of the 2004 American Institute of Archaeology's Annual Outstanding Public Service Award in recognition of the cultural conservation work he has done. Email: hsuzhong@95777.com Tel & Fax: 13621206340, 64669948.

* Ms. Wang Yunxia, Ph.D., Deputy Director of CHP on Research and Training, associate professor in Renmin University of China, School of law. Ms. Wang has been working in cultural heritage areas for many years. She translated many international documents on legal protecting cultural heritage into Chinese. She is also a member of the eight-experts committee of UNESCO on return of looted cultural property during the Second World War. Email: wyxhsz@yahoo.com Tel: 13621206341.

* Ms. Chui Suping, lawyer, Deputy Director of CHP on Legal Affair, director of law affairs office, China National Investment & Guaranty Corp.

In the five years since establishment, CHP has carried out its mission through training, providing consultation services, and cooperating in research with other organizations and government authorities. As a result of these activities, many communities have been able to act in defense of cultural heritage in their localities, and government officials have been made more aware of their responsibilities in cultural heritage protection and have upgraded their skills in this area.

CHP has on average undertaken and completed one project every week. Up to the end of March 2003, a total of 750 people both within and outside of China have contacted CHP for advice on cultural heritage protection. All of them received responses by email or by post. About one third of these responses generated dialogues. We also held 85 training activities for a total of approximately 14,000 people. The 14,000 people include National People's Congress Members, governmental officers, museum experts, archaeologists, private collectors, ancient building owners, antique dealers, film stars, reporters from newspaper and TV stations, university and middle school students. Examples of projects undertaken are as follows:

* In May 2001, CHP successfully helped more than 30 residents in Wuxi, Jiangsu province to protect their old buildings handed down from their ancestors. These Wuxi people learned of CHP from reading articles written by us in provincial newspapers on protecting local cultural heritage. The articles contained CHP's contact fax number. Initial discussions were by telephone, and then representatives came to Beijing to meet us carrying pictures and videos. We outlined for them five strategies they could use to preserve the historic dwellings. Finally, in accordance with the

Administrative Procedure Law, Jiangsu Province Government ordered Wuxi city authorities to keep the ancient area intact, and the dwellings are now preserved. The struggle to preserve the houses has made them a cause celebrity within Wuxi. The 30 residents told us that CHP's consultation was a key factor in the success of their struggle. We also carried out similar activities in Beijing in Sep 2001 and in Shanghai in Feb 2002. In those two cases more than 200 residents received consultation from CHP and at least 9 old buildings were protected.

* In Aug 2001, CHP held a training course for 39 county magistrates in Henan Province. The course was held in conjunction with a working meeting held by the Henan Province Government for about 45 county magistrates in Zhengzhou City. CHP offered to add a cultural heritage protection training course to the meeting program. After reviewing the CHP training plan and printed materials, the provincial government agreed that CHP hold the course for the magistrates on the last day of the meeting, with attendance on a voluntary basis. We found 39 of the 45 magistrates and many officers from the provincial government office attended this training course. Cultural heritage in Henan counties is rich but seriously damaged and degraded. The county magistrates admitted that they lack consciousness of such problems. Subsequent to the course, many of these magistrates often called us for consultation with regard to local heritage preservation in their counties, and CHP maintains an ongoing relationship with many of these counties.

* In Dec 2001, CHP held a symposium on the Protection Law of Cultural Heritage (draft) in Beijing and submitted a report to the Standing Committee of the National Congress. China adopted Protection Law of Cultural Heritage in 1982 and began to draft a new law from 1996. Because of lack of knowledge on international standards, some articles of the draft run counter to international conventions to which China is a signatory, and will be harmful for the national heritage if the draft becomes law without revision. CHP held a symposium on the part of "Antiquity Dealer" of the draft. We pointed out in our report that all antiquity dealers should be registered and the dealers should record their business in detail and send the record to a department of the government. The new law (October 2003) has incorporated our suggestions.

* In Feb 2002, CHP gave a lecture on the protection of cultural heritage to about 90 editors and journalists of the economic channel of Chinese Central TV. CCTV is popular and most Chinese people like to watch its economic channel. In January, the producer asked CHP to give a lecture to its staff because they hoped to make special programs on antiquities auctions and the excavation of underwater cultural property. After several discussions with them, CHP found they knew little about related laws and the terrible situation facing the heritage. CHP, working with some members of international cultural heritage law committee, made a 10 hours' lecture for about 90 editors and journalists from this channel. The lecture included the situation of the protection in China, related national laws and international conventions, recommendations of international organizations and some related cases. As one of the results, the channel stopped their original plan, which could have caused audience misunderstanding, although they had spent a lot of money for the special programs. As another result of the lecture, CHP has become the channel's consultant. Representatives of the channel come to solicit CHP's comments on their programs concerning cultural property about once a month. We find that over the course of time, more and more information provided by CHP is being used in their programs.

* In Apr 2002, CHP held a training course for 12 Beijing prosecutors who were in charge of cases involving destruction of cultural heritage. This was the first such training course they had attended. After the training, many prosecutors maintained close contact with CHP to discuss cases they met. CHP plans to hold a series of courses in China Prosecutor College for training of aspiring prosecutors.

* In July 2002, CHP held some training activities for 40 lawyers in Beijing. Many lawyers are friends of the main members of CHP, but most of them displayed little understanding of CHP's work and ignorance of China's cultural heritage law. CHP began implementing a training plan from that summer. Organized by the Beijing Lawyers Association, 40 prominent lawyers from Beijing and Shanghai attended the one-day training course at the Association's meeting room. To make lawyers pay more attention to cultural heritage is not easy, but CHP will proceed with its plan.

From 1998 to now, CHP members have been giving lectures on protection successively for post graduate students from the School of Cultural Property and Museum in Beijing University, the School of Art in Qinghua University (the former Central Institute of Art), and China University of Political Science and Law.

CHP plays a special role in China today because of its members' professional commitment, deep understanding of Chinese cultural heritage, and good working relationship with the government. No other indigenous registered NGO is working in this field in China. CHP has been de facto recognized by the government for some time. As a result, Mr. He Shuzhong, the Director of CHP, has gone abroad to attend international meetings officially representing CHP. From March of 2001 up to now, CHP's Web site has been input into the data retrieval systems of the China Information Agency and National Administration on Cultural Heritage, both of which are government organizations. Many government officers have taken part in CHP's training courses, which have been conducted in the meeting rooms of the Beijing municipal government and other government departments. All of these indicate acknowledgement by the government of CHP's work. It should, however, be stressed that CHP is not a so-called "GONGO" (government organized NGO). It is acknowledged by the government, but is not established by the government, nor is it a quasi-government entity.

In May 2003, CHP was registered with the Bureau of Civil Affairs of Beijing City as an NGO. This is a watershed event for CHP, as it now can open a bank account in its own name, be exempt from tax on donations received, and hire employees on the same basis as other legally recognized entities in China. At the same time, it undertakes obligations with regard to annual reporting and auditing to the authorities. Official registration is an important indicator of the sustainability of the organization.

All of CHP's work to date prior to this year had been accomplished by a small group of volunteers, working in their spare time and for the most part using their own limited financial resources and personal facilities. Due to the newness of civil society in China, there is not yet a tradition of philanthropy towards NGOs domestically, and the raising of funds locally is difficult. CHP's solicitations locally in the past have yielded only small amounts of money. The principal sources of funds have been as follows:

* Museum Security Network (MSN) in Holland (www.museum-security.org) in 2000 supported the establishment of the web site of CHP and has since then maintained the site. CHP sends all documents and pictures to MSN and MSN puts them on the CHP web site. Contact person: Mr. Ton Cremers, Tel & Fax: 31 10 4653837, securma@xs4all.nl

* Trace Foundation in the U.S. offered 10,000 US\$ for equipment in 2000. The project was finished in 2002. All the equipment of CHP, including computers, was obtained from these funds. Contact person: Ms. Paola Vanzo, Tel: 212 367 7380, Trace@trace.org

* UNESCO offered 5,000 US\$ for a photography shooting project in 2001. CHP recorded 100 endangered ancient heritage sites in the winter of 2001, and has used these photographs in many of its training sessions and other work. Contact person: Mr. Edmond Moukala, culture affairs officer, UNESCO office in Beijing, e.moukala@unesco.org

* Macdonald Archaeological Institute of Cambridge University UK offered 1,000 US\$ for an investigation project in 2001. The project was finished. CHP investigated the illicit excavation and traffic case of Wang Chuzhi ancient tomb in Hebei Province of north China. Now some of objects from this tomb have been returned from America and Hongkong. Contact person: Ms. Jenny Doole, jd244@cus.cam.ac.uk

* Beijing municipal government offered 30,000 RMB for the drafting of the regulation on the protection of the historic city of Beijing in 2002. Previously there had been no such regulations in existence. Beijing municipal government entrusted the main members of CHP to draft the regulations for it. The ceremony for signing the cooperating agreement was held at the government meeting room in March of 2002. The project, under the charge of Dr. Wang Yunxia, was finished in March of 2003. Contact person: Mr. Zhang Guoqiang, Legal office, Beijing municipal government, Tel: 65193446.

* Small amount donations from about 60 people within China. The donations have been used for defraying some of the expenses of training activities.

* James Thompson Foundation of Thailand made a program grant of \$7,000 for installation of a hot line service and related equipment and for the conduct of cultural heritage conservation training among minority groups of Yunnan Province. This project will be finished in 2004.

As mentioned above, registration in May of this year has been a watershed event for CHP, giving it the legal status to be able to efficiently raise and account for funds and their use, and the confidence to raise its profile as a leading organization in the cultural sphere. In addition, it now has premises in which to base its operations. To make use of this opportunity, it must now, building on past achievements, professionalize its operations and develop a firm base of funding. In what follows, we set forth the plan for organizational development of the NGO and for program expansion, together with estimated budgets.

4. Organizational and Ongoing Activities Development Plan:

The following is a description of the organization and infrastructure of CHP for which core funding is needed:

Management and Accountability: The legal representative of CHP, in whose name the license of the Bureau of Civil Affairs was issued, is Wang Yunxia. The Managing Director is He Zhuzhong. CHP is accountable to the Bureau of Cultural Relics of Beijing City as its official supervising agency, to which CHP is required to provide operational reports and audited financial statements from time to time.

Staffing: Initially CHP will employ two staff as receptionist / telephone operator / secretarial / administration. Subsequently an Office Manager will be employed to develop and manage the training programs, supervise the office, manage the finances, and handle public relations. The office manager should be in his 30s or 40s, have experience as a professional manager, and preferably have at least some familiarity with cultural conservation issues. Additional paid and volunteer staff will be added in the future as needed.

Advisory Council: An Advisory Council will be created of senior Chinese and foreign experts who can provide guidance in cultural conservation, assist in providing introductions for CHP, and help to arrange assistance for CHP's work.

Premises: Through the generosity of a private Chinese donor, an office and exhibition suite of 182 square meters in a newly constructed complex called Tiantong Gardens have been secured rent-free

for twenty years, commencing November of 2002, to serve as the Office and also the Training and Exhibition Center of CHP. Tiantong is a residential town in the suburbs north of Beijing, which is easy to reach by bus and subway. Initial work in making the suite ready for use and simple furnishing has been accomplished, but now further investment in furnishing and equipment is required to make it fully useful for administration, training and exhibition purposes. It is composed of one big room (training & exhibition room) and four small rooms (two for library and two for offices), and is suitable for such a center. The training and exhibition center is intended to facilitate training services and the convenient provision of information on cultural heritage protection, to develop the public's consciousness of protection, to enlarge the involvement of the general public in the protection policy making process, and to provide proper office space for the organization.

Finance and Accounting: A bank account has been opened with China Everbright Bank. Monthly accounts will be produced, and they will be audited on an annual basis by Beijing Bureau of Civil Affairs and Beijing Bureau of Cultural Heritage.

Library: A library, mostly assembled from donations, will be maintained at the Center for both reference and for assistance in training programs.

5. Program Development:

Hot line and consulting service: Through the generosity of the James Thompson Foundation, funds are available to establish a hot-line service. Officials and community leaders around the country needing assistance in understanding the law concerning conservation of cultural heritage in their areas, or assistance in developing strategies for protecting their cultural heritage, may call this number for consultation. Consultation will be provided by experts of CHP, using telephone, fax, email, and personal visits. This will be one of the ongoing core services of CHP.

Web site: The web site has heretofore been in English language and has been largely targeted at a foreign audience. The focus will now turn equally to the Chinese domestic audience, and the web site will in the future be maintained in Chinese language as well. The web site will henceforth be an increasingly important tool of CHP in carrying out its work.

Exhibitions: Exhibitions concerning the work of CHP, and concerning cultural heritage protection in general, will be displayed at the CHP Center. These will supplement training put on at the training center located next to the exhibition hall.

Public relations: As an aspect of the general work of cultural heritage conservation consciousness raising, and in order to develop a public profile that will assist in local fund-raising in the future, CHP will cultivate relations with Chinese press and TV, and will seek to regularly provide the local media with news items. It will also seek occasions to address both local Chinese and resident foreign corporate audiences, both to increase their sensitivity to cultural protection issues and to cultivate them as local funding bases.

Publications: Publications will initially principally be related to preparing training materials, but subsequently manuals on cultural heritage protection will be produced for wider distribution.

Film: Shoot documentary films to show the endangered situation of China's cultural heritage and seek the best way for protecting it. Such film should be distributed widely. This film should record different dangers and evaluate their consequences, look into the causes of the losses in detail, and interview related parties on protecting cultural heritage, e.g. local people, tourists, ancient property owners, antiquity dealers, administration officers, law makers, police, museum directors, archaeologists, protecting engineers, experts from international organizations and young people.

Volunteer network: In order to generate widespread community involvement, leverage the influence of CHP, and enlist grassroots support, it is envisaged that over the course of time CHP will develop a network of volunteers, organized into local chapters on an informal basis. This will begin in one of the districts of Beijing municipality on a small scale as an experiment. CHP will recruit 3-5 volunteers from schools or villages nearby each site and give them training and equipment (bicycle, telescope, camera or others) to them as appropriate. Sites will be identified for monitoring. Volunteers will inspect the sites once or twice a week and report to CHP's office in Beijing. CHP will transmit the information to local authorities. As experience is gained, the volunteer network will gradually be expanded to other parts of the country.

Symposium: An annual CHP International Seminar on China Cultural Heritage Protection will be put on, with a different venue each year. Both Chinese and foreign participants will be invited, and there will be representation from both official and non-official sectors. Press coverage will be encouraged. This annual event will be developed into a major symbol of CHP in the public eye.

Training seminars: Heretofore the mainstay of CHP's work, training programs will be expanded and intensified, and will be systematized along the lines of subject matter and audience, so that they can be more easily replicated around the country.

6. Conclusion:

CHP has over the past five years demonstrated, through the dedication and tenacity of its key members, an ability to survive under difficult circumstances and to make a valuable and unique contribution to cultural conservation and to development of the rule of law in China. Now that it has successfully registered as an NGO with Beijing Bureau of Civil Affairs, it has ambitious plans for expanding its scope and impact, and replicating its work around the country through a volunteer network supervised by a small professional staff at its center in Beijing.

**ANNUAL MEETING OF THE ICOMOS INTERNATIONAL SCIENTIFIC COMMITTEE
ON LEGAL, ADMINISTRATIVE AND FINANCIAL ISSUES (ICLAFI)**

PLOVDIV, BULGARIA, MAY 2004

RESPONSE OF THE QUESTIONNAIRE

Gideon Koen

Izrael

I. Tax concessions and the VAT problems by financial initiatives in the field of the preservation of the cultural heritage

In Israel the preservation properties are addressed in 3 main statutes:

1. The planning and building law – addresses all issues relating to planning and building in Israel including buildings and sites, both with preservation value and without.
2. The Antiquities Law – addresses antiques created before 1700 AD.
3. The National Parks, Nature Reserves National Sites and Memorial Sites Law – addresses issues concerning national parks, nature reserves, national sites and memorial sites that were declared as such by the proper authority.

In my answers below I will refer to all 3 acts and the way each one relates to each situation.

The Planning and Building Law - In Israel, statutory restrictions regarding a specific property are defined in a municipal planning scheme. The Israeli Planning and Building Law gives the local and district planning authorities the power to establish periods of time between the deposit of the planning scheme and its ratification. In case such provisions restrict a persons property rights, the Minister of Finance is authorized to grant a full or partial exemption from taxes regarding the property or to delay the date of payment. In addition, the local authority is authorized to give a full or partial exemption from any municipal taxes or levies regarding the property or to delay its payment date.

Such exemptions will be granted and calculated depending on the terms of the restrictions and the loss of enjoyment of the property due to the said provisions.

In the event of a preservation scheme – if a property included in the scheme is hurt or damaged and the owner has not received compensation as a result of such injury, the property will enjoy an exemption from the annual municipal taxes. This exemption will continue for as long as the damage continues.

The Antiquities Law – Property created by man before 1700 AD is defined in Israel as an “Antique” and the Antiquities Law accords it a different status than a property designated for preservation, as defined in the Planning and Building Law. The Antiquities Law provides that the state is the sole owner of any antique discovered after the enactment of that Law (1978) together with the property where it was discovered. It also lists many restrictions applicable to such property. The Minister of Culture and Education has the power to compulsorily acquire an antiquities site in case such purchase is needed for preservation and/or research. This law doesn't grant deductions or tax benefits to the owner of the property upon which the antique is discovered. On the other hand, it does grant him compensation in case of a compulsorily acquisition. There is one limitation to the ownership of the state of the antique, when the manager of the antiquities authority uses the authority given to him, subject to the approval of the Minister of Education and Culture, to relinquish the State's ownership of the antique.

National Parks, Nature Reserves National Sites and Memorial Sites Law – this law defines a “National Site” as a structure or a group of structures along with their nearby surroundings which has a national, historical importance in the development and settlement of Israel and which was declared by the Minister of Interior as a national site.

