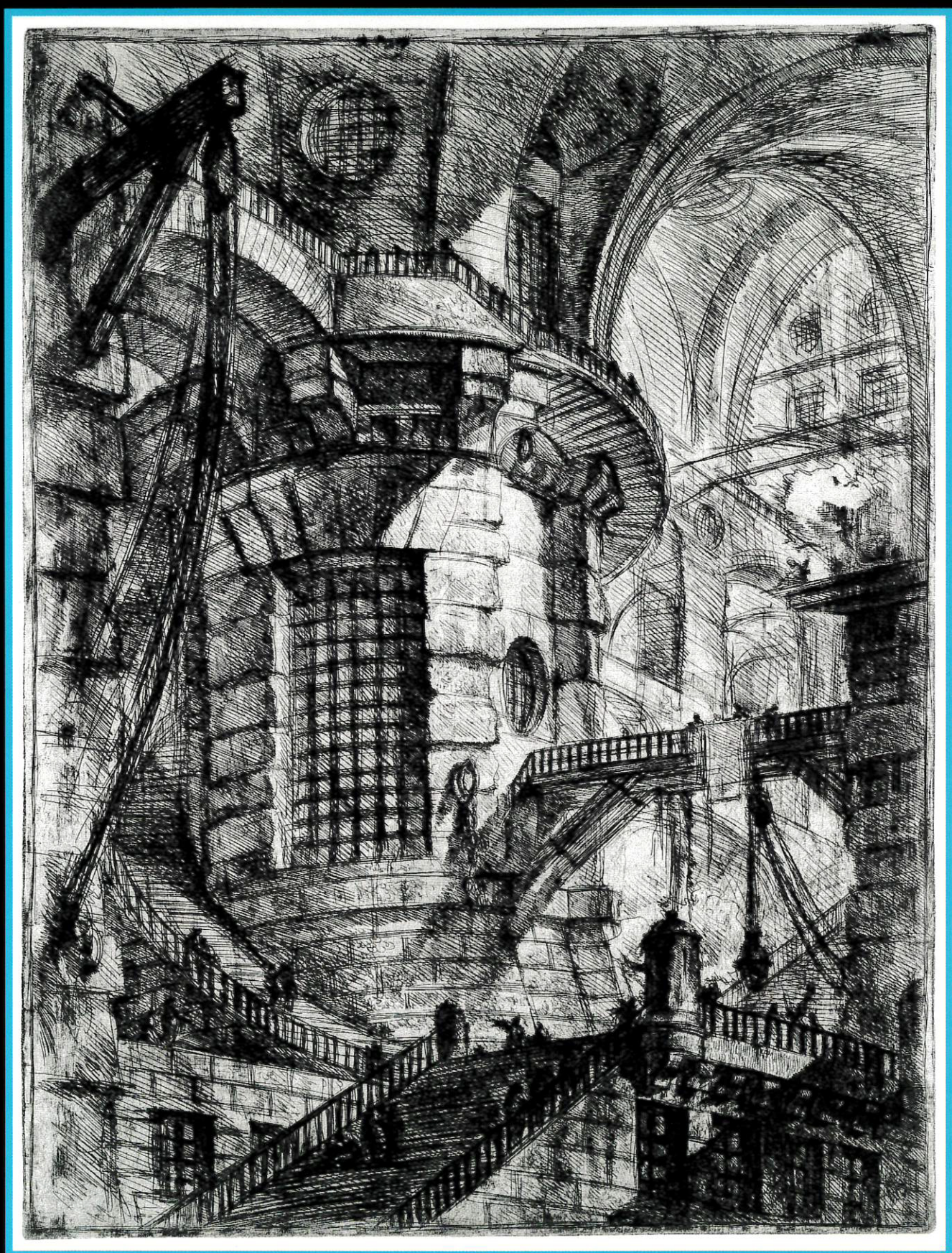
LEGAL STRUCTURES OF PRIVATE SPONSORSHIP



ICOMOS · HEFTE DES DEUTSCHEN NATIONALKOMITEES XXVI
ICOMOS · JOURNALS OF THE GERMAN NATIONAL COMMITTEE XXVI
ICOMOS · CAHIERS DU COMITÉ NATIONAL ALLEMAND XXVI