Ideas to solve the problems:

- A. To grant an exemption from VAT in circumstances where preservation works are being conducted.
- B. To allow deduction of preservation expenses for tax purposes and spread it over a short period of time.
- C. To grant an exemption from municipal property improvement levy resulting from preservation works.

II. Problems related to the necessity to develop new legislation/regulation

1. Formulating the state's obligations regarding preservation plans – In Israel planning decisions are made by the authorized planning bodies – both at the municipal and district levels (The district committee works within the framework of the Interior Ministry.) In Israel, only antiques and national sites are supervised by public institute - the Antique Authority and The Nature Reserve and National Parks Authority which both enjoy a special governmental budget. All the other sites that have preservation value but are not defined as an Antique or as a National Site are not supervised by a public institute and don't enjoy a special budget for preservation. The private bodies, which have committed themselves to advancing preservation issues, receive a limited budget from the Ministry of Science Culture and Sport.

The topic of preservation is becoming very popular in Israel as of late and a substantial number of members of the legislature are embracing and promoting the subject in many forums when opportunities present themselves.

Ideas to solve the problem: creating a statutory body and defining it as the body which is trusted with advancing and promoting preservation issues as a all and, of course, establishing its budget in the law. Another idea is to give the private bodies, which have committed themselves to promoting preservation, a special status within the planning bodies in Israel and to expand their authorities.

2. Development of mechanisms for preventing and penalizing non-regulated intervention in historic monuments – In Israel there is a criminal penalty (arrests and/or fines) for building without proper authorizations or against the directives of an certified planning scheme. The imposition of such penalties has no regard as to whether the property has preservation value or not.

The Antiquities Law establishes criminal penalties (arrest and/or fines) for damaging an antique or a property, which holds antiques.

The National Parks, Nature Reserves National Sites and Memorial Sites Law - The Minister of Environment has the right to establish regulations needed to prevent the damage of a national site.

This law also establishes criminal penalties (arrest and/or fines) for damaging a national site. Furthermore, it gives the manager of the Nature Reserve and National Parks Authority the power to issue an immediate warrant or a injunctive order against anyone where there is a high likelihood of damage and based on a reasonable premise that damage is likely to be caused.

Furthermore, he has authority to issue an administrative injunction in a case where there is reasonable foundation to presume that works are likely to take place without a permit or license. Such an order may be issued against the person responsible for execution of the works or anyone on his behalf.

A proposal for amendment of the Planning and Building Law is being prepared at this time. It attempts to impose more severe penalties for damaging a property designated for preservation (by increasing the sum of the fines and prolonging the time period of incarceration) and even to deny authorization to build on such property for substantial periods of time. These proposals also try to create instruments (immediate warrants) that can be used by the authorities to prevent the threat of immediate damage to such properties, before it's too late.

3. Development of mechanism for the strict application of the requirements of the law to the owners of monuments of cultural value in regard to the management and maintenance of the monuments – In Israel, at present, the management and maintenance of monuments are voluntary acts of the property owners. The local preservation committee can demand, via the official engineer of the local authority, that the owner perform maintenance works on a property designated for preservation where there is a real danger that the property will be destroyed or that its preservation will be severely damaged.

The National Parks, Nature Reserves National Sites and Memorial Sites Law - The Minister of Environment has the right to establish regulations required to prevent the damage of a national site and guard it, impose management and maintenance on a national site, both in general and particular to a specific site. In case the site has an additional local or national value, the minister can order the local authority to undertake the maintenance, and management etc. of the site. Such order is submitted to both the interior minister and finance minister for approval. The Nature Reserve and National Parks Authority has general power to perform any acts needed to preserve and rehabilitate nature, landscape, heritage and national sites.

4. The Antiquities Law – the owner of the antique is the state and therefore it is obligated to preserve the antiques. Furthermore, in order to dig upon a property to discover antiques, one needs a license from the manager of the Nature Reserve and National Parks Authority, which establishes the conditions for digging and determines exactly where the digging may be conducted. A person who conducts digging must protect the digging site and the antiques found there and guarantee their preservation. Development of mechanisms regulating the relations between the owners of monuments of cultural value and the State in cases of conflict between the personal interest of the owner and the public interest in preservation of monuments – In Israel, at present, should the owner of a property designated for preservation not perform the works needed to prevent the property's destruction, as described in the above section 3, the local authority may perform the rescue works by itself and charge the owner with the cost of such works or it can compulsorily acquire the property.

In Israel, there is also a mechanism for compensating the individual for all damage that occurs as a result of a planning scheme or due to a preservation scheme, which both facilitates preservation and prevents such preservation from injuring the specific property and the owners property rights.

Another mechanism for compensation is TDR – giving the individual, who has been injured as a result of a preservation scheme, building rights in another piece of property for his use as opposed to granting him financial compensation. Such compensation can be more easily embraced by governmental bodies that don't want to spend more money from their limited state budget.

The Antiquities Law determines that compensation will be paid when one is hurt or injured as a result of the seizing or the restricting of works performed upon a property, which led to the discovery of an antique or in the case of compulsorily acquisition.

5. Various forms and ways for coordination of the specific law for protecting monuments with other laws – the Planning and Building Law includes all aspects relating to municipal planning and gives the almost complete authority to the planning committee which considers all relevant aspects of the matter before giving its decision regarding a property designated for preservation.

In cases where a property is protected or managed by more than one law, then cooperation between the relevant authorities helps to save its preservation.

III. Regulation of the management and establishment of integrated conservation plans including the development of necessary instruments

In Israel this question is not relevant, since it is almost impossible to establish uniform criteria for all properties designated for preservation.

IV. Economic relation between preservation and cultural tourism

At the moment, there is no law dedicating part of the income from tourism to conservation.

V. The role of NGO in the process of preservation

In Israel the NGO's have a very strong role in the process of preservation, since they cover all the preservation property that are not protected by The Antiquities Law and The National Parks, Nature Reserves National Sites and Memorial Sites Law – it works primarily in the municipal area and specifically in relation to objections to building plans which cause damage to preservation properties. It also serves to increase the public awareness of the preservation agenda and its importance. It also acts as a tool to protect and supervise preservation interests through the legal system by ensuring that all relevant acts are being followed in full.

**ANNUAL MEETING OF THE ICOMOS INTERNATIONAL SCIENTIFIC COMMITTEE
ON LEGAL, ADMINISTRATIVE AND FINANCIAL ISSUES (ICLAFI)**

PLOVDIV, BULGARIA, MAY 2004

MEXICO

**Roberto Núñez Arratia
José Ernesto Becerril Miró**

1. Tax Concessions and the VAT problems by financial initiatives in the field of the preservation of the Cultural Heritage

1.1. Current Situation

In Mexico, although there is not a specific tax system for the conservation of the Cultural Heritage, different federal and local laws establish tax concessions (i.e. deductions, exemptions and reductions of taxes and fees) as promotional actions in this field.

The Income Tax Law provides a deduction (through depreciation) of 10% of the restoration expenses in declared or catalogued monuments for corporations. If a building does not have these characteristics, the deduction is of 5%¹

The same law establishes a deduction of 100% of the donations granted to civil associations with cultural purposes and the donations to the Federal, State or Municipal governments with a cultural intention.²

LFMZ provides that the owners of monuments that conserved and restored them can apply for the exemption of the Real Estate Tax ("Impuesto Predial")³. This tax benefit is conditioned to the previous obtaining of an opinion issued by INAH indicating that the conservation of the monument is adequate and the use of the monument is in accordance to their cultural characteristics. In the Rules of LFMZ are included the requirements for this opinion.⁴

In reference to VAT, the Law establishes a sole exemption of this tax in the services rendered by Civil Associations with cultural and religious purposes⁵

The interests of the loans granted by the banks for the rehabilitation of historic buildings (as any other buildings) cause the payment of VAT. But this tax does not represent an important charge for the owners of a monument. The real problem for the owners of monuments is the difficulty to obtain a loan due to the requirements established by the banks.

In Mexico City, as consequence of the creation of the Consultative Council for the Redemption of the Historic Center (August 14, 2001), the local government granted tax concessions and administrative benefits,

These benefits consist in a immediate deduction of 100% in the investments for reparations and adaptations; deduction of the income tax in the transferences of ownership of buildings located in the Historic Center⁶, and the following reduction in local taxes:

¹ Income Tax Law.- Article 44-1-A.

² Income Tax Law.- Articles 24, 70 – IX, 70 – A Y 70 - B

³ LFMZ.- Article 11

⁴ Rules of LFMZ.- Article 45.

⁵ VAT Law.- Article 15 – XII-C

| TAX AND REDUCTION | CONDITIONS |
|--|---|
| <ul style="list-style-type: none"> - REAL ESTATE TAX. - ADQUISITION OF REAL PROPERTY TAX - FEES FOR THE GRANTING OF BUILDING PERMITS - FEES FOR SERVICES OF HIDRAULIC INSTALATION. REDUCTION 100% | <ul style="list-style-type: none"> - Subvention during the restoration process - The investment must represent, at least, the 10% of the commercial value of the building |
| REAL ESTATE TAX REDUCTION 50% | <ul style="list-style-type: none"> - Owners or buyers of catalogued or declared monuments. The owners or buyers have to live in the monument. |
| REAL ESTATE TAX REDUCTION 50% | <ul style="list-style-type: none"> - Owners or buyers of catalogued or declared monuments. The owners or buyers have to live in the monument. |
| <ul style="list-style-type: none"> - REAL ESTATE TAX - FEES RELATED TO NEW BUILDINGS AND RESTORATIONS REDUCTION 80% | <ul style="list-style-type: none"> - Investors in new real estate projects in the Historic Center. |

In our opinion, the governmental actions and tax and administrative concessions granted recently in the Historic Center of Mexico City has benefited the big investment companies, as we could appreciate in the case of the new Sheraton Hotel:

| Total Investment in the Project | Land Price | Investment in current building | Pendent Investment | Tax Subvention Mexico City Government |
|--|----------------------------------|---------------------------------------|-----------------------------------|--|
| \$561,660.000.00 Mexican Pesos | \$65,527.000.00 Mexican Pesos | \$268,800.000.00 Mexican Pesos | \$227,333.000.00 Mexican Pesos | \$9,300.623.00 Mexican pesos |
| \$48,840.000.00 US Dollars | \$5,698.000.00 US Dollars | \$23,374.000.00 US Dollars | \$19,768.086.00 US Dollars | \$808,750.00 US Dollars |

Heretofore, these benefits are not accessible for the owners of deteriorated buildings with empty or non-used areas in the higher floors that can be restored and destined as dwelling areas. For this matter, it is necessary more attractive tax, administrative and financial benefits in order to provide a better certainty to the owners of monuments for more time.

1.2. Recommendations

Before the lack of economical resources in the filed of the preservation of the Cultural Heritage, the tax concessions are important ways for the promotion of private and social investment in this activity.

All Cultural Heritage Protection Law represents the imposition of strong limitations to the owners of monuments. For this reason, it is necessary that the Law provides benefits to the owners of monuments that fulfill with the requirements established in the Law.

⁶ Decree granting Tax Concessions and Administrative Benefits for the Redemption of the Historic Center of Mexico City, published in DOF dated on October 8, 2002.

In our opinion, the tax concessions has to fulfill with the following characteristics:

- a) To represent a real benefit for the persons those fulfill the law. If we accept that the granting of tax concessions means a governmental action destined to promote the conservation projects, the tax concessions must have the similar weight than the limitations to the owners of monuments imposed by the Law. If this situation does not happen, the interest to realize conservation projects decrease. In other words, the tax concession must permit the reasonable maintenance of a monument for its owner.

In Mexico, LFMZ just permits a discount in the Real Estate Tax to the owners that conserved and restored a monument. However, it is important to indicate that this tax is low and this fiscal benefit is not interesting for the owners of monuments if this concession is compared with the economical investment in a conservation project.

As we have exposed, the local authorities (i.e. the government of Mexico City) have established additional tax benefits when the conservation project is realized in Historic Centers.

Unfortunately, the sum of federal and local tax concessions does not represent for the owner of a monument the recovering of an important part of the investment used in a normal restoration process.

- b) To be granted through easy procedures. The tax concession has to be granted through easy procedures provided by the Law in order to warrant the access to this benefits. If this situation does not happen, the tax concession will not have force as a real benefit for the person that decide to invest in a conservation project.

Continuing the example of LFMZ, as a previous requirement for the access to the Real Estate Tax benefits, it is necessary to obtain an opinion issued by the Mexican authorities. in our opinion, the conservation of the monument is adequate and the use of the monument is in accordance to their characteristics.

2. Problems related to the necessity to develop new legislation

2.1. Formulating the State obligations regarding the preservation of the monuments of culture

The regulation of the State obligations regarding the conservation of the Cultural Heritage has to be included in the most important disposition in the legal system of a country: the Constitution.

The recognition of the cultural rights (and specially the right to access to our Cultural Heritage) in the Constitution represents the compromise of the national government before the conservation of the monuments and sites. Also, this compromise means a legal obligation for the State before the society and the Constitution has to include legal procedures in order to permit the society to demand to the State specific actions for the protection of the Cultural Heritage.

In accordance to the opinion of some legal specialists, one of the most important problems of the Mexican Constitution is the lack of any disposition for the recognition of cultural rights (except the recognition of the cultural rights of the indigenous communities).

Before this situation, the Mexican Law has not established legal procedures in order to demand to the State the protection of the Cultural Heritage before a situation that could represent a risk of destruction.

2.1.1. Current Administrative Structure

In Mexico, the protection and preservation of monuments is mainly a federal activity. LFMZ establishes that the protection, conservation, restoration and recovering of monuments is a matter of public interest and the following federal authorities are competent in the application of this Law:

- President of Mexico

- Public Education Ministry
- INAH
- INBA
- ~~Others federal authorities and offices~~⁷

It is important to make a special mention about the participation in this field of CONACULTA that is the responsible of the cultural policy of Mexico.

As we could appreciate, the state and municipal governments are not included in this list. However, these governments can participate in the conservation of the Cultural Heritage in accordance to the LFMZ⁸ and its Rules, especially in the following cases:

- For the restoration of a monument, it will be required the previous permit and the supervision of INAH⁹
- For the conservation and exhibition of artistic monuments with the collaboration of INBA¹⁰
- INAH and INBA will provide professional advisory in the conservation of monuments¹¹
- INAH has the faculty of suspend the non-authorized interventions.
- In urgent cases, Municipal authorities have to help INAH in the provisional suspension of non-authorized interventions in monuments.¹²

The sites of monuments are subjected to the competence of the federal authorities.

In order to have a better idea about this matter, it is convenient to define the concept "*monument*" established in LFMZ.

This concept was included in the Monuments Law issued in 1934 and this disposition divided the monuments in accordance to a historic period. This chronological definition based in the time has been criticized and there are petitions for an amendment of the Law in this matter.

The Archeological Monuments are the goods produced by the cultures located in our national territory before the establishment of the Spanish culture in the country, including the vestiges of flora and fauna related to these cultures¹³. These monuments are public property.

The Historic Monuments are the goods related with the history of Mexico, including the buildings realized during XVI to XIX Centuries; documents and files included or had been included in federal, state or municipal offices and archives; original documents and scientific and technical collections of the same period.¹⁴

The Artistic Monuments are mobile goods and buildings with a relevant esthetic value.¹⁵

In order to determine the competence of the authorities, the archeological value is more important than the historic value and the historic value is more important than the artistic value.

⁷ LFM.- Article 3

⁸ LFMZ.- Article 4

⁹ LFMZ.- Article 7

¹⁰ LFMZ.- Article 8

¹¹ LFMZ.- Article 9

¹² LFMZ.- Article 12

¹³ LFMZ.- Article 27

¹⁴ LFMZ.- Articles 35 and 36

¹⁵ LFMZ.- Article 33

2.1.2. Cultural Heritage Management

The conservation of the Cultural Heritage is a multidisciplinary matter and in this topic, it is possible to appreciate different aspects: cultural, social, economical, urban, tourist, environmental. As consequence of this situation, it is possible to confirm the participation of an important number of authorities in this field.

In accordance to the Mexican Law, the functions of INAH and INBA consist in the registry of Cultural Heritage, the granting of licenses, the making of verification actions and the imposition of penalties when an action against the Cultural Heritage Law is detected.

However, it is not possible to find specific dispositions in accordance to the concept of the Cultural Heritage Management. LFMZ was issued in 1972, and its amendments have not represented a change in the vision related to role of the State before the Cultural Heritage.

The specialists have recognized the importance to create a Management system of our Cultural Heritage, but in this moment LFMZ does not include specific disposition in this way. In our opinion, it is necessary a total amendment of the Mexican Law for the including of the concept of "Management of the Cultural Heritage" in our legal system.

Mexico is a federal country, integrated by States with their own government. In each Mexican State, it is possible to find a Cultural Institute for the protection and promotion of the local culture and the local Cultural Heritage.

An important problem that the legal specialists have found is the lack of actions or co-ordination between the federal and local cultural authorities in order to establish global policies and actions for the protection of our Cultural Heritage.

There is a lack of organized co-ordination between the governmental authorities, institutions and organizations. In the past, it was created an Intergovernmental Commission with the intention of co-ordinate the actions related the preservation of the Cultural Heritage. A possible solution for this project is the creation of a Commission integrated by governmental offices, in order to provide a better co-ordination between the authorities.

2.1.3. Financing

The financing for the protection and conservation of Cultural Heritage includes:

- Public Direct Investment and Participation, including budget and subventions
- Benefits for the private sector – tax concession: exemptions and deductions

In Mexico, in accordance to the National Development Plan issued by the President in the beginning of its government period, the Federal Government destines a specific budget for the conservation and restoration of the Cultural Heritage through CONACULTA, INBA and INAH.

The local governments also create special budgets for the protection and conservation of monuments protected by its own laws.

The proprietorship of INAH is integrated, in accordance to its Organization Law¹⁶, by the amounts granted by the National Budget and other contributions made by public and private entities. Additionally, the patrimony of INAH is integrated by the incomes derived of its own activities (i.e. publishing and sale of books, movies, pictures, reproductions, royalties, etc.)

The conservation and restoration works in historic public buildings are financed by the Federal Government but, actually, the collaboration and co-financing between the different levels of government and the private sector is frequent.

¹⁶ Organization Law of the National Institute of Anthropology and History. Published in DOF on February 3, 1939. Amendments published on January 13, 1986.

In the Historic Center of Mexico City, the following ways of financing have been used:

- Direct financing by the Federal Government and the Government of Mexico City
- The creation of tax benefits in order to promote investment of the private sector and
- The mixture of resources granted by the public and the private sector.

It is necessary to considerate the importance of the Public Investment due to its recovering effects for the Historic Sites, through actions destined to the improving of public spaces, equipments, urban infrastructure and dwelling.

Due to the current scarcity of public resources, it is also important the private investment based in the confidence in the public management of the rescue project of the Historic Center of Mexico City through clearly defined and effective plans, objectives and strategies, a visible and strong compromise of the authorities and the attraction of tax, financial and administrative benefits.

Recently, there was an important investment consisting in the acquisition of 48 buildings with high commercial potential in the Historic Center of Mexico City. These buildings will be restored and destined to dwelling, commercial, services and offices. For this purpose, it was constituted a private real estate corporation. Any investor is able to participate in this corporation and it will participate in the stock market with an initial issuing of bonus convertible in stocks in a term of five years.

2.2. Development of mechanism for preventing and sanctioning of non-regulated intervention in the monuments of culture and their environment.

The interventions in monuments or buildings located in monuments zones are regulated by LFMZ. This disposition provides that it is required a previous authorization issued by INAH or INBA for the following actions:

- Works of conservation and restoration in historic monuments made by their owners.
- Works of excavation, foundation, demolition or construction in contiguous lands of a monument;
- Works inside and outside of a monument
- The installation of advertising, billboards, posters, pavilions and others installations in Zones of Monuments

LFMZ also establishes that, in urgent cases, the municipal authorities are able to help the federal authorities in the provisional suspension of non-authorized works made in contiguous lands of a monument.

Additionally, LFMZ permits INBA to emit a provisional declaration of artistic monument when it is detected the realization of works that could represent an irreparable damage for a building with relevant esthetic value. With his declaration, INBA is able to order the stop of such works.

Also, there are in our Law an important number of non-regulated interventions in the Cultural Heritage: for example, the interventions realized in the contiguous areas of a monument. LFMZ does not establish any disposition related the protection of the contiguous areas of a cultural site, including the natural and building environment, the urban image and the monumental open spaces.

In Mexico City, there are others preventive mechanisms in order to protect the Cultural Heritage, as the Technical Opinion issued by the Cultural Sites Direction of the Urban Development and Dwelling Ministry of the local government. This opinion is a necessary requirement for any work in monuments, being necessary to obtain previously the authorization granted by INAH or INBA and to fulfill the requirements for interventions (substitutions, additional modifications, change of land use, etc.) indicated in the rules for intervention included in the partial urban plans for cultural zones.

In the State of Jalisco, there is a governmental office named Urban Development Agency (Procuraduría de Desarrollo Urbano). In accordance to the Laws of Jalisco, this agency is able to promote before the state and municipal authorities and the Administrative Courts the following actions: the imposition of preventing measures and the revocation of authorizations related to interventions in Cultural Buildings when a violation to the Law is detected. Also, this agency has the faculty of apply the suspension of works as safeguard measure based in a technical opinion.¹⁷

In our opinion, it is really important -as an initial step in order to present and penalize the non-regulate interventions- to create a technical regulation for the intervention in monuments and sites. This kind of mechanisms could be:

- a) special rules and legal dispositions for specific monuments and sites,
- b) special rules and legal dispositions for specific conservation and restoration procedures and for the treatment of specific topics, in cases when these matters are important and representative in a monument and site.

Other important mechanism is the creation of consultative bodies of specialist as technical support for the government in the adoption and implementation of actions, rules, policies and procedures in the conservation and restoration of the Cultural Heritage and the regulation of the intervention in monuments.

Unfortunately, there are not the mentioned mechanisms included in the Mexican federal legislation. For this reason, the decisions adopted by INAH and INBA respect to the intervention in monuments are discretionary. In some cases, the owner affected by this governmental decisions could file before the federal courts an claims against governmental acts (named in Mexico "*juicio de amparo*") and the consequence of this situation is the revocation of the mentioned governmental action.

Additionally, LFMZ does not include the protection of the natural and built environment as a specific issue to be regulated in the intervention in monuments and sites.

Other important mechanism of protection is the declaration of monuments and zones of monuments. In accordance to the Rules of LFMZ, the declarations of zones of monument have to include the terms, conditions and specifications that the constructive activities have to fulfill in these cultural sites.

The intention of this disposition is to provide to each monumental zone a specific regulation in order to warrant a specialized attention to the zones of monuments in accordance to their natural, built and cultural characteristics.

However, there is not the specific regulation in the declarations of zones of monuments.

In some cases (i.e., the declaration of the Historic Center of Puebla as historic zone¹⁸), the declaration does not include any disposition related this regulation.

In the case of the majority of the declarations issued in the 80's and 90's (i.e., the declaration of the Historic Center of Aguascalientes as zone of historic monuments¹⁹), the sole indication respect to the mentioned specific regulation is the obligation to obtain a previous authorization emitted by INAH.

Recently, the declarations of monuments have included a new disposition granting to the Public Education Ministry the faculty of define the parameters of protection in the declared zone of

¹⁷ Cultural Heritage Law for Jalisco State.- January 20, 1998.- Article 18

¹⁸ Published in DOF on November 18, 1977

¹⁹ Published in DOF on December 20, 1990. The Article 5 of this declaration indicates: "*The constructive activities realized in the historical zone in Aguascalientes will be subjected to the conditions established in the correspondent legal dispositions and the works of construction, restoration or conservation in this zone of historic monuments must be approved previously by the National Institute of Anthropology and History*"

monuments (i.e. the declaration of a zone of historic monuments in the Historic Center of Mazatlan²⁰).

An exceptional case in Mexico is the declaration of the archeological zone of Teotihuacan²¹.

In this declaration, the archeological zone is divided in three areas:

- a) Central Area of Archeological Monuments (the area with the most important presence of monuments)
- b) Additional Area of Archeological Monuments (the recently discoveries happened in this area)
- c) General Protection Area (when it is possible to find archeological vestiges)

The declaration establishes a specific regulation for each area: protecting the visual values, indicating special requirements and limitations for building works, preventing damages to the environment, regulating the land uses, providing co-ordination measures between the protection of the Cultural Heritage and the urban development programs, etc.

Unfortunately, this is a rare case in the Mexican legislation. In our opinion, it is necessary to review and enforce the function of the declaration of monuments and cultural zones as a mechanism of regulation of the Cultural Heritage.

Other important mechanism for the control and detection of non-regulate interventions in monuments is the Public Registry of Monuments.

In accordance to LFMZ, it is obligatory to file in this Registry the monuments and the transferences of ownership of these buildings.

However, in our opinion, The Public Registry of Monument could be an important mechanism of control of the interventions in monuments if the licenses granted by the authorities for the realization of interventions in monuments would be filed in this Registry.

It could permit:

- a) to provide information about the different interventions in a monument (if all the interventions have been authorized and files by the authority); and/or
- b) to detect non-regulated interventions in a monument (before the incongruence between the latest information filed in the Registry and the real situation of the monument).

2.3. Mechanisms for the strict application of the requirements of the law to the owners of monuments

The obligatory requirements of the management and maintenance of monuments established in LFMZ and its Rules are the following:

- The owners of monuments must conserve and restored them with the previous authorization issued by INAH or INBA.
- The competent Institute has the faculty to realize conservation or restoration works in a monument if its owner does not carry out this works once he received an order in this sense issued by the authority. The owner of the monument will pay the expenses of such works.
- INAH or INBA can suspend the non-authorized conservation or restoration works in monuments

²⁰ Published in DOF on March 12, 2001 . The Article 5 of this declaration provide the following: "The Public Education Ministry will define the parameters of protection of this zone of historic monuments and will promote educational and diffusion programs in order to stimulated between the community the knowledge, study, respect and appreciation of Cultural Heritage conserved in this zone"

²¹ Published in DOF on August 30, 1988.

- The change of used in Historic Buildings owned by the federal government will be included in decree issued by the President
- The transference of ownership of Cultural Buildings will be included in a public deed and the parts must notify to INAH or INBA about this operation.
- The building works and others restoration and conservation works made in a zone of monuments have to be realized in accordance to the conditions established in the competent legal dispositions and with the previous authorization of INAH or INBA.
- It is prohibited the definitive exportation of artistic monuments owned by private persons and corporations.
- The constructive works made in a contiguous lands of a monument have to been authorized previously by the competent Institute
- The monuments have to been filed in the Public Registry of Monuments by their owners. The inscription could be made directly by the authority, notifying of this circumstance to the owner. The Law establishes a special defense procedure in order to avoid the inscription on the monument in the Registry.
- The declarations of zones of monuments will be notified to the owners of the building located in these areas.

It is important to indicate that LFMZ does not include a special procedure in order to permit the defense of the owner of a monument against the declaration of a monument or a zone of monuments. For this reason, recently ²², the Supreme Court of Justice of the Nation has considered that LFMZ is unconstitutional as long as this disposition violates the audience right established in our Constitution.

In our opinion, the development of mechanisms of strict application of the requirements of the law to the owners of monuments has to be supported in the following actions:

- a) The creation of technical and specific regulation for the intervention, the management and maintenance of monuments in accordance to the characteristics explained in the point number 2.2.
- b) The creation of consultative bodies integrated by specialists in different sciences involved in the conservation of the Cultural Heritage. This action could warrant the implementation of governmental decisions with a scientific base.

But, with independence to the mentioned actions, the most important mechanism to permit a strict application of the law is the establishment of an special recruitment process for the candidate to join in a governmental institution dedicated to the preservation of the Cultural Heritage, proving that the candidate has the necessary knowledge and experience in order to provide an adequate treatment to our Cultural Heritage.

Other important issue that the cultural authorities have to solve in order to warrant a strict application of the Law is a permanent training plan for all the personnel of the governmental institutions dedicated to the protection of the Cultural Heritage.

Other actions related to this matter are:

- a) The creation of a Manual of Policies and Procedures in order to regulate the internal operation of the cultural authorities and
- b) The realization of internal audits for the verification of the normal operation of these cultural institutions.

²² Full Meeting of Supreme Court Of Justice of the Nation.- Volume XI, March 2000. Thesis P. XXI X/2000 Page 96
Subject: Administrative Constitutional.

2.4. Mechanisms regulating the relations between the owners of monuments of culture and the State in case of conflict between the personal and public interest

2.4.1. Financial Mechanisms

One of the most important problem for the preservation of the monuments is the little valorization of the Cultural Heritage made by its owners. It is important to develop educational and promotional actions in order to inform to the owners of monument respect to the real value of the cultural sites and the importance of their participation in redemption and conservation projects.

Although LFMZ establishes the obligation of the owners of monuments of conserve and restored them, this obligation is just a "good intention" if it is not fulfilled, caused by the high costs of the restoration works (this works could be more expensive than a new edification) and the lack of financing options.

One of the most important mistakes and omissions of Mexican legislation is the establishment of the obligation to conserve and restore the monuments for their owners without providing economical resources for this objective.

It is necessary to create public policies, adequate technical rules and tax and financial mechanism for the owners of monuments in order to stop the irreparable losses or an important part of our Cultural Heritage.

2.4.2. Legal Mechanism

When the conflict between the personal interest and the public interest appears, the best way to solve this situation is with the agreement of the parts.

Obviously, before the violation of a Law, the State has the possibility to impose penalties and other coactive actions. However, our opinion is to enforce the social management of the Cultural Heritage.

Following this idea, Mexican ICOMOS promotes two important legal dispositions: the Cultural Heritage Law for Baja California State and the Rules for the Protection of the Cultural Sites in Morelia.

In accordance to both legal dispositions, when it is detected a violation or action against the Cultural Heritage, the owner of the monument or the responsible of this violation has the opportunity to take on an agreement with the cultural authorities and present a protection program for the monument in order to avoid the imposition of the penalty provided in the Law.

The main idea of these dispositions is promote the correct actions related to our Cultural Heritage and not to limit the solution of this kind of conflicts with the imposition of penalties.

If the owner of a monument or the responsible of the violation does not fulfill the agreement or the conservation program, the authority has the faculty to impose the legal actions provided by the Law.

In our opinion, in this kind of conflict we have to find the collaboration between the parts.

2.5. Various forms and ways for co-ordination of the specific law for the monuments with the others laws

The new situations derived of the social, cultural, politic and economical development in Mexico during the last 30 years have surpassed the Constitution and LFMZ issued in 1972. This Law is considered decrepit due to it contains omissions, outdated concepts and mistakes, and in consequence it is considered as inadequate for the current circumstances and is qualified as insufficient and with serious legal omissions including the lack of co-ordination with other laws involved, directly or indirectly, with the Cultural Heritage. For these reason, some specialists have proposed a total amendment for the Mexican legal system of protection of the Cultural Heritage.

One of the most important actions for the improvement of LFMZ is the proposal of amendments and additions in order to get the compability of LFMZ with other legal dispositions related to land planning, land use, environment, sanctions and a close relation between the practical application of the monuments regulation and the urban development programs.

The problem of the co-ordination between authorities and laws related, directly and indirectly, to the protection of the Cultural Heritage could be solve through the adoption of the following ways:

2.5.1. Management Plans of Conservation

This protection instrument has been used by the Mexican Authorities since just a few years ago. This documents are not obligatory in our legal system, however, in our opinion the management plan is one of the most important way to provide a global vision of all the necessary governmental actions for the protection of a monument or site, establishing the most important pendent and relevant issues in a conservation process. In the detection and the solution of the mentioned issues, the co-ordinated intervention of all the competent authorities will be necessary.

2.5.2. Collaboration Agreements

The most important form in order to obtain a compromise between of all the authorities involved in the protection of the Cultural Heritage are the collaboration agreements. In these documents are possible to determine the rights and obligations of all the parts in the projects related the Cultural Heritage conservation.

The co-ordination between the state and municipal government with the federal government is organized in case of some Historic Towns included in the Word Heritage List through collaboration agreements, as we can verify in the following table:

| | |
|-------------|---|
| Mexico City | Collaboration Agreement between the Mexico City Government, INAH and INBA, establishing a "Projects Table" in order to improve the procedures of licenses and authorizations |
| Morelia | The creation of the Cultural and Historic Sites Coordination (Coordinación de Sitios Históricos y Culturales) , as an co-ordination and consultative agency for the activities of the municipal commissions |
| Oaxaca | Collaboration Agreement with INAH in order to protect the Historic Center |
| Puebla | Collaboration Agreement with INAH for the development of projects: <ul style="list-style-type: none"> - Cataloguing of Monuments - Up-dating of the Catalogue of the Historic Center - Up-dating of the delimitation of the Historic Center |
| Queretaro | The creation of the Monuments and Sites Direction , as an specialized agency for the support of the activities of the municipal governments and the link with the federal authorities |

Additionally, in the declarations of monuments and zone of monuments, there is a specific provision establishes the obligation to make a collaboration agreement between the federal, state and municipal authorities as a mechanism of governmental co-ordination.²³

²³ For example, in the declaration of a zone of historic monuments in Valle de Allende (published in DOF on March 9, 2001) we can find the following provision included in the Article 8: "In order to contribute to the better preservation of the zone of historic monuments indicated in this declaration, the Federal Government through the Social Development Ministry will propose to the Government of the State of Chihuahua, with the correspondent participation of the Municipality of Valle de Allende, to make a co-ordination agreement, in accordance to the Planning Law, the General

2.5.3. Periodical Meetings of Follow Up

In some cases, it is necessary to dedicate time and to determine a specific space in order to permit a direct dialogue between all the authorities involved in the management, regulation and conservation of the Cultural Heritage. The possibility to held this kind of meetings, dedicated to the discussion and to find the better solutions for the global problems of the Cultural Heritage.

2.5.4. Consultative Bodies

LFMZ does not include any disposition related the integration or participation of consultative bodies in the definition of policies and projects related the protection of the Cultural Heritage.

In the State Laws of Cultural Heritage we can find some examples of consultative bodies integrated by all the levels of government and the private and social sectors.

For example, in the Cultural Heritage Law for Baja California State, the Cultural Heritage Council is integrated by:

- The Governor of the State
- The General Director of the Cultural Institute of Baja California
- Education and Well-Being Ministry
- Planning and Finances Ministry
- Human Settlements and Public Works Ministry
- Tourism Ministry
- A representative of each Municipality of the State
- A representative of the Autonomous University of Baja California
- A representative of each Architects Associations recognized in the State
- A representative of each Civil Engineers Associations recognized in the State
- A representative of the organizations and associations dedicated to the protection of the Cultural Heritage
- The offices of representation of the federal authorities before the state government
- The representative of international organizations specialized in this matter.
- The Municipal Rules of Protection of the Cultural Sites of Morelia establishes the creation of Consultative Council of Cultural Sites integrated by:
 - The Municipal President
 - A representative of the Urbanism and Public Works Commission of the Municipal Council
 - A representative of Education, Culture and Tourism Commission of the Municipal Council
 - A representative of the Municipal Institute of Urban Development
 - The Urbanism, Public Works, Historic Center and Environment Ministry of the Municipal Government
 - The Environmental Protection Direction of the Municipal Government
 - A representative of the City Council

Law of Human Settlements and the state laws, with the intention to establish the bases for the realization of actions destined the regulation of land use for the preservation of the zone and its environment as well as the urban infrastructure and equipment. The National Institute of Anthropology and History will have the participation mentioned in this agreement.”