INTERNATIONAL COUNCIL ON MONUMENTS AND SITES
CONSEIL INTERNATIONAL DES MONUMENTS ET DES SITES
CONSEJO INTERNACIONAL DE MONUMENTOS Y SITIOS
МЕЖДУНАРОДНЫЙ СОВЕТ ПО ВОПРОСАМ ПАМЯТНИКОВ И ДОСТОПРИМЕЧАТЕЛЬНЫХ МЕСТ



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INTERNATIONAL SEMINAR
ON LEGAL STRUCTURES OF PRIVATE SPONSORSHIP
AND PARTICIPATION IN THE PROTECTION AND MAINTENANCE OF MONUMENTS

ORGANIZED BY THE GERMAN NATIONAL COMMITTEE OF ICOMOS IN COLLABORATION WITH
THE DEPARTMENT OF INTELLECTUAL AND CULTURAL PROPERTY LAW OF THE FACULTY OF
LAW AND ADMINISTRATION OF THE UNIVERSITY OF KATOWICE/POLAND

WEIMAR/GERMANY, APRIL 17 TO 19, 1997

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ACTAS DEL COMITÉ INTERNACIONAL ICOMOS DE ASUNTOS JURÍDICOS, ADMINISTRATIVOS Y FINANCIEROS · I
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Foreword

At the Ninth General Assembly of ICOMOS in Lausanne in 1990 I made the acquaintance of the Canadian Marc Denhez, who told me about his idea for establishing an international specialized ICOMOS committee on legislation and finance. The need for such a committee became more and more evident to me during the years that I was a member of the ICOMOS Executive Committee. At the request of ICOMOS President Roland Silva in particular I attempted to set up such a committee. It quickly became clear that, in order to be successful, these efforts needed to attract the support not so much of the National Committees but rather of interested individuals. I found a partner in Professor Wojciech Kowalski from Katowitz University, a colleague who was ready from the very start to work effectively to turn the idea into reality. We agreed that an ICOMOS committee on questions of law should not be an end in itself, but rather should handle the comparative legal aspects of a particular theme at each of its meetings, which hopefully will take place annually.

For the founding conference of the ICOMOS International Committee on Legal, Administrative and Financial Issues we chose the theme "Legal Structures of Private Sponsorship and Participation in the Protection and Maintenance of Monuments", a topic that has particular relevance as public funding for preservation becomes more and more scarce worldwide. The conference in Weimar on 17-19 April 1997 was a success in two respects. The papers, presented again in this publication, formed the basis for a fruitful exchange of information and opinions by participants from eighteen countries; they convey a broad picture not only of various legal forms in differing legal systems, but also of their practical significance and application. But in addition to this scientific output the Weimar conference was the launching place of the ICOMOS International Committee on Legal, Administrative and Financial Issues, which in the meantime has been formally confirmed by the ICOMOS Executive Committee in accordance with the ICOMOS bylaws. The new committee's bylaws and a working program that was agreed upon in Weimar are also included in this publication.

For economic reasons – in terms of work as well as limited financial resources – the conference language was English. Accordingly the papers presented in Weimar also appear in this publication in English. At the initiative of the President of the Spanish National Committee of ICOMOS, Mrs. Suárez-Inclán Ducassi, Spanish summaries of the papers are also included; prepared by the Spanish National Committee, these summaries will ensure a much broader readership for this publication.

I would like to thank the Federal Ministry of the Interior, the German Foundation for Monument Protection, the Alfred Toepfer Foundation F.V.S. and the Messerschmitt Foundation for their financial support of the Weimar conference and this publication; my colleague Professor Kowalski for his participation in the conception, planning and execution of the conference; Rector Prof. Dr. Gerd Zimmermann and Chancellor Dr. Ing. Heiko Schulz from the Bauhaus University at Weimar, where the conference took place; the director of the State Preservation Office of Thuringia, State Conservator Professor Rudolf Zießler for his support; the President of the Spanish National Committee of ICOMOS, Mrs. María Rosa Suárez-Inclán Ducassi, for the preparation of the Spanish summaries for this publication and for her invitation to hold the next meeting of the new committee, again in conjunction with a scientific conference, in Spain in 1998; and finally the participants and speakers for their assistance in making the Weimar conference the success that it was.

This publication appears simultaneously as Journal XXVI in the series "ICOMOS – Journals of the German National Committee" and, with optimistic faith in the future of the new committee, as Journal Nr. 1 in a new series of the ICOMOS International Committee on Legal, Administrative and Financial Issues. For the design of this volume we have made an effort to liven up the somewhat dry legal material with a touch of self-irony with a drawing by Tiepolo and caricatures by Daumier.

Werner von Trützschler

Prefacio

En la Novena Asamblea General de ICOMOS en Lausana, en 1990, tuve ocasión de conocer al canadiense Marc Denhez, que me habló de su idea en orden a establecer un comité internacional ICOMOS especializado en asuntos jurídicos y financieros. En este sentido, la necesidad de un comité de este género se me hizo cada vez más evidente durante los años en que fui miembro del Comité Ejecutivo ICOMOS. De este modo, a instancia del presidente de ICOMOS Roland Silva, emprendí la tarea de establecer dicho comité. Pronto se reveló que, para culminar con éxito, estos esfuerzos necesitaban el apoyo, no tanto por parte de los Comités Nacionales, como sobre todo por la de individuos interesados en la materia. Encontré un colaborador en el Profesor Wojciech Kowalski de la Universidad de Katowitz, un colega que estuvo dispuesto desde el primer momento a ponerse manos a la obra para convertir lo que aún era una idea en una realidad tangible. Eramos del parecer común de que un comité ICOMOS sobre cuestiones jurídicas no debía ser un fin en sí mismo, sino que, más bien, debía tener como cometido el tratamiento de los aspectos legales comparados de un tema concreto en cada una de sus reuniones, que, esperamos, tendrán lugar con carácter anual.

Para el seminario de inauguración del Comité Internacional de Asuntos Jurídicos elegimos el tema "Formas legales organizativas para el patrocinio de la preservación del patrimonio histórico", un asunto que tiene una particular relevancia a medida que la financiación pública se va retrayendo progresivamente en todo el mundo. El Seminario tuvo lugar en Weimar, entre el 17 y el 19 de abril de 1997 y fue un éxito desde dos puntos de vista. Las ponencias, presentadas ahora en forma de publicación, constituyeron la base para un fructífero intercambio de información y opiniones por parte de participantes de dieciocho países; trazaron de este modo un amplio fresco no sólo de las variadas formas legales en los diferentes sistemas jurídicos, sino también de su significación y aplicación prácticas. Pero, además de este resultado científico, el Seminario de Weimar constituyó el punto de partida del Comité Internacional ICOMOS de Asuntos Jurídicos, Administrativos y Financieros, que, en este período de tiempo, había sido formalmente confirmado por el Comité Ejecutivo ICOMOS, de acuerdo con sus estatutos. Se incluyen asimismo en la publicación los estatutos del nuevo Comité y un programa de trabajo acordado también con ocasión del Seminario de Weimar.

Por razones de economía – en términos de trabajo así como de recursos financieros limitados –, el Seminario tuvo como lengua de trabajo el inglés. En consecuencia, las ponencias presentadas en Weimar también aparecen ahora publicadas este idioma. A iniciativa de la presidenta del Comité Nacional Español de ICOMOS, la Sra. Suárez-Inclán Ducassi, aparece asimismo una síntesis en español de estas ponencias; preparada por el Comité Nacional Español, esta síntesis contribuirá con seguridad a una difusión mucho más amplia de esta publicación.

Me gustaría dar las gracias al Ministro Federal del Interior, a la Fundación Alemana para la Protección de los Monumentos, a la Fundación Alfred Toepfer F.V.S. y a la Fundación Messerschmitt por su contribución financiera al Seminario de Weimar y a esta publicación; a mi colega el Profesor Kowalski por su participación en la concepción, planificación y ejecución del Seminario, al Rector Prof. Dr. Gerd Zimmermann y al Chancellor Dr. Ing. Heiko Schulz de la Universidad Bauhaus de Weimar, donde tuvo lugar el Seminario; al director de la Oficina Estatal de Thuringia para la Preservación del Patrimonio, al Conservador Estatal Profesor Rudolf Ziessler y a tantos otros por su apoyo; a la presidenta del Comité Nacional Español de ICOMOS, la Sra. María Rosa Suárez-Inclán Ducassi por la preparación de la síntesis en español para su publicación y por su invitación a celebrar la próxima reunión del nuevo Comité, de nuevo conjuntamente con un Seminario científico, en España en 1998, y finalmente a los participantes y conferenciantes por su colaboración que hizo del Seminario de Weimar el éxito que fue.