- A representative of Mexican ICOMOS
- A representative of the Architects Association in Michoacan State
- A representative of the Engineers Association in Michoacan State
- ~~A representative of the Master on Historic Buildings Restoration of the Universidad Michoacana de San Nicolás de Hidalgo~~
- A representative of the Historic Investigations Institute of the Universidad Michoacana de San Nicolás de Hidalgo
- A representative of the Archdiocesan Commission on Sacred Art
- A representative of the Lawyers Bar on Michoacan State
- A representative of the Mexican Building Industry Chamber
- A representative of Associations dedicated to the protection of the Cultural Heritage

2.5.5. Specialized Agencies

In some cases (i.e. the current draft of Rules for the Protection of the Historic Center of Queretaro) the authorities create a specialized agency for the attention of the cultural zones. In this case, this agency acts a co-ordination mechanism between the authorities for the "integrated conservation" of the Cultural Heritage. Being this agency the responsible of the planning of the protection and conservation activities, they represent an important way to get a global management of our monuments and sites.

3. Regulation of the management and establishment of "integrated conservation"

The creation and implementation of Cultural Heritage Plans in a process of "integrated conservation" have to be activities established in the Law. In our opinion, the most important principles for a regulation of this kind of plans are the following:

- a) A "global vision" of the Cultural Heritage, including the cultural matters but jointly with the urban, economical, tourism and social problems that participate in the diary reality of a monument or cultural site.
- b) The definition of the faculties of all the authorities involved in the monument and site.
- c) The inclusion of a democratic process in the creation and issue of a conservation plans, taken in consideration the opinion of all the sectors involved in the monument or cultural site in order to know and include the necessities of the habitants, users, authorities and conservators in these documents.
- d) The establishment of a specific period for the social discussion of a conservation plan.

4. Economic relation between preservation and cultural tourism

The relation between cultural heritage and tourism is close. The monument or cultural site is a point of attraction of the tourist. For this reason, it is important the economical contribution of the tourist sector in the preservation of the cultural heritage, especially in the solution of the problems derived of the use of the cultural heritage in this economic activity.

The economical contribution in the cultural tourism could make through the establishment of a tax or fees for the most important users of a cultural and tourist site: the renders of tourist services and the tourists. This amount has to be destined to a special fund dedicated to the specific conservation works in order to obtain a double benefit:

- a) the conservation of the Cultural Heritage;
- b) the offering of a best tourist attraction.

Additionally, it is important to promote the investment and the direct public participation in this activity. But it also important to create tax benefits and promotional actions (i.e. deductions, exemptions and reductions in federal, state and municipal taxes and fees, and mainly in the following taxes: VAT, Income Tax, Land Acquisition Tax and real estate Tax)

In the similar way that the concept of "Cultural Heritage" has changed, the cultural tourism has been transformed derived the development of the communications and the increment of the interest for visiting the cultural sites. The increment in the cultural tourism has its advantages and risks. In one hand, this activity produces economical resources, creates new employments, promotes the infrastructure investments and is an important factor for the valorization of the Cultural Heritage. In the other hand, the tourism can cause an adverse impact in a community damaging or destroying the cultural values of its monuments as well as its way of life and well-being.

For this reasons, it is necessary the planning of the cultural tourism, trying to get the balance between the economical matters, the Cultural heritage, the environment, the development and the well-being of the community.

In accordance to the resolution of the Oxford Colloquium, it is important the systematic cooperation between the tourism and cultural authorities. In Mexico, CONACULTA and the Tourism Ministry have signed a collaboration agreement in order to improve the protection, conservation, preservation, restoration, recovering, diffusion and promotion of the Cultural Heritage with tourist potential in Mexico.

This agreement involves the public, private and social sectors and its intention is to enforce the activities regarding the Cultural heritage and the Tourism in the national and international level.

5. The role of NGO's in the process of preservation

The role of the NGO's is important in the scientific, academic and promotional areas of the Cultural Heritage conservation.

The most important public mechanism for stimulation in this participation is the creation of consultative bodies in order to permit the participation of the NGO's in the examination and qualification of projects related the conservation of the Cultural Heritage.

Also, the role of NGO's is to inform to the authorities respect to any situation that could represents a risk for the integrity of a monument or site.

LFMZ and its Rules regulate the incorporation and operation of the civil associations, neighbors and farmers organizations dedicated to the protection of a monument or site, the promotion of the Cultural Heritage, the rendering of services to visitants of a monument, the organization and maintenance of museums and other activities.

The regulation for this kind of social organizations is strong and based in a total intervention of the authorities in the incorporation and operation of these organizations.

In other hand, the Articles 48 and 49 of the General Law of Human Settlements ²⁴ provides the promotion of the social participation social participation in the conservation of the Cultural Heritage.

Finally, the local legislation of the Cultural Heritage has established measures in order to permit a constant participation of NGO's in the conservation of the Cultural Heritage.

This situation is based the close relation between the local authorities and the community and the importance of the Cultural Heritage conservation for the population.

²⁴ Published in DOF on July 21, 1993.

Abbreviations

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|----------------------|--|
| INAH | National Institute of Anthropology and History (Instituto Nacional de Antropología e Historia) |
| INBA | National Institute of Fine Arts and Literature (Instituto Nacional de Bellas Artes y Literatura) |
| CONACULTA | National Council for the Arts and the Culture (Consejo Nacional para la Cultura y las Artes) |
| LFMZ | Federal Law of Archeological, Artistic and Historic Monuments and Zones (Ley Federal sobre Monumentos y Zonas Arqueológicas, Artísticas e Históricas) |
| RULES OF LFMZ | Reglamento de la Ley Federal sobre Monumentos y Zonas Arqueológicas, Artísticas e Históricas |
| DOF | Official Journal of the Federation (Diario Oficial de la Federación) |

**ANNUAL MEETING OF THE ICOMOS INTERNATIONAL SCIENTIFIC COMMITTEE
ON LEGAL, ADMINISTRATIVE AND FINANCIAL ISSUES (ICLAFI)**

PLOVDIV, BULGARIA, MAY 2004



**Prashantha B. Mandawala
Vice President
ICOMOS – SRI LANKA**

A Sri Lankan Perspective on:

- **Legislation and Regulations applicable for the protection of Cultural Heritage**
- **Tax concessions and the VAT incentives in the field of the preservation of the Cultural Heritage**
- **Regulation of the management and establishment of "integrated Conservation"**
- **Economic relation between preservation and cultural tourism**
- **The role of NGO in the process of preservation**

1. DEFINITIONS APPLICABLE TO CULTURAL HERITAGE

In order to identify the different entities of the Cultural Property in Sri Lanka, the following definitions are applied.

Archaeological Heritage

Part of the material heritage of mankind in respect of which archaeological methods provide primary information and includes all vestiges of human existence and places relating to all manifestations of human activity, abandoned structures and remains of all kinds (including subterranean and underwater sites), together with the portable cultural material associated with them.

Monument

Any building, or other structure or erection, or any tomb, tumulus, or other place of interest, or any part or remains of the same or any other site where the material remains of historic or prehistoric human settlement or activity may be found, and includes the site of any monument and such portion of land adjoining such site as may be required for fencing or covering in or otherwise preserving any monument.

Antiquity

Any ancient monument or any of the following object lying or being or being found in Sri Lanka, which date or may reasonably be believed to date from a period prior to the 2nd day of March 1815.

Statues, sculptured or dressed stones and marbles of all descriptions, engravings, carvings, inscriptions, paintings, writings, and the material whereon the same appear, all specimens of ceramic, glyptic, metallurgic and textile art, coins, gems, seals, jewels, jewellery, arms, tools, ornaments, and all other objects of art which are movable property

Cultural Property

Cultural Property which on religious or secular grounds is specifically designated as being of importance for archaeology, prehistory, history, literature, art or science, and which belongs to one of the following categories –

- i. rare collections and specimens of fauna, flora, minerals and anatomy
- ii. property relating –
 - a. to history, including the history of science and technology, military and social history
 - b. to the life of national leaders, thinkers, scientists and artists
 - c. to events of national importance
- iii. products of archaeological excavations or of archaeological discoveries
- iv. elements of artistic or historical monuments or archaeological sites which have been dismembered
- v. antiquities more than one hundred years old such as inscriptions, coins, currency notes and engraved seals
- vi. objects of ethnological interest
- vii. pictures, paintings and drawings produced entirely by hand
- viii. original marks of statutory art and sculpture
- ix. original engravings, prints and lithographs

- x. rare manuscripts, old books, documents, drawings, maps, plans and publications of special interest
- xi. postage revenue and similar stamps
- xii. archives
- xiii. articles of furniture more than one hundred years old
- xiv. old musical instruments

2 LEGISLATIONS AND REGULATIONS APPLICABLE TO THE PRESERVATION OF CULTURAL HERITAGE

Since 1887, there are number of legislations that were passed by the Government of Sri Lanka for preservation of Cultural Heritage in Sri Lanka. They are,

- a) Treasure Trove Act No. 17 of 1887 and Act. No. 03 of 1891 for the prevention of hiding the ancient treasures in Sri Lanka
- b) Antiquities Ordinance No. 15 of 1900 for the better protection and conservation of antiquities in Sri Lanka
- c) Antiquities Ordinance No. 9 of 1940 amended by Act No. 2 of 1955, Act No. 22 of 1955 and Act No. 24 of 1998 for the provision of better preservation of the and of sites and buildings of historical, or archeological importance in Sri Lanka
- d) Cultural Property Act No. 73 of 1988 for the provision for the control of export and licensing to deal in Cultural Property
- e) Archaeological Sites of National Importance Act No. 16 of 1990 to declare certain archaeological activities, sites, remains, antiquities, ancient and historical monuments and to record them as being of national importance

2.1 State obligations with regard to the preservation of the monuments of culture

2.1.1 Legal Framework

a) Antiquities Ordinance

The antiquities ordinance together with its amendments provides the main legal framework for the protection of antiquities in Sri Lanka. These provisions could be identified as **Ownership of Antiquity, Discovery of Antiquity, Declaration of Monuments, Declaration of Archaeological Reserves and Export of Antiquities.**

Ownership of Antiquity

All antiquities discovered in or upon any land in the ownership of any person is not considered as a property of such person but will be considered as such person has only having an interest in such property.

All ancient monuments (see the **Declaration of Monuments** section below) not owned by any person or the control of which was not vested in any person as trustee, incumbent or manager was considered as the absolute property of the State from the date of the ordinance came into operation.

All undiscovered antiquities other than ancient monuments, lying on or hidden beneath the surface of the ground or in any river or lake or within the territorial sea of Sri Lanka is considered as the absolute property of the Crown.

Discovery of Antiquity

On the discovery of any antiquity other than an ancient monument, the Director General of Archaeology is entitled to the custody and procession on behalf of the State unless otherwise he do not consider it necessary. As such, no person is allowed to excavate any land belong to him or otherwise, except under the authority of a licence issued by the Director General of Archaeology. Therefore, every person who discovers any antiquity other than the authority of a licence should report and if it is practicable deliver the antiquity to the nearest peace officer¹ and report to the Government Agent with in seven days of discovery.

Declaration of Monuments

Any specified **monument**, which has existed or is believed, to have existed for a period of not less than hundred years could be declared as an **ancient monument** under the ordinance. Over and above any **tree** growing in State or any other land of historical and archaeological importance, which is to be preserved or protected, could also be declared as an **ancient monument**.

Any ancient monument situated on any land other than Crown land is in danger of destruction or removal or damage from neglect or injudicious treatment could be declared as a **protected monument** to protect it in the interest of the public.

Declaration of Archaeological Reserves

The Director General of Archaeology can declare any specified area of land to be an archaeological reserve for the purpose of this ordinance in which only the Director General is permitted to carry out any activity.

Export of Antiquities

As antiquities has been declared as articles which are restricted for the exportation under the Customs Ordinance No. 17 of 1869 and its subsequent amendments, no person is allowed to export any antiquity with out an licence issued by the Director General of Archaeology.

b) Cultural Property Act

The Cultural Property Act provide the legal framework to deal with the cultural property of Sri Lanka under the headings of **Export of Cultural Property, Registration of Cultural Property and Licence to deal in Cultural Property.**

Export of Cultural Property

No person is allowed to attempt to export any cultural property from Sri Lanka without a licence issued by the Controller of Exports, which is accompanied by a statement from the Director General of Archaeology.

Registration of Cultural Property

No person in Sri Lanka should own or have in his custody or possession of any cultural property unless it is registered by the registering officer and obtain a certificate from such officer.

¹ Peace Officer means a police officer and includes any headman appointed by a Government Agent to perform police duties

Licence to deal in Cultural Property

No person in Sri Lanka is permitted to carry out a business of selling or offering to sell any cultural property except under the authority of a licence issued by the Director General of Archaeology.

c) Archaeological Sites of National Importance Act

Archeological Reserves under the Antiquities Ordinance; archeological activities such as exploration, excavation, inscription, recording, conservation, protection display, layout, conduct of research, establishment of museums, provision of services to the visitors, preparation of a register of ancient monuments; and Ancient Monuments declared under the Antiquities Ordinance are declared to be of national importance for the purpose of the ninth schedule of the Constitution. By this declaration the responsibility of the above-mentioned activities comes under the control of the Central Government.

2.1.2 System of Protection and Management of Cultural Heritage

According to the Antiquities (Amendment) Act No. 24 of 1998 the Director General of Archaeology is empowered –

- to formulate a national archeological policy and to co-ordinate and implement such policy
- to inventories the archeological heritage of Sri Lanka
- to protect and maintain such archaeological heritage
- to conduct research into every aspect of archaeological heritage
- to enhance public awareness of the archeological heritage
- to carry out specific activities such as issue of licences to excavate, to export antiquities and to supervise activities connected with the protected monuments

As the Director General of Archaeology is considered the only authorized officer in Sri Lanka who is empowered to carryout the protection and management of cultural heritage, the act also provide him, generally or specially to authorize the exercise, performance or discharge of any of his powers, duties of functions –

- through the Government Agent or the District Secretary of a District or Divisional Secretary of any division within that district or division respectively
- through any officer of the Archaeological Department
- through any person possessed of special expertise and resources in or for the exploration, excavation, conservation, restoration or maintenance of monuments and antiquities

As such, the Government Agent or the District Secretary of a District or Divisional Secretary of any division has been empowered by the Director General of Archaeology to represent him in any occasion where the presence of him is necessary. But the officers of the Archaeological Department are mainly authorized to carry out most of the activities related to the Cultural Heritage. The Director General is assisted by an Additional Director General, who is in charge of the administration and financial activities and by a Deputy Director General to perform his main duties. The different technical activities of the department is entrusted to Directors who are responsible for the division of excavations and museums, exploration and documentation, conservation and maintenance, epigraphy and numismatics, chemical conservation, and general services. Assistant Directors, Graduates and Technical Officers of different professions assist the Director of each

section to formulate and carry out different work programs and to carry out powers of the Director General vested under the law. Responsibility of day-to-day activities of the department is handled by Assistant Directors of Provinces.

The Director General of Archaeology has also entrusted the exploration, excavation, conservation, restoration and maintenance of monuments, sites and antiquities of ten sites, namely, Abhayagiriya Monastery; Jetavana Monastery; Maha Vihara Monastery; Polonnaruwa Archaeological Reserve; Sigiriya Archaeological Reserve; Dambulla Temple; the Royal Palace Complex, four Hindu Temples, and Buddhist Monasteries of Malwatta and Asgiriya in Kandy; Ramba Temple Complex; Tissamaharama Temple Complex and Galle Dutch Fort complex, to the Director General of the Central Cultural Fund.¹ The Director General of Central Cultural Fund carries out its work programme through consultant directors of archeology and conservation appointed for each of its projects assisted by Graduates and Technical Officers of different professions. A Project Manager at each of the project who is supervised by Assistant Directors, Directors of development, finance & administration and the Deputy Director General assist the Director General in fulfilling his obligation.

The export of antiquities is supervised by the Superintendent of Customs of the Biodiversity Protection Unit of the Sri Lanka Customs, who has close relationship with the Director General and the Director of General Services of the Archaeological Department.

The Controller of Exports with the permission of the Director General of Archaeology permits the export of Cultural Property under the Cultural Property Act. The responsibility of registering the Cultural Property is vested with the Government Agent of the respective district while the licence to deal in Cultural Property is the responsibility of the Director General of Archaeology under this act.

2.1.3 Financial Measures applicable for the preservation of Cultural Heritage

According to the Constitution of Sri Lanka and the Archaeological Sites of National Importance Act the responsibility of the preservation of Cultural Heritage lies with the Central Government. Therefore, the allocation of funds for the preservation of the Cultural Heritage is carried out through the annual Budget of the Central Government at the beginning of each financial year. The Director General of Archaeology in consultation of its Director initially prepare a five year plan identifying different activities that should be carried out in order to preserve the cultural heritage. This plan will be reviewed before the beginning of each financial year and the priority projects will be identified in order to prepare an annual work programme, which will send to the Government Treasury for the allocation of funds. This work programme will be readjusted according to the final allocations provided by the Treasury through the annual budgetary allocations. But it should be noted due to the substantial Budget deficit encountered in almost every financial year by the government, the annual allocations provided to the Department of Archaeology in every year is limited and in some years the allocations were limited to meet recurrent expenditure only.

According to the Antiquities (Amendment) Act. No.24 of 1998 the Director General of Archaeology is empowered to levy an entrance fee where it is considered necessary at selected sites or visitor centers, but it is not clear how these income could be used as the

¹ Central Cultural Fund is an institution established by an Act No. 57 of 1980 for the provision of funds for the development of cultural and religious monuments in Sri Lanka, to meet expenses incurred in developing, restoring and preserving cultural monuments and the development of religious and cultural activities in Sri Lanka and abroad, to provide financial assistance to artists, craftsmen, writers, painters, musicians and others who are engaged in promotion of cultural activities and to provide for the making of awards to persons who have served the nation in the cultural and religious fields.

income of the department had to be remitted to the Government Treasury. On the other hand this act also provide the legal power to establish under the control and administer a fund known as "Antiquities Reward Fund" for the purpose of rewarding informants and enforcement officers contributing to recover of illegally appropriated antiquities or to the protection of sites and antiquities. The income for this fund will be obtained from one half of all fines recovered by any court in respect of convictions for offences under the Antiquities Ordinance, donations from individuals, societies or institutions and any other prescribed payments.