Esta publicación aparece simultáneamente como Actas XXVI en la serie "ICOMOS – Actas del Comité Nacional Alemán" y, con fe optimista en el futuro del nuevo Comité, como Actas núm. I en la nueva serie del Comité Internacional ICOMOS de Asuntos Jurídicos, Administrativos y Financieros. Para el diseño de este volumen, hemos hecho un esfuerzo para aligerar el en cierto sentido árido material jurídico a través de un toque de auto-ironía con un dibujo de Tiepolo y caricaturas de Daumier.

Werner von Trützschler

Avant-propos

Lors de la IX[ème] Assemblée Générale de l'ICOMOS à Lausanne en 1990 je fis la connaissance du Canadien Marc Denhez qui me parla de ses initiatives visant à la fondation d'un Comité International de l'ICOMOS spécialisé en matière de droit. Tout au long des années de ma présence au Comité Exécutif de l'ICOMOS, la nécessité d'un tel comité m'était devenue de plus en plus évidente. Sur la demande de Roland Silva, Président de l'ICOMOS, je cherchai finalement à créer ce comité. Je me rendis très vite compte que mes efforts ne pouvaient être couronnés de succès que si je réussissais à sensibiliser non seulement les Comités nationaux de l'ICOMOS, mais surtout des personnalités comptétentes et intéressées à cette idée. En le Professeur Wojciech Kowalski de l'Université de Katowitz je trouvai un partenaire prêt à contribuer avec énergie à la réalisation du projet. Nous nous trouvâmes d'accord qu'un comité de l'ICOMOS en matière de droit ne pouvait être une fin en soi et que sa tâche concrète serait de discuter scientifiquement lors de réunions à intervalles réguliers certains sujets sous un aspect de droit comparé. Comme titre de la conférence initiale du Comité International de Droit de l'ICOMOS nous avions choisi ‹formes juridiques du mécénat organisé dans le domaine de la conservation des monuments historiques›, un sujet dont l'actualité était assurée, face à la diminution des fonds publics consacrés à la préservation des monuments. La conférence tenue à Weimar du 17 au 19 avril 1997 a été un succés double. Les rapports réunis dans cette publication donnent une image étendue et multiple non seulement des différentes formes juridiques à l'intérieur des différents systèmes de droit, mais aussi de leur application et de leurs effets pratiques. Ils furent à la base d'un échange fructueux d'informations et d'opinions parmi les participants venus de 18 pays. En outre un Comité International de l'ICOMOS pour les Questions de Droit, d'Administration et de Finance a été constitué, formellement confirmé depuis par le Comité Exécutif de l'ICOMOS en accord avec le statut de l'institution. Le règlement du nouveau comité ainsi qu'un programme de travail voté à Weimar sont publiés dans ce cahier. Comme nous avions choisi, pour des raisons d'économie de travail et de moyens, l'anglais comme langue de conférence, c'est en anglais qu'apparaissent les rapports ci-joints. On en trouvera en annexe des résumés en espagnol, dûs à l'initiative de Madame Suárez-Inclán Ducassi et aux efforts du Comité National Espagnol qu'elle préside. Ces résumés contribueront certainement à élargir le cercle de nos lecteurs.

J'adresse mes remerciements au Ministère Fédéral de l'Intérieur, à la Fondation Allemande pour la Protection des Monuments, à la Fondation Alfred Toepfer F.V.S. et à la Fondation Messerschmitt pour leur soutien financier aussi bien à la conférence de Weimar qu'à cette publication; à notre collègue Wojciech Kowalski pour son concours à la conception, à la planification et à la réalisation de la conférence; au Professeur Dr. Gerd Zimmermann et au Dr. Heiko Schulz, Recteur et Chancelier de la Bauhaus-Universität de Weimar, où s'est tenue la conférence; au Professeur Rudolf Zießler, Conservateur Général du Service de Monuments

Historiques de Thuringe, pour son soutien; à Madame María Rosa Suárez-Inclán Ducassi, Présidente du Comité National Espagnol de l'ICOMOS, pour la rédaction des résumés inclus à cette publication, ainsi que pour son invitation à réaliser la prochaine rencontre du nouveau comité dans son pays en 1998; et, pour terminer, à tous les participants et rapporteurs pour leur collaboration, qui fut à la base du succès du congrès de Weimar.

Cette publication apparait en tant que numéro XXVI de nos cahiers du Comité National Allemand et que Nr. 1 d'une nouvelle série de carnets du Comité International de l'ICOMOS pour les Questions de Droit, d'Administration et de Finance, dans l'espoir optimiste qu'un avenir sera réservé à ce dernier. Nous avons essayé d'alléger la matière juridique un peu sèche de ce tome en y ajoutant des caricatures de Tiepolo et de Daumier.

Werner von Trützschler

Предисловие

На IX. общем собрании комитета ИКОМОС в Лозанне в 1990 году я познакомился с господином Марком Денизом из Канады, поделившимся со мной своей идеей основать в рамках ИКОМОС-а международный специализированный комитет по вопросам законодательства. Необходимость основания такого комитета становилась за время моей работы в исполнительном комитете ИКОМОС все более очевидной. В частности, по просьбе президента ИКОМОС-а, господина Роланда Сильвы, мы попытались основать такой комитет. В течение проходящих работ по подготовке вскоре стало ясно, что эти работы будут увенчаны успехом только в том случае, если удастся заинтересовать не столько национальные комитеты ИКОМОС, сколько привлечь внимание отдельных лиц. В лице профессора Войчеха Ковальского из университета в г. Катовице я нашел партнера, с самого начала любезно согласившегося принять участие на реализации этого проекта. Мы с ним были одного мнения относительно того, что комитет ИКОМОС по вопросам законодательства не должен являться самоцелью, но чтобы он, как мы надеемся, в будущем по случаю ежегодных встреч, занимался определенной темой на уровне сравнительного права.

Для учредительной конференции Международного комитета по вопросам законодательства ИКОМОС, мы выбрали тему "Правовые формы организованного меценатства в области охраны памятников культуры" - тему, особенно актуальную в обстановке всемирного понижения общественных средств для охраны памятников культуры. Веймарская конференция, проходящая с 17 по 19 апреля 1997 года стала успехом в двух отношениях. Доклады, представляемые вновь в этом сборнике, показывают широкую и многоликую картину не только разных правовых форм в разных правовых системах, но также практическое значение этих форм и их применение. Доклады представляют собой основу для плодотворного обмена информацией и мнениями участников, съехавшихся на Веймарскую конференцию из 18 стран. Наряду с этим научным вкладом был на конференции основан международный комитет ИКОМОС по вопросам права, управления и финансов, между тем формально утвержденный согласно уставу ИКОМОС исполнительным комитетом ИКОМОС. Устав нового комитета и программа его работы, утвержденные Веймарской конференцией, также публикуются в представляемом сборнике.

По причинам экономности работы, а также из-за ограниченных финансовых средств был рабочим языком английский язык. Поэтому доклады, с которыми участники выступали на конференции, публикуются в этом сборнике также на английском языке. В приложении приводятся резюме отдельных докладов на испанском языке, составленные по инициативе президента Испанского национального комитета ИКОМОС, госпожи Суарез-Инклан Дукасси, испанским комитетом ИКОМОС. Несомненно эти резюме будут способствовать тому, что представляемое издание сборника заинтересует еще более широкий круг читателей.

Я хотел бы выразить свою благодарность Федеральному министерству внутренних дел, Немецкому фонду по охране памятников культуры, Фонду Альфреда Тепфера Ф.В.С. и Фонду Мессершмитт за финансовую поддержку, оказанную Веймарской конференции и изданию этого сборника, моему коллеге, профессору Ковальскому за участие в работе по концепции, планированию и реализации конференции, господину ректору Проф. доктору Герду Циммерманну и канцлеру Доктору инженеру Гейко Шульцу из Университета Баугауз в Веймаре, организаторам конференции, директору Туринского краевого управления по охране памятников культуры, господину Проф. Рудольфу Цислеру за их поддержку, президенту Испанского национального комитета ИКОМОС, госпоже Марии Розе Суарез-Инклан Дукасси за подготовку резюме этого сборника на испанском языке и за ее приглашение в Испанию в 1998 году для проведения там следующей встречи нового комитета, и одновременной организации научной конференции, и в конечном счете участникам и докладчикам за их сотрудничество, благодаря которому Веймарская конференция стала успешной.

Этот сборник публикуется как тетрадь XXVI, изданий "ИКОМОС - тетради Немецкого национального комитета" и с оптимизмом в будущее одновременно как тетрадь № 1 новой серии Международного комитета ИКОМОС по вопросам права, управления и финансов. В процессе работы над представляемым сборником мы старались освежить несколько сухой юридический материал оттенком самоиронии рисунков Тиеполо и карикатур Дюмиера.