Over the years the annual allocations to the Archaeological Department started declining as the priority of the Governments were mainly aims at the development of infrastructure facilities necessary for development activities and provision of free health facilities, free education facilities, etc. to the general public. As a result of this managers of the cultural heritage were compelled to search for more avenues of income, which were essential for the protection of the cultural heritage. As a result the Central Cultural Fund was created in 1980 for which income could be generated from –

- any grant received from the Government
- any gifts or donations of money made to the Fund
- any income from investments or other receipts due to the Fund
- any income derived from the levy of charges from visitors and tourist entering the area called "the Cultural Triangle"¹

The Central Cultural Fund since its inception in 1980 received Government Grants and Donations from various International Governments and International Institutions such as UNESCO, WFP, UNDP, etc. but since 2001 it manages expenditure of its ten sites from the income generated mainly from entrance charges received from visitors and tourists to the Sites and Monuments belongs to the Archaeological Department with in the Cultural Triangle area. In 2003 the Central Cultural Fund has generated a direct income of 445 Million Sri Lankan Rupees² of which 94% from entrance fees, 16 % from other sources such as investments, donations, publication sales, etc. Out of this income 68% has spend on the protection of its ten sites while 30 % has been spend as operational and other expenses. The institution has about 200 Million Sri Lankan Rupees as savings by the end of the year 2004. As the main income of the Central Cultural Fund derived from the entrance fees to Sites and Monuments belongs to the Archaeological Department the Director General of Archaeology also could obtain finances from the Central Cultural Fund to carry out activities connected with the preservation of Cultural Heritage for which the Government has not allocated funds. On the other hand the Director General of Archaeology also obtain fund for the preservation of Cultural heritage in North and East for which a property in the heart of the capital, Colombo City has been donated to the Central Cultural Fund by an individual to be leased or rented.

2.2 Mechanisms for preventing and sanctioning of non-regulated intervention in the field of Cultural Heritage

The Director General of Archaeology has been empowered through the Antiquities Ordinance with wider powers to prevent non-regulated interventions in the field of cultural heritage. The measures that had been taken could be explained under the headings of Discovery of

¹ The Cultural Triangle Means the triangular area covered by joining the cities of Anuradhapura – the first capital of Sri Lanka established in 6th century BC, Polonnaruwa – the second capital of Sri Lanka established in 11th century AD and Kandy – the last capital of Sri Lanka established in 16th century AD before the British take over in 1815.

² One American Dollar is equivalent to 98 Sri Lankan Rupees approximately.

Antiquities, Declaration of Ancient Monuments, Declaration of Archaeological Reserves, Export of Antiquity and Export of Cultural Property.

Discovery of Antiquities

The exactions for the purpose of discovering antiquities on land belonging to a person or otherwise in Sri Lanka could only be carried out under the authority of a licence issued by the Director General of Archaeology. Every licence will contain conditions in which the supervision of the excavations by any person approved by the Director General of Archaeology is essential. All antiquities found during such excavations should be reported to the Director General of Archaeology within a prescribed period and hand over them unless he is not interested.

If any person excavate for the purpose of discovering antiquities whether on land belong to himself or otherwise except under the authority of a licence issued by the Director General of Archaeology, will be guilty of an offence and will on conviction after summary trial before a Magistrate be liable to a fine not exceeding one hundred rupees or to imprisonment of either description for a term not exceeding one year.

Declaration of Ancient Monuments

The Director General of Archaeology could declare specific monuments as Ancient Monuments under the provisions of the Antiquities Ordinance. Out of these Ancient monuments, the monuments in private land could be declared as Protected Monuments. At present the declared Ancient Monuments could be identified under the following four headings.

- a) Ancient Monuments which are belongs to the Department of Archaeology
- b) Ancients Monuments belongs to the State but used by other Government institutions
- c) Ancient Monuments in private custody declared as Protected Monuments
- d) Ancient Monuments in private custody, which are not declared as Protected Monuments.

While all four categories are within the preview of the Department of Archaeology, any interventions of the Ancient Monuments are in the category of above a) and b) comes directly under the preview of the Department. The Ancient Monuments under the category of above c) and d) will be visited as an when necessary by the officials of the department especially by the provincial Assistant Directors.

In the case of category c) above, the Director General of Archaeology could issue a permit to a person interested in carrying out any work of restorations, repairs, alterations or additions with prescribed conditions in which the supervision of the excavations by any person approved by the Director General of Archaeology is essential. Every person who violate this will be guilty of an offence and will, notwithstanding anything to the contrary in any other written law, be liable on conviction after summary trial before a Magistrate to a fine not exceeding fifty thousand Sri Lankan Rupees or to imprisonment of either description for a term not less than two years and not exceeding five years or both such fine and imprisonment.

Declaration of Archaeological Reserves

All Archaeological Reserves declared under the antiquities ordinance or any state land reserved for archaeological purpose before the ordinance came into operation has become the property of the Archaeological Department. The Director General of Archaeology or a person acting under and in according with his direction could only carry out any work within these reserves.

Every person, other than the Director General of Archaeology or a person acting accordance with his directions, who clears or breaks up for cultivation or cultivates any part of a reserve, or erects any building or structure upon any reserve, or fells or otherwise destroys any tree

standing on any reserve, or encroaches any reserve will be guilty of an offence and on conviction after a summary trial before a Magistrate be liable to a fine not exceeding one hundred of Sri Lankan Rupees or to imprisonment of either description for a term not exceeding three months or to both such fine and imprisonment. In addition to passing the sentence the Magistrate will make an order to eject such person from the reserve.

Export of Antiquity

All antiquities have been declared as articles of which the exportation is restricted under the provisions of the Customs Ordinance of Sri Lanka. As such no person is allowed to export any antiquity except upon a licence obtained from the Director General of Archaeology. Any person who violates this provision of the law will be guilty of an offence and will be liable on conviction to a fine not exceeding fifty thousand Sri Lankan Rupees or to imprisonment of either description for a term not exceeding five years.

Export of Cultural Property

Any person who intends to export any cultural property should obtain a licence from the Controller of Exports, which should be accompanied with a statement from the Director General of Archaeology. If any person, himself or by another person on his behalf export or attempt to export any cultural property without proper licence, will, without prejudice to the provisions of the Customs Ordinance, be guilty of an offence and will on conviction after a summary trial before a Magistrate be liable to a fine not exceeding five thousand of Sri Lankan Rupees or to imprisonment of either description for a term not exceeding three years or to both such fine and imprisonment.

2.3 Mechanisms for the strict application of the requirements of the law to the owners of Cultural Heritage

The application of the requirement of law to the owners of Cultural Heritage is carried out by the Director General through Government Agents, District Secretaries, Divisional Secretaries, officers of the Archaeological Department and specially appointed experts. The Director General from time to time hold discussions and special informational meetings with the Government Agents, District Secretaries and Divisional Secretaries to discuss the ways and means to apply the law related to the protection of Cultural Heritage. On the other hand the officers of the Department of Archaeology mainly the Provincial Officers regularly visit the area assigned to them in order to apply the requirements of the law. Over and above the Director General has appointed various persons with special expertise to exercise his powers in special areas of interest.

Apart from this the Director General from time to time meets the owners of the Cultural Heritage to educate them with the requirement of law for the protection of cultural heritage, which they owned.

The Director General also take necessary steps to hold educational meeting with law enforcement officers of the country in order to educate them with the necessity of their participation of applying the laws related to the protection of the cultural heritage.

The most important law enforcement, which had been helping the Director General of Archaeology in the protection of the Cultural Heritage, was to prevent a person charged with or accused of an offence under the Antiquities Ordinance released on bail, notwithstanding anything to the contrary in the Code of Criminal Procedure Act. No. 15 of 1979 or any other written law and to treat a certification signed by him in a prosecution for an offence will be admissible in evidence without further proof and will be *prima facie* evidence of the facts.

2.4 Mechanisms for regulating the relations between the owners of Cultural Heritage and the State, and the public interest in the preservation of them

Relation Between the Owners of Cultural Heritage and State

Development of mechanisms for regulating the relation between the owners of Cultural Heritage and the State has been identified as never ending battle in Sri Lanka. As most of the Cultural Heritage in the country is related to the religion, almost all Ancient Monuments and Archaeological Reserves are been either owned or occupied by clergy and are regularly worshiped by deities. This has resulted in pressuring the Archaeological Department either to reconstruct the ruined monuments or to build various forms of new buildings with in the premises. Over the years the Archaeological Department has excised strict control over the Ancient Monuments owned by the state and situated with in the archeological reserves. But it had not been successful in fully controlling the Protected Monuments but has managed to come to some kind of agreements with the owners. As such the interventions made by religious owners are tolerable up to a certain extent in most of the cases.

Over the years the Department of Archaeology had been able to hold regular meetings with the religious owners of the monuments when interventions are proposed. The Director General of Archaeology was able to arrive at a suitable consensus through continues dialog with the religious owners and managed to obtain agreement to refer the matter to the Archaeological Advisory Committee when no agreement could be reached. In the case of Protected Monuments owned by laypersons could be easier to handle in cases of proposed interventions.

But the most difficult instances encountered by the Director General of Archaeology are in the cases of political interferences. When a monument it treated in the top list of the political agenda the Director General of Archaeology will not be able to exercise his full powers but may be able to minimize the destruction by applying diplomatic measures. But it is sad to state that in most instances the politicians has won the race sometimes causing irreparable damage to the monuments in some instances.

Public interest in the preservation of Cultural Heritage

Over the years the public interest in Cultural Heritage has dramatically increased favorably and unfavorably to the monuments and sites. The favorable increase could be identified through the increase of domestic visitors to the sites. For example the domestic visitors to Sigiriya¹ has increase from in 320,724 1982 to 548,037 in 2003. But it is sad to note that through the increase of public interest the site erosions also had dramatically increased causing serious damages to the site and there had been a remarkable increase of willful damages to the sites. Therefore, the Archaeological Department through the Antiquities (Amendment) Act of 1998 has enforced penalties to any person who willfully destroys, injures, defaces or tempers with any antiquity or willfully damages any part of it will be guilty of an offence and will be liable on conviction after summary trial before a Magistrate to a fine not exceeding fifty thousand Sri Lankan Rupees or to imprisonment of either description for a term not less than two years and not exceeding five years or both such fine and imprisonment. But it should be noted that information received by the law enforcement officers and officials of the department on the acts of violation of provisions of the Antiquities Ordinance has increased mainly due to the increase of public interest in safeguarding the Cultural Heritage belongs to their ancestors.

¹ Statistics on Domestic Visitors are only available from Sigiriya as the entrance fees from locals are only charged at Sigiriya, as it is the only secular site as against others, which are religious sites, visited by pilgrims cannot impose a entrance fee.

2.5 Various forms and ways for co-ordination of the specific law for the monuments with the other laws

In Sri Lanka there are number of laws which help to preserve the cultural heritage. Out of these the Town and Country Planning Ordinance No. 13 of 1946 together with its amendments, the Urban Development Authority Law No. 41 of 1978 and the Urban Development Authority (Special Provisions) Act. No 44 of 1984 are of special consideration as these are directly involved in the preparation of planning schemes in Cities, Towns and Villages in Sri Lanka. When ever a Planning Scheme is proposed in these areas a committee is set up to formulate the planning proposal to develop such areas. In order to identify the areas and monuments that should be preserved with in the proposed development area, various individuals and officials from the government institutions who are responsible for the protection of the cultural heritage will be appointed as members of these committees. They will not only serve as members in the committee who formulate the proposals but also will serve as members who will monitor the implementation of such schemes. Over and above the two institutions formed under the above laws, namely, National Physical Planning Department and the Urban Development Authority had formulated planning regulations to regulate the development activities with in Municipal Council, Town Council and Pradeseya Saba² areas. The representatives from the authorities enforcing the regulations related to the preservation of heritage will be appointed to the planning committees, which approves the development proposals with in these local government institutions, to look after the aspect of preservation with in the development frame work.

The other important institutions, which help to preserve movable cultural heritage, is the National Museums Department established under the National Museums Ordinance No. 31 of 1942. The Director of National Museums Department and the Director General of Archaeology works in close relation to safeguard the movable cultural property. It is important to note that the present Director of National Museums is the former Director of Chemical Conservation of the Department of Archaeology.

The Forest Conservations Department and the Wild Life Conservation Department which regulate the Flora and Fauna Act of Sri Lanka also work very closely with the Department of Archaeology and the other institutions which safeguard the heritage in order to preserve the flora and fauna within the archaeological areas. The officials in these departments participate in the regular meetings called by the archaeological officers in order to discuss the issues in this regard. It should be noted most of archaeological reserves in Sri Lanka have also declared as sanctuaries under the flora and fauna act.

The next important department, which is helping the preservation of cultural heritage, is the Department of Police. It is happy to state that over the years Police Department has been successful in caring out number of successful raids to bring suspects behind bars who have committed offences mainly in illegal excavations, illegal sales of cultural property, thefts, vandalisms and willful damages. The Director handling the exploration and documentation section of the Department of Archaeology carry out various educational programs to educated law enforcement officers with regard to the archaeological laws and regulations.

The Biodiversity Unit of the Department of Customs has immensely helped the Department of Archaeology in battling out to prevent illegal export of cultural property. Despite various political interferences the superintendent in charge of this section has been able to prevent various attempts made in recent years to export valuable cultural properties from the island.

The Government of Sri Lanka has formulated two different institutions, the Galle Heritage Foundation by the Galle Heritage Foundation Act No. 07 of 1994 and Sigiriya Heritage

² Pradesiya Saba is the lowest level local government institution established in Sri Lanka.

Foundation by the Sigiriya Heritage Foundation Act No. 62 of 1998. The aim of the establishment of these two institutions is mainly for the development and protection of two World Heritage Sites of Sigiriya and Galle. Director General of Archaeology is a member of the Board of these two institutions through which the decision-making could be controlled.

Finally, the most difficult government institution that the Archaeological Department had to work in close relation with the Budget Department of the Government Treasury. Over the years the Director General of Archaeology had number of tough times to convince the Budget Department to obtain annual funds necessary for the protection of the cultural heritage. At this point it is worth mentioning the one of the Finance Minister has stated "allocating money to the Department of Archaeology is equivalent to dumping money to a bottomless pit, as there is no return to the economy" and in one instance the annual allocation was reduced and the money had been reallocated to subsidized to grow Gurkins to export to the international vegetable market. All these have resulted in allocation of very limited funds for the department at the beginning of each year.

3. Tax concessions and the VAT incentives applicable to the preservation of the cultural Heritage

In Sri Lanka the provision of tax concessions and the VAT incentives are yet to be fully addressed. The provision made in this regard is under the Central Cultural Fund Act could be identified as the main provisions which are in operation at the moment. These concessions could be identified as follows.

- a) Exceptions could be obtained from the payment of customs duty on any goods imported by the fund, if the goods are considered to be conducive for the advancement of the aims and objectives of the fund.
- b) Fund will be exempted from the payment of income tax or wealth tax under the Inland Revenue Act No. 28 of 1979
- c) If a person makes a gift to the fund, he will be exempted from the payment of gifts tax under the Inland Revenue Act No. 28 of 1979 to the total value of the gift
- d) If a person makes a donation to the fund, such donations will be considered as an approved expenditure for the purpose of the Inland Revenue Act No. 28 of 1979 and he will be entitled to relief under this act in respect to the total value of the donation
- e) The fund is exempted from the payment of entertainment tax under the Entertainment Tax Ordinance and other taxes and rates under the Municipal Councils Ordinances, the Urban Council Ordinance and the Pradeseeya Saba Act.

Under the Sigiriya Heritage Foundation Act concessions similar to above a), b), d) and e) had been provided but this is still not in operation as the institution is not yet been formed. Therefore, most of the concessions are presently channeled through the Central Cultural Fund in order to obtain above reifies.

4. Regulation of the management and establishment of "integrated conservation"

The laws related to the preservation of cultural heritage refer almost noting with regard to the integrated conservation. The only relevance made in the Antiquities (Amendment) Act is the developer paid "Impact assessment" that has to be carried out by the Director General of Archaeology before development projects are approved with in any land proscribed in the gazette. Impact assessment survey is to be carried out to assess the consequences upon the antiquarian, historical or archaeological aspects of the land proposed for the development. The sponsors of the development project have to provide 1% of its total cost of the development to the Director General of Archaeology to conduct this survey.

Apart from this provision the Town and Country Planning Ordinance and the Urban Development Authority Act provide the declaration special areas as “Sacred Cities” and “Sacred Areas” respectively for the prohibition or restriction of the use or development of land for the preservation of the places and structures of religious, historical, architectural, archaeological or artistic interests. Number of areas of has been declared under these provisions in order to preserve the cultural heritage from the development pressures. Any development proposals falling in these areas will be controlled and integrated planning approach will be made to tackle the conflict between development Vs preservation.

5. Economic relation between preservation and cultural tourism

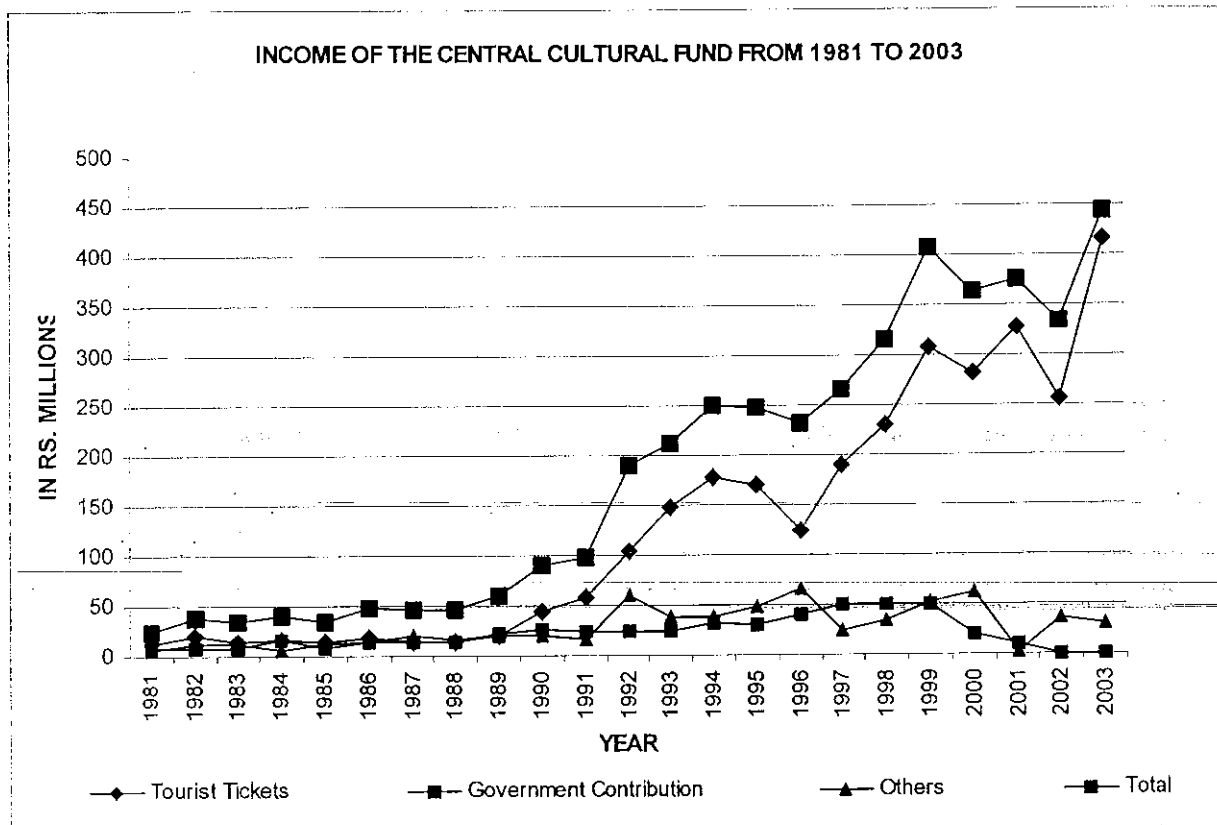
Since the formation of the Department of Archaeology in 1890, the preservation of the cultural heritage had been a responsibility of the Government of Sri Lanka. The initially the expenses were allocated to the survey of ancient monuments and sites while number of Buddhist societies carried out restoration of monuments without considering the archeological importance. The first allocations of funds for the conservation of monuments were seen in 1904 to conserve the more fragile brick build monuments in Polonnaruwa. Thereafter the department was provided with continuous allocation of funds by the Government to preserve the cultural heritage in Sri Lanka. The work carried out by the Archaeological Department and Several Buddhist Societies manage to obtain aspects of the historical evidences of the ancient past of Sri Lanka. Since most these monuments were related to the regimes and religions, the general public commenced visiting these monuments and sites mainly for religious purposes. The Poson festival held on the full moon day of June to celebrate the arrival of Buddhism to Sri Lanka attracted thousands of Buddhist pilgrims to Anuradhapura, Polonnaruwa, Sigiriya and Dambulla while the Esala Pagent held in Kandy by the Tooth Relic Temple in August also did the same. Initially Sri Lanka was advertised in the World as a Paradise mainly for the sunny beaches, tea plantation in the hill country and the natural beauties. The architectural and other remains of ancient cities, palaces, monasteries, temples, gardens, landscapes, buildings, irrigation works, and masterpieces of sculpture and paintings which have survived from nearly every phase of the historical period since 6th century BC, gradually attracted the interest of the international visitors.

In 1975, the initial idea of tying the preservation of cultural heritage with tourism was discussed and a cabinet memorandum was prepared which was not forwarded as it was refused to be signed by the Minister for Tourism. In 1979, Sri Lankan Government put forward a proposal to UNESCO requesting to commence a programme to preserve the monuments and sites of Sri Lanka. This proposal was accepted and in 1980 “the UNESCO – Sri Lanka Cultural Triangle Programme” was commenced in the six sites of –

- Abhayagiriya Monastery – build in 1st century BC which had 5000 Buddhist monks
- Jetavana Monastery – build in 3rd century AD which has the tallest brick build monument in the world
- Alahana Parivena – the Buddhist University established in 12 the century AD
- Sigiriya Royal Palace and Water Gardens – established in 5th century AD
- Dambulla Painted Caves – houses 2000 sq.m. of painted walls and ceiling with hundreds of sculptures housed within caves
- Kandy – the Royal Palace, the temple of the Tooth Relic of Lord Buddha, the four Hindu Shrines and the two grate living Buddhist monasteries of Malwatta and Asgiriya

The monitoring of the progress of the project was handed over to a committee headed by the Prime Minister of the country, which was later transferred to the Board of Governors of the Central Cultural Fund. The act of the Central Cultural Fund provided to obtain its income from

the levy of charges from visitors and tourist entering the area called "the Cultural Triangle". This provision allowed the authorities to introduce entrance fees to the above sites and two different systems charges, i.e. higher rate to international visitors and lower rate to domestic visitors, were introduced. Over the years the income from the visitors gradually increased and in 1981 the income from the sale of entrance tickets was 11 million Rupees while in 2003 the income was 416 million Rupees. According to the available statistics the number of domestic visitors to Sigiriya in 1982 was 320,724 and in 2003 was 548,037. The numbers of International visitors to the Cultural Triangle area in 1984 were 129,600 and in 2003 were 212,521. Out of the 416 million Rupees of income the Central Cultural Fund has spend 303 million Rupees for the activities connected with its ten sites which could be observed as an indicator to identify the economic relation between preservation and cultural tourism.



6. The role of NGO in the process of preservation

Basically there are two non-government institutions that are continuously interested in the process of preservation of the cultural heritage in Sri Lanka. One being the Sri Lanka Council of Archaeologists incorporated by the Sri Lanka Council of Archaeologists (Incorporation) Act. No. 4 of 1992. The second being the ICOMOS Sri Lanka. The Presidents together with the council and the members of these institutions are actively involved in the preservation of cultural heritage in Sri Lanka. They hold their monthly meetings to discuss various issues related to the preservation of heritage and make representations to the authorities to take immediate action in any misappropriations. Apart from this the Presidents of these two institutions are invited to various seminars organized by the authorities responsible for the preservation of the cultural heritage.

Apart from these two organizations there are various other NGO's who pay a keen interest in the preservation of the heritage. These organizations play an important role in safeguarding the heritage at the village level and they are mainly responsible for the provision of information with regard to unauthorized excavations and vandalism of the cultural heritage. This information has helped immensely to the law enforcement authorities to bring the culprits

before the justice. It should be noted when the air force was expanding the runway to facilitate landing of the supersonic fighter planes to the Sigiriya air port, one of the NGO went before the courts and managed to obtain an injunction against the development until the dangers were investigated by UNESCO as Sigiriya is a World Heritage Site. Finally the development proposals were abandoned due to the adverse effects, which were pointed out by the investigating committee of UNESCO that might be a threat to the site. As these organization are consisting with various individuals who are professionally qualified in the fields of archaeology, conservation, legal, financial, management, etc. they are of great asset to the country in the preservation of cultural heritage.

7. Conclusions

The Department of Archaeology since its creation in 1890 has successful in safeguarding the cultural heritage in Sri Lanka. At the moment the Department has 118 archaeological reserves under its belt and 680 protected monuments under its supervision. During the past 114 years of its service it has been able to face number of obstacles in preserving the cultural heritage. The main and most difficult situation faced by the department is the attempts made by religious owners of the monuments and sites to make various interventions, especially to reconstruct the monuments and build various new buildings with in the sites. As a result of the Buddhist movement in the earlier part of the 19th century number of stupas in the country has been reconstructed. Most of these interventions had happened before 1940 before the department was empowered with the control of monuments and sites. This does not mean there were no such interventions after 1940, but most of the interventions happened after 1940 are due to the pressures applied by religious owners through the highest political level in the country. But all these interventions were controlled up to a certain extent to safeguard the archaeological importance of the sites and monuments. But it should be noted that there are very few instances that religious owners of some protected monuments have carried out various interventions, without respecting the advice of the department, with the political blessings but these interventions are still remains as unauthorized interventions. But it is important to see the birth of NGOs in the resnet past, who are interested in the preservation of the cultural heritage, will not hesitate to go before the justice to prevent such intervention for which the political pressure is applied to the department to keep a blind eye if the permission cannot be granted.

On the other hand although any person charged with or accused of an offence under the Antiquities Ordinance could not be released on bail has prevented most of unauthorized interventions and damages to the cultural heritage. But the penalties provided under the Ordinance, especially the monitory value of the fine, seems to be unrealistic. In resnet court case the accused Buddhist priest and a lawyer who was practicing in the same court charged by the Criminal Investigating Department of the Police for the illegal procession and attempt of sale of a very important antiquity was fined by on one thousand rupees as the word " be liable to a fine not exceeding" exists in the Antiquities Ordinance.

It should also be noted although the Cultural Property Act had come into force in 1988 action has not yet taken by the Minister due to various political pressures applied by the owners and persons dealing with the cultural property. This menas that the preservation of cultural heritage could not be carried out by the officials of the state, without wider participation of the General Public.

ANNUAL MEETING OF THE ICOMOS INTERNATIONAL SCIENTIFIC COMMITTEE
ON LEGAL, ADMINISTRATIVE AND FINANCIAL ISSUES (ICLAFI)
PLOVDIV, BULGARIA, MAY 2004

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Spain

I. The present Legal Framework for the protection, conservation and management of cultural heritage in Spain. (Note: The term "Law" or "Act" is used interchangeably in this text to refer to Acts of Parliament)

1. The Spanish Constitution of 27 December 1978 (Arts. 9, 44, 46, 48, 50, 148 and 149) and the Organic Laws on the establishment of the Statutes of the Autonomous Communities. (Note: Organic Laws require the agreement of 2/3 of M.P.)
2. Law 7/1985 of 2 April, regulating the Legal System for Local Entities (articles 2 and 25), which has been modified in part and developed by different Laws and Royal Legislative Decrees. Law 39/1988 of 28 December, on the Tax and Financial System of Local Entities.
3. Law of the Spanish Historical Heritage (LPHE) 16/1985 of June 25th (Official State Gazette of June 29th, 1985). Royal Decree 111/1986 of January 10th as a partial development of the said LPHE, modified in part by Royal Decree 64/1994 of January 21st (Official State Gazette of March 2nd)
4. Law 49/2002 of December 23rd on the Tax System of Non-profit Entities and Tax Incentives for Patronage (Official State Gazette of December 24th). This Law has also introduced some modifications on the Law 40/1998 of 9 December on Personal Income Tax and the Law 43/1995 of 27 December, on Corporate Income Tax.
5. Organic Law 1/2002 of 22 March 2002 on Associations (Official State Gazette of March 26th).
6. Law 50/2002, of 26 December on Foundations (Official State Gazette of December 27th)¹.
7. Royal Decree 1740/2003 of 19 November on operational proceedings concerning the associations of public utility (Official Gazette of January 11th)
8. Law 6/1998 of 13 April on Land Regulations and Valuation (or Appraisal), which has been partially modified (Official State Gazette of May 21st, 2003). This Law also includes basic regulation on Urban Planning, which anyway shall be adapted and developed by each of the Autonomous Communities.
9. Different Laws on the protection and conservation of cultural goods, as well as on foundations, associations, taxes and on land regulations and urban planning, have come into force in the Autonomous Communities of Spain since the above-mentioned Laws were promulgated.

¹ The previous Law 30/1994 of November 24th on Foundations and Tax incentives for private contribution in activities of general interest has been abolished.

II. The national system for the protection, management and control of cultural heritage. Distribution of competencies among the State and the Autonomous Communities. The role of Local Entities.

Regarding the national system for management and control of cultural heritage, it is to be said that, according to the political system established by the present Constitution, the Autonomous Communities have assumed all the competencies in their respective territory (both in administrative and legal matters since they all have their own Parliament). The Government of the State has the exclusive competence in those cultural properties belonging to the State, even though their management can also be transferred to the Autonomous Communities. It also has competence against the illicit exportation of cultural goods and a residual action in case of “spoliation”, which besides being an expression that continues to need a more precise definition, seems to be destined to allow the State to act, in subsidiary terms and under extreme circumstances, when the Autonomous governments fail to preserve cultural properties. Notwithstanding, this last faculty has been scarcely exerted by the authorities of the Ministry of Culture. According to the Constitution, the State Government has also competencies in matters dealing with foreign relations. There is a national Council of Historic Heritage where the representatives of the above mentioned Ministry and those of the different Autonomous Communities discuss on matters of cooperation and common interest.

Following the spirit of decentralization marked by the Constitution, local entities have also assumed an outstanding role in the protection and management of cultural heritage. Once a town or a given area inside the municipal territory has been declared of historical interest according to the legal provisions, it is expected to develop a Special Plan for Protection under the Laws on Land Regulations and Urban Planning. When this plan is approved both by the city councils and the Autonomous government, its management is put under control of local authorities that shall authorize or deny the interventions in the protected area and supervise their execution. In case of conflict, the Autonomous government shall act as a second instance.

III. Financial regulations aiming to the protection and preservation of heritage, by the establishment of stimulating measures and tax incentives.

“Steps for Development” contemplated in Section VIII of the Law on Spanish Historical Heritage of 1985 (LPHE) are developed in the following provisions:

Royal Decree 111/1986 of January 10th as a partial development of the said Law, modified in part by Royal Decree 64/1994 of January 21st (Official State Gazette of March 2nd). They were even more developed and updated in the Law 30/1994 of November 24th of Foundation and Tax Incentives to Private Contributions in Activities of General Interest (Official State Gazette of November 25th) which, as proved not to be a sufficient stimulating instrument, has been replaced by the present Law 49/2002 of December 23rd on the Tax Regime of Non-profit Entities and Tax Incentives for Patronage, and by the Law 50/2002, of 26 December on Foundations.

Also, Personal Income Tax and Corporate Income Tax, if later in time, may have an effect on the tax benefits fixed by the above provisions by determining some percentages in tax reductions foreseen by the former.

The General State Budget Act may amend, in accordance with the provisions of article 134, paragraph 7 of the Spanish Constitution: a) The tax rate of nonprofit entities; b) The percentage of deduction and limits for their application provided for in the Law 49/2002 of December 23rd on the Tax Regime of Non-profit Entities and Tax Incentives for Patronage. Likewise, the General State Budget Act may establish a list of preferential Patronage activities, as well as the beneficiary entities, in the areas of general interest determined by the above Law 49/2002 of December 23rd. In this case, the General State Budget Act may also establish for this activities and entities up to a five-percentage increase in deduction percentages and in the percentage amount of the maximum levels of deduction admitted by the Law 49/2002.

Apart from the above-mentioned Law 49/2002 of December 23rd on the Tax System of Non-profit Entities and Tax Incentives for Patronage, there are other related provisions, like the new Organic Law 1/2002 of 22 March 2002 on Associations and the above mentioned new Law 50/2002 of 26 December, on Foundations.

The State Sphere's Foundations was regulated by Royal Decree 316/1995, of February 23rd and is implemented by other complementary dispositions .

The provisions of the Law on the Tax Regime of Non-profit Entities and Tax Incentives for Patronage apply notwithstanding whatever may be established by Agreements and Conventions entered into by the State with churches, confessions and religious communities². The religious entities and foundations created or developed by the same legal instruments may optionally benefit from the stimulating measures established by this Law if they wish so, provided that they are inscribed in the Register of Religious Entities and meet the requirements fixed by the Law.

IV. The following are the most important stimulating measures in financial terms (see also section X on the special tax regime for foundations and non-profit associations declared of public utility):

- 1) Relating *constructors and firms involved in public works, as well as restorers, owners and holders*, the Law establishes preferential access to official credit for funding, public works, conservation, upkeep and rehabilitation, as well as archaeological prospectuses and excavations carried out in areas declared to be of cultural interest. In order to do this, the Public Administrations may establish, by means of agreements with public and private entities, the conditions of using credit benefits.
- 2) As regards *public works built and development by private persons by virtue of State dispensation without financial contribution from the State*, 1 per cent of the overall budget shall be applied to funding conservation or enrichment works for the Spanish Historical Heritage, preference being given to the works themselves or their immediate surroundings. An exception is made in the case of public works with an overall budget under 600,000 Euros, which affects State Security and the security of public services. The Ministry of Education and Culture drafts a yearly Plan for Conservation and Enrichment debited to the said funds. In order to execute the projects and programs one must request cooperation from the Administration.
- 3) *Debt payment in different taxes*: Succession and Gift Tax, Property Tax, Personal Income Tax and Corporate Income Tax may be paid *by handing over assets belonging to the Spanish Historical Heritage* which are registered at the General Registry of Assets of Cultural Interest or included in the General Inventory. In such case, the said assets shall be appraised, for this purpose, by the Board of Classification, Appraisal and Export of Assets belonging to the Spanish Historical Heritage.
- 4) *Exemptions and other benefits: Assets belonging to the Spanish Historical Heritage registered in the above Registry and Inventory* are exempt from Income Tax. These assets may be reappraised for tax purposes up to their market value, being exempted from increased capital tax, unless they are part of the holder's floating assets. Likewise, the following are exempt from Local Real State Tax:
 - ~~Monuments and gardens each declared to be assets belonging to the Spanish Historical Heritage;~~

² The Financial Agreement made between the State and the Holy See, and the Cooperation Agreements signed with the Spanish Federations of Religious Evangelic Entities (Law 24/1992 of 10 November), Israeli Communities (Law 25/1992 of 10 November) and the Islamic Community of Spain (Law 26/1992 of 10 November).

- Those classified as "specially protected" by the urban development plan for archaeological areas;
- When included in classified Historical Sites, those at least 50 years old which receive complete urban protection;

There is an exemption from other local taxes on property or its use and conveyance when owners or holders of real property rights have undertaken conservation, improvement or rehabilitation works on Real State declared to be of cultural interest.

These exemptions shall be applied in the terms established by respective municipal regulations.

5) *Tax incentives for patronage established in Act 49/2002 of 23 December on the Tax Regime of Nonprofit Entities and Tax Incentives for Patronage:*

The tax incentives provided for in this Act are applicable to gifts, donations and contributions made *in favor of*: 1) Registered foundations and nonprofit associations recognized to benefit the public that opt for the special tax regime provided for them and fulfill the requirements set out in the Law; 2) the State, Autonomous Communities and Local Entities, as well as official autonomous institutions linked to them; 3) Universities; 4) Other public institutions determined by the Act.³

The tax regime allows deductions for *outright and irrevocable gifts, donations and contributions of the following nature*: a) Monetary gifts, gifts of properties or rights; b) Membership fees; c) Establishment of a right of usufruct *in rem* over properties, rights or securities, without compensation; d) Gifts or donations of properties belonging to national historic heritage that are registered in the General Registry of Properties of Cultural Interest or included in the General Inventory; e) Gifts or donations of cultural properties of guaranteed quality to entities whose purposes include the pursuit of museum activities and the promotion and dissemination of historic art heritage.

In the case of revocation, the donor will be liable for payment of the amounts of the deductions made as well as possible late payment interests.

The tax base for deductions made for the aforementioned gifts, donations and contributions will be the following: a) For monetary gifts, their amount; b) For gifts or donations of properties or rights, their book value, or, otherwise, their value as determined by the rules for Property Tax. c) For the establishment of a right of usufruct over immovable properties, 2 % of their cadastral value. d) For the establishment of a right of usufruct over securities, the annual amount of the dividends or interests perceived by the beneficiary. e) For the establishment of a right of usufruct over properties or rights, the annual amount resulting from applying the legal interest rate for money. f) For gifts or donations of works of art of guaranteed quality and properties that belong to national historic heritage, the assessment made by the Classification, Valuation and Exportation Board. In the case of properties not belonging to national historic heritage, the Board will assess whether they are of sufficient quality. The maximum limit for the assessed value of these properties will be their usual market value at the time of transfer.

With regard to the *deduction from personal income tax*, taxpayers are entitled to deduct 25% of the value of donations from their net taxable income. This value will be computed according to the limit provided in Personal Income Tax Act 40/1998 of 9 December and other tax regulations. Non-resident taxpayers operating in Spain through a permanent establishment may apply the same

³ With regard to churches, religious confessions and communities having agreements of cooperation with the State, as well as the religious associations and entities contemplated in such agreements, the Act provides that they are considered qualified entities to benefit from patronage as well as from the special tax regime provided for under this law, without prejudice to the provisions of said agreements. With regard to the foundations belonging to these entities, and also without prejudice to said agreements and the regulations developing them, they may opt for the special tax regime set out in this Act.

deduction. Non-resident taxpayers operating in Spain not through a permanent establishment can apply the income tax deduction to taxable events occurring within one year of the date of the gift, donation or contribution and the amount of the deduction may not exceed 10 % of the taxable base of all returns submitted in this period.

With regard to the *deduction from corporate income tax*, the deduction will be 35%, after applying all other tax deductions and credits corresponding to this tax, and the amounts not deducted in the first year can be deducted in the returns of the tax periods concluding in the subsequent ten calendar years. The amount of this deduction cannot exceed 10 % of total taxable income in the tax period. The amounts in excess of this limit can be deducted in the tax periods concluding in the subsequent ten calendar years.

Priority patronage activities. The General State Budget Act may establish a list of priority patronage activities within the scope of the general interest purposes cited in this Act, as well as the qualifying entities for patronage. With respect to these activities and entities, the General State Budget Act may increase up to a limit of 5 % the percentages and limits of the deductions established in this Act.

Exemption of incomes and capital gains derived from gifts, donations and contributions. Capital gains and revenues resulting from gifts, donations and contributions will be exempt from personal income tax, corporate income tax and non-resident income tax. Gains derived from transfers of urban land or the establishment or transfer of rights of enjoyment restricting the ownership rights to real property, when carried out for the same purposes will be exempt from the Urban Land Gains Tax.

The beneficiary entity must issue a *certificate* of the gifts, donations and contributions received and file it with the tax administration.

The Act also covers the *Tax regime for other forms of patronage*: a) **Business- nonprofit entity agreements on general interest activities**, by which these entities, in exchange for financial support to achieve their specific aims, agree in writing to publicize by any means the involvement of the company in their activities. The amounts paid or the expenses incurred will be considered deductible expenses and the tax regime applicable to these amounts will be incompatible with the other tax incentives provided for under this law. b) **Expenses on general interest activities** will be considered as deductible expenses in the determination of taxable income for corporate income tax, non-resident income tax of taxpayers operating in Spain or the net taxable income of the economic activity of taxpayers subject to direct evaluation regime of personal income tax, provided that they are included in the expenses made for the general interest purpose specified in the Act. This deduction will be incompatible with the other tax incentives provided for under this Act. c) **Support programs for events of exceptional public interest**, which may be established by the Act, as appropriate. This Act will regulate their duration and the creation of a consortium or the designation of an administrative body in charge of implementing the program and certifying the suitability of the expenses and investments made with respect to the established aims and plans, the basic lines of action and the tax benefits that will be applicable. These entities may deduct from their net taxable income 15 % of the expenses and investments corresponding to, among others, the rehabilitation of buildings and other constructions that contribute to enhancement of the physical area concerned. These works must comply with the requirements established in architectural and urban planning regulations that may be established in this regard by both the municipalities affected by the respective program and the designated consortium or administrative body. When advertising support refers specifically to dissemination of the event, the deduction will be for the total amount of the investment; otherwise, the tax base for deduction will be 25 % of the investment. This deduction, when added to the other corporate income tax deductions, cannot exceed 35 % of net taxable income after subtracting deductions and credits to avoid double taxation. Non-deducted amounts may be deducted in the returns of the subsequent ten calendar years. Calculation of the time period may be deferred until the first year within the period of prescription in which profits are

obtained by newly created entities or losses from previous years are offset by the provision of new resources. Taxpayers are entitled to the deductions provided for in this Act for donations and contributions to the consortium. The priority patronage regime will be applicable to programs and activities related to the event, provided that they are approved by the consortium or competent administrative body and are undertaken by the entities foreseen in the Law and the aforementioned consortium, with an increase of 5 % in the percentages and limits of the established deductions. Transfers subject to the Transfer Tax and Stamp Duty will benefit from a 95 % tax credit on the tax due when the properties and rights acquired are used directly and exclusively by the taxpayer for the purpose of investments eligible for deduction including, among others, the rehabilitation of the buildings and constructions indicated above. Companies or entities implementing the aims of the respective program will receive a 95 % tax credit on all local taxes and duties that may be chargeable on operations related exclusively to implementation of this program.

- 6) Additional Provision 1 of this Act introduces some *amendments to Personal Income Tax Act 40/1998 of 9 December and other tax regulations*, of which the most notable are the following:

- **"Public grants by the competent administrations to owners of properties belonging to national historic heritage** registered in the General Registry of Properties of Cultural Interest referred to in National Historic Heritage Act 16/1985 of 25 June, for the sole purpose of their conservation or rehabilitation, may be allocated in fourths to the year they are obtained and the following three years, provided that they comply with the requirements established in this Act, in particular with respect to the obligations of public visiting and exhibition of said properties".
- Taxpayers will be entitled to a 15 % deduction on the tax due for the amount of the investments or expenses made for: a) **Acquisition of properties belonging to national historic heritage outside of Spain for their introduction in Spain**, provided that the properties remain within Spain and part of the possession of the holder for at least three years. The tax base for this deduction will be the valuation made by the Classification, Valuation and Exportation Board or by the corresponding bodies of the Autonomous Communities. b) **Conservation, repair, restoration, dissemination and exhibition of properties owned by the holder that are classified as properties of cultural interest according to the National Historic Heritage Act**, provided that they comply with the requirements of this Act, in particular with respect to the obligations of public visiting and exhibition of said properties. c) **Rehabilitation of buildings, maintenance and repair of roofs and facades, as well as improvements in infrastructures of property owned by the holder** located in a protected area of Spanish cities or in architectural, archeological, natural or landscape ensembles or properties located in Spain declared World Heritage by the UNESCO."

- 7) Additional Provision 2 also introduces **amendments to Corporate Income Tax 43/1995 of 27 December**, including:

- Companies subject to corporate income tax will be entitled to a 15 % deduction from net taxable income for the amount of the investments or expenses carried out in for the protection and dissemination of national historic heritage and cities, ensembles and properties declared World Heritage, *in the same circumstances as those specified above for private individuals*.
- *Nonprofit entities to which the tax regime established Act 49/2002 of 23 December⁴ is not applicable*, will be subject to corporate income tax at a rate of 25 %.

⁴ Non-profit foundations and associations recognized as public utility entities that opt to be included in the special tax regime established in this Act and meet the necessary requirements (See last section of this paper).

- *Nonprofit entities to which the tax regime established Act 49/2002 of 23 December is applicable*, will benefit from the tax exemptions provided for in this Act and pay only 10 % of income derived from non-exempt economic activities (*Note: The special tax regime enjoyed by these entities and the requirements they must fulfill are described in section X of this paper*).

- 8) Additional Provision 3 includes another *amendment to Royal Legislative Decree 1/1993 of 24 September approving the Transfer Tax and Stamp Duty Act*. By virtue of this amendment, the aforementioned nonprofit entities that opt for the special tax regime provided in Act 49/2002 of 23 December will be exempt from this tax.

V. Public spending and private financial contributions⁵

The total amount of **public spending specifically for the protection, conservation, study and rehabilitation of historic heritage** both by the State and Autonomous Communities as well as Local Corporations accounts for 15 to 16% of public spending on culture, amounting to approximately 0.2% of total public spending.

Of this total amount, approximately 31.35% is provided by the State; 44.56% by Autonomous Communities; 6.13% by Province and Island Councils; 6.54% by City Councils of more than 50,000 inhabitants; and 11.42% by City Councils of less than 50,000 inhabitants.

Aside from these public funds, the Church contributes from its own resources a slightly lower amount than Autonomous Communities. To this amount, the investments made by entities such as Banks, Savings Banks and Foundations should be added. Adding together these and the previous contributions, the approximate percentages of each of the above mentioned investment sources are as follows: State, 22.30%; Autonomous Communities, 31.70%; Regional and Island Councils, 4.36%; City Councils of more than 50,000 inhabitants, 4.65%; City Councils of less than 50,000 inhabitants, 8.13%; Church, 26.78%; Banks, Saving Banks and Foundations, 2.8%.

Financial contributions by private individuals must also be taken into account, these being particularly difficult to assess because their primary purpose is for ordinary maintenance. Many restoration, conservation or rehabilitation works of cultural properties are taken on by private individuals. They obtain **government subsidies** covering a varying percentage of the total cost of the required investment (amounting to 30 or 40% of the total investment value, and even to 80% in some cases), as well as low-interest or preferential rate loans.

VI. Regulation of the establishment and management of "integrated conservation". Specific Plans for protection regarding both conservation and planning activities

With respect to historic towns article 20 of the Law of the Spanish Historical Heritage (LPHE) of 1985 puts the protection of historic cities under the control of urban measures based on the laws on Land Regulations and Urban Planning. In article 21 it states that urban planning will include the classification of all buildings, interior and exterior areas, other significant structures and natural components, as well as the definition of the types of intervention possible. Full protection will be provided for those items classified as having outstanding value, while planning instruments will set the level of protection for the rest. Remodeling is allowed on an exceptional basis provided that it represents "an improvement in the relations with the urban environment of the area" and "avoids degrading uses". In any case, the existing land divisions must be maintained. Replacements are allowed exceptionally if they contribute to "conservation of the character" of the complex as a whole.

Under the LPHE, protection of the heritage of historic centers is implemented through what are termed the Special Plan for Protection, the General Plan, and the Subsidiary Regulations, which are

⁵ (Suárez-Inclán, MR. Extract from previous works presented to the ICOMOS ICLAFI. 2000)

based in the Laws on Land Regulations and Urban Planning. Despite the provisions of the LPHE, quite often these plans fail to guarantee in practice an equitable distribution of obligations and benefits. Sometimes they also fail to take into account the financial measures necessary for future administration of the plans or not enough consideration is given for future difficulties in obtaining new public resources for the maintenance of the protected properties. According to the LPHE each declaration of a historic city as a historic complex implies the inclusion of a large number of protected buildings. But another problem is that, as it has been said, the Law on Historic Heritage places protection of these buildings under the control of urban regulations that do not correspond to a conservationist philosophy of consolidated urban planning. Thus, in practice the urban inventories of protected items tend to include an insufficient number of buildings belonging to cultural heritage⁶

VII. Mechanisms for: 1) preventing and sanctioning non-regulated intervention in cultural properties; 2) the application of the legal requirements regarding the management and maintenance of monuments by their owners; 3) resolving conflicts between private owners and public interest.

These aspects are contemplated in the existing regulation at a national, regional and local level. All the interventions in protected monuments and areas of cultural interest are clearly regulated in terms of preserving their cultural values once these have been officially recognized by the appropriate legal instrument. Both previous authorization and regular supervision by the responsible public institutions are common legal requirements which equally affect official entities and private owners at the different territorial levels. The infringement of these rules may bring the imposition of penalties and other administrative restricting measures to the offenders, and have even penal consequences. The law also contemplates subsidiary action to be carried out by public authorities when private owners neglect or omit their obligations of maintenance and conservation of monuments and other cultural properties. Notwithstanding, it would be necessary for owners to comply more widely in practice with the social function intrinsic to cultural properties. It should also be emphasized that town or city councils often do not take subsidiary action allowing them to execute the required works and pass on the cost to the property, and very rarely do they resort to compulsory expropriation. This fact, together with the possibility of technical ruin introduced by the Law on Historic Heritage of 1985 (in accordance with the Granada Convention of the same year) and article 21 of this law results in some buildings being declared ruins even in protected cities and neighborhoods, with their consequent demolition.

VIII. Ways and forms to coordinate the specific law for cultural heritage with other legal instruments concerning cultural tourism, social and economical development, natural environment, etc.

It is obvious that Heritage cannot be contemplated as an isolated item but inside the global scope of sustainable development as a nonrenewable resource of transcendent importance in many areas, including the economic. Therefore, it is not only necessary to consider heritage in both its material and spiritual dimensions, covering simultaneously cultural and natural values. It is also required to deal with worldwide long-term management by coordinating all the resources and converging needs, in a context of national and international ecological management serving quality of life. Thus, the different legal provisions and policies dealing with cultural and natural heritage, tourism, public works, industry, social welfare, etc should be combined so that they may be applied in a coordinated way.

Despite the fact that there is an increasing consciousness on this need, there is also an evident difficulty to achieve this goal in practice. Among other reasons, this situation is due to the specific – and up to a certain extent isolated- scope of each law or legal branch, to the existing fragmentation

⁶ (Suárez-Inclán, MR. Idem id. 1999)

of the competencies corresponding to the different public entities even inside their territorial spheres, and to the specific contents of competencies of the different jurisdictional branches in charge of the administration of justice (public matters or questions where public institutions are involved, criminal courts, common law, etc.)

IX. Cultural tourism as an hypothetical factor for the sustainability of cultural heritage.

Many considerations have been made on the risk, advantages and disadvantages that the massive tourism may produce on cultural goods, as well as on the necessity to preserve those genuine factors that really attract what could be called visitors of a "high quality". But there are many historical places in the world where this considerations are not taken into account since tourism is only contemplated as an income source in the short term.

The following suggestions, as derived from the experience lived in Spain in the field of tourism⁷ may, perhaps, help to enlighten other people. In any case, it is worth to say that there are no general rules that may be directly extrapolated to every historic place. It is advisable to study other experiences and to take into account general principles both of an ideological and empirical nature. But approaches based on extreme conceptual viewpoints or on the importing of foreign experiences "as is" are contrary to the analysis required by the diversity and widely different circumstances involved in each particular case. Each place has its own "genius loci", its own charm and cultural personality, and this should be respected in all interventions. Tourism development in historic places should not be at the mercy of trends in the tourism industry, but rather be directed in a planned way and adapted to the particular attractions of the historic place. In any case it is obvious that planning of cultural tourism development should be guided by the principle of sustainability and should include investments designed to conserve and generate income from heritage and also for its conservation. In each specific case, it is necessary to carry out an analysis of the profitability curve by combining costs and profits. Cultural tourism planning should be comprehensive and take into account the necessary balance between the economy, the environment, heritage and the quality of life of the population.

Income from cultural tourism may also facilitate functional regeneration in other areas. Measures to prevent the tourism sector from becoming the only source of wealth will help to ensure economic balance in the event of a possible crisis in demand. Among other objectives, it is important to regenerate the historic center in a way that ensures that local inhabitants will continue to reside there. Investing part of the income from tourism for improvements in community facilities and infrastructures as well as the optimum use of traditional buildings as dwellings will help to encourage long term continuity of historic centers.

Visits to historic monuments or cities sometimes take place over the course of a single day, as tourists are usually lodged in other nearby towns or cities. In these cases, it is not always easy to attract tourists to stay overnight, but integrated planning combining the different resources can help to promote both historic areas. In other words, a diversification of the offer especially if this is done either through cultural routes or tourist itineraries may provide direct and indirect benefits for different geographical areas and even distant regions.

Planning of the use of cultural properties should include an evaluation of environment impacts and of those factors that could diminish their genuine attraction, and the economic cost of such impacts

⁷ The current annual number of foreign tourists visiting Spain is 50 - 52 million. In other words, 125% of the total population. Of course, not all visitors take part in cultural tourism, although nowadays most do so as either a secondary or occasional activity, and there is a strong upwards trend in the demand for this type of tourism. There is also an increasing internal demand which generates important resources for the maintenance and conservation of cultural properties. But income from cultural tourism is difficult to assess as part of total income from tourism activities. Figures that could provide an overall, reliable estimation of the economic impact of investing the resources of cultural tourism in heritage conservation are difficult to provide due to the fact that specific statistics for this area are not available from public entities and that a great part of the monuments visited are owned and administered by the Church.

estimated. A strategy designed to optimize these exceptional resources should include a study on the possibility of diversifying the offer to encompass surrounding areas, including possible cultural routes covering a wider area. In this context, it would be appropriate to carry out a study on a local and regional level, with more detailed information on the heritage property and its nearest surroundings. This could be used as an important tool for integrated planning and on a long-term basis for conservation, development of trade and industry, planning improvements to infrastructures and the ideal location of local accesses and tourism development activities. This would also encourage the desired rational planning that combines public resources and private initiatives within a framework of information available to the public. Among other advantages, it would allow tourism planning to take advantage of all the possibilities offered by the historic place and its surroundings, and allow a suitable relationship between maintenance costs and the operating income to be established. Among other possibilities, offers encompassing transportation services – including long distance transport– entrance tickets, accommodation, gastronomy, folklore, parking areas, guided tours, sale of craftwork, etc., through different cultural routes can be considered. In addition, visitors should be informed so they are aware of the type of experience that awaits them. Information should be provided not only when tourists reach their destination, but also prior to their arrival. It is also important that information centers be available to help tourist achieve a better and more accurate understanding of the heritage place.

Investments in and management of heritage properties intended for cultural tourism must respect their integrity, nature and meaning. The objectives of the International Charter of Cultural Tourism adopted by ICOMOS in its 12th General Assembly (October 1999) are to promote the tourist industry while ensuring sustainable development, but always on the basis of respect and enhancement of heritage, given its significance and fragile nature; Long-term protection and conservation should be an essential component of plans for social, economic, legislative, cultural and tourism development, and the adverse impact of tourism projects on heritage must be minimized; Management plans to develop a heritage resource should guarantee beforehand that its natural and cultural values will be preserved and establish acceptable limits; Tourism planning should include measures to prevent negative impact on significant features or ecological characteristics; Promotion and management of places of cultural and historic value should protect their authenticity; Tourism planning needs to be focused on enhancing the intrinsic attraction of the historic place and facilitating its appropriate understanding and enjoyment by the visitor, and uses despoiling or diminishing its nature or function should be avoided.

Before planning actions and deciding on the specific use that heritage designated for cultural tourism is to have, it is necessary to ask what the tourist and particularly the quality tourist is seeking. Among the things a tourist seeks when visiting historic places, the following can be listed: *Uniqueness* (what he/she cannot find elsewhere); *Authenticity*; *Integrity*; *Novel experiences* (atmospheres different from the tourist's usual environment and different ways of viewing life, etc.); *Quality of services*; *Environmental quality*; *Quality of its characteristic atmosphere*. Etc. Often these wishes are not taken into consideration and the genuine elements and atmosphere of the historic place are destroyed to offer tourists what they can find in their own living environment. As it is proved, in the long run quality tourism will withdraw, and the tourist will look for other places that fulfill his or her expectations. This results in a loss of income for the community involved and may also lead to economic decline in some cases.

Finally, let me make a last reference to the paper I sent to the ICLAFI seminar held in Brijuni (Croatia) in 2000, listing ~~the main factors that, in my opinion, should be taken into account when~~ considering which are the benefits of cultural tourism, as well as the potential risks or disadvantages and their impact in the sustainability of cultural properties and historic areas:

- Among other *benefits* that can be generated by cultural tourism, the following can be highlighted:

- Enhancement and recovery of heritage
- Cultural exchange and dialogue
- Increased knowledge and broadened perspectives
- Incorporation of values from other cultures
- Learning about the history of human civilization
- Improved understanding between different peoples
- Economic growth with the consequent enhancement of underutilized resources
- Generation of economic resources for the community visited (local, regional or national), both in the private and public sectors
- Direct and indirect job creation (experts consider that each directly created job generates 1.2 indirect and 1.5 induced jobs)
- Attraction of capital and other resources from other areas within the country or abroad, as well as public and private investments
- Improved infrastructures and local access
- Potential reinvestment of part of the resources generated from heritage conservation for new rehabilitation projects providing subsequent economic benefits.

Etc.

Among the risks and disadvantages, the following can be mentioned:

- Increased problems of access and movement within historic centers and sites if measures are not taken to accommodate them to the flow of tourists;
- ~~Potential conflicts of functionality in the everyday life and usual activities of local inhabitants;~~
- Noise and other inconveniences caused by the behavior of certain visitors, as well as an excessive influx of tourists in the streets and other public areas. Occasional street disorders;
- The local population may also be affected by pressure resulting from harassment or disrespect for the traditions, customs and lifestyles that make up their particular idiosyncrasy;
- Speculative pressure from the tourist industry which, especially when combined with the above circumstances, can lead to forceful displacement of local residents from historic centers;
- When dependence on tourist activities is excessive or exclusive, it may entail the risk of a decline in tourism causing a collapse of economic activity;
- Another risk is the possibility of demand exceeding supply. Tourism development should therefore be restricted to the number of visitors and degree of exploitation that the site is actually capable of bearing, and should be tailored so that it is in harmony with the functional needs of the local residents;
- Inflation from a rise in the price of land, construction and everyday consumer services and products is another challenge. In other words, an excessive increase in the cost of living may threaten the economic stability and well being of the local population over the medium and long term;

- Another factor that should not be forgotten is the need for appropriate planning of dependence on, and particularly permissiveness, regarding outside companies from the tourist trade, as these may end up absorbing an excessively large proportion of the resources generated. This may sometimes lead to the local population benefiting only marginally from tourism activities in comparison to tour operators who set up in the same locality and have their own staff and services.

As a general conclusion it may be stated that Cultural tourism is undoubtedly one of the principal sources of wealth for sustainable development as well as for supporting the financial cost of conservation and restoration of cultural heritage. In an inverse sense, it can also be said that the maintenance of this specific kind of tourism on a long-term basis is derived both from investments made on the preservation of cultural properties and the appropriate management of the historic areas where they are located and their surroundings. But it also involves considerable risks. These are often not taken into account by the public authorities responsible for heritage or by many citizens and professionals who remain unaware of their irreplaceable spiritual and economic value⁸.

X. The role of NGOs in the process of protection of cultural heritage and mechanisms existing to stimulate voluntary shareholding: Special Tax Regime of Nonprofit Entities.

Among other entities, **both foundations and associations declared of public utility** may benefit from the special measures provided for in Act 49/2002 of 23 December on the Tax Regime of Nonprofit Entities and Tax Incentives for Patronage.

These entities must meet the following **requirements**:

- 1) They must pursue general interest purposes (such as cultural, scientific, promotion of volunteer work or other aims of general interest);
- 2) They must allocate to pursue their specific purposes at least 70% of the income and revenues derived from: a) economic activities; b) transfers of properties and rights of ownership (income from onerous transfers of immovable properties where they conduct their activity is not included, provided that such income is reinvested in properties and rights of like nature); c) income obtained by any other means, after deducting the expenses incurred to obtain such income and excluding from this calculation the expenses incurred for compliance with statutory aims or the purpose of the nonprofit entity. Calculation of income will not include contributions or donations received in the form of a capital asset. Nonprofit entities must allocate the remainder of income and revenue to increasing capital assets or reserves.
- 3) They must not carry out economic activities unrelated to their purpose or statutory aim. This requirement will be understood to be fulfilled if annual net income from this type of non-exempt activities does not exceed 40 % of the total annual income of the entity and does not violate the laws for the defense of free competition. The leasing of immovable property belonging to the entity does not constitute an economic activity for this purpose.
- 4) The founders, associates, patrons, statutory representatives, members of the governing board and their spouses or relatives to the fourth degree inclusive must not be the principal beneficiaries of the foundation's activities or benefit from special conditions. Nevertheless, this rule will not apply to foundations whose purpose is the conservation and restoration of properties belonging to national historic heritage that comply with the requirements of this specific regulation, in particular with respect to the obligations of public visiting and exhibitions of said properties.

⁸ The above expressed ideas on Cultural Tourism and the necessary sustainability were advanced in the paper submitted to the organizers of the ICLAFI seminar held in Croatia in 2000.

- 5) The positions of patrons, statutory representative and member of the governing board must not be remunerated, notwithstanding the right to be reimbursed for duly justified expenses incurred in the performance of their functions, as long as they do not exceed the limit for per diem allowances exempt from taxation. Patrons, statutory representatives and board members may receive remuneration for giving services to the entity, including those given within the framework of an employment relationship, other than those involved in the performance of the functions corresponding to them as patrons or members of the governing board, but such persons may not participate in the economic results of the entity, either directly or indirectly through a third party person or entity.
- 6) In the case of dissolution, the assets of the foundation must be transferred in their entirety to foundations and associations qualifying as beneficiaries of patronage or other public entities pursuing general interest purposes, and this circumstance must be expressly provided for in the founding business or in the statutes of the dissolved entity.
- 7) They are legally registered in the corresponding Registry.
- 8) They comply with their accounting obligations, prepare a detailed financial report in accordance with applicable regulations and file it in due time with the public body in charge of the corresponding registry.

These entities will be granted the following **tax benefits**:

1. Corporate Income Tax

1.1. Exempt Income⁹

1. Income derived from the following will be exempt:
 - a) Gifts and donations received to support the purpose of the entity, including contributions and donations in the form of capital assets and financial assistance received through the business- nonprofit entity agreements regulated in article 25 of this Act;
 - b) Membership fees paid by associates, collaborators or benefactors;
 - c) Public grants, except those used to finance non-exempt economic activities.
2. Income derived from the movable and immovable property of the entity.
3. Income from acquisitions or transfers, whatever their modality, of properties or rights.

⁹ *Corporate Income Tax Act 43/1995 of 27 December* specifies that these entities will be exempt from payment of corporate income tax on the following *income*: a) Income derived from the conduct of activities constituting its specific purpose or aim b) Income derived from lucrative acquisitions and transfers, provided that they are carried out in compliance with its specific purpose or aim; c) Income resulting from the onerous transfer of properties related to the pursuit of its specific purpose when the total amount obtained is allocated to new investments related to said specific purpose or aim; New investments must be made within the period of one year prior to the date of delivery or availability of the asset and the three following years and remain in the assets of the entity for seven years, unless the asset has a shorter useful life. These three exceptions will not apply to income from economic activities, movable or immovable property or transfers different from those indicated above. Income from economic activities will be considered to be all income from either work by staff or capital gains, when it constitutes the organization by the entity on its own account of either the means of production or human resources with the purpose of undertaking the production or distribution of goods or services. Determination of the taxable base will only include income derived from non-exempt economic activities and will be taxed at a rate of 10%. The following expenses will not be considered tax-deductible: a) Expenses attributable solely to exempt income. Expenses partially attributable to non-exempt income will be deductible in the percentage they represent of the income obtained in the year from economic activities with respect to the total income of the entity. b) The amounts corresponding to the application of results and, in particular, those allocated to support exempt activities. Entities subject to this tax must maintain their accounting in accordance with the Code of Commerce or the specific regulations governing them.

4. Income obtained from exempt economic activities in the cases foreseen in the Act.
5. Income obtained from other exempt income sources included in the above items.

1.2. Exempt Economic Activities

Income derived from the following economic activities carried out in compliance with the specific purpose of the foundation will be exempt:

4. Economic activities related to properties declared of cultural interest in accordance with the National Historic Heritage Act and respective regulations of the Autonomous Communities, as well as museums, libraries, archives and documentation centers, provided that they meet the requirements established in said Act, in particular with respect to the obligations of visiting and public exhibition of these properties.
8. Economic activities consisting of the organizations of exhibits, lectures, symposia, courses or seminars.
9. Economic activities related to the preparation, editing, publication and sale of books, magazines, brochures, audiovisual and multimedia materials.
11. Economic activities that are merely ancillary or complementary to the exempt economic activities or to the activities aimed to comply with statutory aims or purpose of the nonprofit entity. Economic activities will not be considered as ancillary or complementary if their net income exceeds 20 % of the total income of the entity.
12. Economic activities of minor importance. Economic activities will be considered as minor if their net income does not exceed 20,000 euros.

1.3. Determination of taxable base and tax rate

1. Nonprofit entities will only be subject to corporate income tax on income derived from non-exempt economic activities.
2. The following will not be considered as tax-deductible expenses: a) Expenses attributable solely to exempt income. b) Amounts allocated to amortize assets not related to taxable economic activities. c) Amounts corresponding to the application of results and, in particular, surpluses from non-exempt economic activities.
3. The positive taxable base corresponding to income derived from non-exempt economic activities will be taxed at a rate of 10 %.

1.4. Income not subject to withholding

Exempt income provided for in this Act will not be subject to withholdings or payments on account.

1.5. Obligation to file

Entities that opt for this tax regime are obliged to file a Corporate Income Tax return for their total income, both exempt and non-exempt.

1.6. Conditions required for application of this special tax regime

Application of this special tax regime is subject to compliance with the conditions and requirements described above. Failure to comply will result in the obligation to pay all amounts that would have been paid if the entity had not benefited from this special tax regime and late payment interests, without prejudice to any fines that may be applicable.

2. *Local taxes*

2.1. Properties in the ownership of entities that have opted for this special regime will be exempt from payment of Real Estate Tax (except those related to economic activities not exempt from Corporate Income Tax) and the Transfer Tax on properties acquired by onerous transactions.

2.2. These entities will also be exempt from the Urban Land Gains Tax.

The application of both exemptions will be subject to communication to the municipal government concerned that the entity has opted for this special regime and compliance with all applicable conditions and requirements. These exemptions are established without prejudice to those provided for in Act 39/1988 of 28 December regulating local taxes.

Nonprofit foundations and associations that opt for this special tax regime are also *qualifying recipients for patronage*, since the gifts, donations and contributions they receive enjoy the tax incentives provided for in this Act.

With regard to *charitable building entities* established under article 5 of Act of 15 July 1954, *they may opt for the special tax regime* foreseen for nonprofit foundations and associations, provided that: a) they comply with the requirements established in the specific Act regulating these entities, b) those specifically indicated in Act 49/2002 of 23 December regulating the Tax Regime of Nonprofit Entities and c) they are duly registered in the corresponding registry of the state or autonomous administration. However, *the status of qualifying recipients for patronage will not be applicable to them* and, therefore, they will not be eligible for the tax incentives for patronage provided for in this Act.

With regard to *religious entities*, refer to the information given at the end of section III and footnotes 1 and 2.

The General State Budget Act may amend, in accordance with the provisions of article 134, paragraph 7 of the Spanish Constitution: a) *The tax rate of nonprofit entities;* b) *The percentage of deduction and limits for their application provided for in this Act.*

With respect to *Value Added Tax (VAT)*, nonprofit entities may expressly request exemption from this tax for the activities carried out in compliance with their purposes that do not imply a financial gain of a non-exempt nature.

Poland

- can deduct a certain amount (not %) of renovations you do on your property (flat).
- General principle of donation - persons & corporations - can deduct up to 1% of your tax owed. for purposes which are approved like conservation.

Tax credit.

Thomson

very little in the way of tax incentives for res. some depreciation. Grants.

- no way to divert money from cultural tourism to restoration.
- ~~NGOs~~ take for businesses they run & use money for their purposes, but very little tax paid.
- Swedish EkonoS - small association Swedish Association for maintenance of heritage - lobbying, educational, etc.
- Nature Home Associations - group of local enthusiasts for studying local history & take care of bldgs. originally moved endangered bldgs. to site, but not thought good today.
- Financing of rescue archaeology - most done by govt. agency, but not a monopoly. Regional museums have archaeologists, university, private companies. Person can't choose which is assigned to project. There is a semi-tender process.

Sergiu -

Vat - 0% for all religious buildings

Building Permit Tax 0% for hist. monument
(usually 1%)

No obligation to compensate owner for restrictions

Luss -

Set-aside of 1% of all public works
budget for cultural enhancement for proj.s
more than 600,000 Euros (except ~~defense~~ defense)

Deduction of up to 15% for
Rehabilitation, etc. in protected areas.

Donation of Cultural goods -
25% for individuals / 35% corporate

VAT - churches exempt.

Can pay your income taxes by giving them
registered cultural goods. Most usable
for moveable, but ok for immovable.

Alberdo -

Argentina used special tax on cinema admissions to promote Argentine cinema in Argentina & other countries. (Opened cinema in NYC to promote Argentine movies) Good example.

Icomos Costa Rica

1% of (~~R~~) to go into fund to capitalize Icomos Costa Rica. Only a couple of years, but resulted in abt. \$2 million. * ^{of} taxes applied to tobacco.

In Peru - 4 articles in heritage legislation on tax relief, but not currently in application.

Not tax benefit, but "adopt a balcony" program. Enterprises gained prestige by assisting in the restoration of Lima Center. Restoration actually did by the municipal workers.

Leonard -

National Restoration Fund - privatized corporation operates this and pays out subsidies and makes low-interest loans on behalf of the Govt. Can pre-pay subsidies abt. 60% of owners get these low-interest loans against future subsidy. Revolving fund created.

Only give subsidy for restoration with plan for long-term maintenance. More money going for maintenance.

Do not use subsidies as sole means of promoting
conservation

One-stop shop to solve financial issues - bank