Вернер фон Трюцшлер

Vorwort

Bei der IX. Generalversammlung von ICOMOS in Lausanne im Jahre 1990 lernte ich Marc Denhez aus Kanada kennen, der mir von seiner Idee zur Gründung eines internationalen ICOMOS-Fachkomitees für Rechtsfragen berichtete. Die Notwendigkeit eines solchen Komitees wurde auch von seiten des Exekutiv-Komitees von ICOMOS gesehen. Vor allem auf Bitten von ICOMOS-Präsident Roland Silva wurde versucht, ein solches Komitee ins Leben zu rufen. Bei den Bemühungen wurde sehr schnell klar, daß diese nur von Erfolg gekrönt sein würden, wenn es gelänge, nicht so sehr die Nationalkomitees von ICOMOS, sondern interessierte Persönlichkeiten für die Idee zu gewinnen. In Professor Wojciech Kowalski von der Universität Katowitz fand ich einen Partner, der bereit war, von Anfang an tatkräftig an der Umsetzung der Idee mitzuwirken. Wir waren uns einig, daß ein ICOMOS-Komitee für Rechtsfragen nicht Selbstzweck sein sollte, sondern sich bei seinen hoffentlich künftig jährlichen Treffen jeweils wissenschaftlich rechtsvergleichend mit einem bestimmten Thema auseinandersetzen sollte.

Für die Gründungskonferenz des Internationalen ICOMOS-Rechtskomitees wählten wir das Thema ›Rechtsformen für organisiertes Mäzenatentum in der Denkmalpflege‹ aus, ein Thema, das angesichts der weltweit immer knapper werdenden öffentlichen Mittel für die Denkmalpflege besonders aktuell ist. Die Weimarer Konferenz vom 17. bis 19. April 1997 wurde in doppelter Hinsicht ein Erfolg. Die in dieser Publikation vorgelegten Beiträge vermitteln ein breites vielgestaltiges Bild nicht nur unterschiedlicher Rechtsformen in verschiedenen Rechtssytemen, sondern zeigen auch die praktische Bedeutung dieser Rechtsformen und ihrer Anwendung auf. Sie bildeten die Grundlage für einen fruchtbaren Informations- und Meinungsaustausch der Teilnehmer aus 18 Ländern an der Weimarer Konferenz.. Neben diesem wissenschaftlichen Ertrag wurde dort ein – inzwischen vom Exekutivkomitee von ICOMOS gemäß der ICOMOS-Satzung formell bestätigtes – Internationales ICOMOS-Komitee für Rechts-, Verwaltungs- und Finanzfragen gegründet. Die Satzung des neuen Komitees und ein in Weimar beschlossenes Arbeitsprogramm sind im vorliegenden Band ebenfalls abgedruckt.

Giambattista Tiepolo, A Venetian Lawyer at his Desk, c. 1760, National Gallery of Art, Washington



Aus Gründen der Arbeitsökonomie und nicht zuletzt auch wegen begrenzter finanzieller Ressourcen war Tagungssprache der Konferenz Englisch. Dementsprechend erscheinen die Konferenzbeiträge in diesem Band in englischer Sprache. Beigefügt sind spanische Zusammenfassungen der einzelnen Beiträge, die auf Initiative der Präsidentin des Spanischen Nationalkomitees von ICOMOS, Frau Suárez-Inclán Ducassi, vom Spanischen ICOMOS-Komitee angefertigt wurden, und die sicherlich dazu beitragen werden, daß die vorliegende Publikation eine noch breitere Leserschaft finden wird.

Danken möchte ich an dieser Stellen dem Bundesministerium des Innern, der Deutschen Stiftung Denkmalschutz, der Alfred Toepfer Stiftung F.V.S. und der Messerschmitt Stiftung für die finanzielle Unterstützung der Weimarer Konferenz und dieser Publikation, Herrn Kollegen Kowalski für seine Mitwirkung bei der Konzeption, Planung und Durchführung der Konferenz, Rektor Prof. Dr. Gerd Zimmermann und Kanzler Dr.-Ing. Heiko Schulz von der Bauhaus-Universität Weimar, der Tagungsstätte der Konferenz, dem Leiter des Thüringischen Landesamts für Denkmalpflege, Herrn Landeskonservator Prof. Rudolf Zießler für ihre Unterstützung, der Präsidentin des Spanischen Nationalkomitees von ICOMOS, Frau María Rosa Suárez-Inclán Ducassi, für die Anfertigung der spanischen Zusammenfassungen für diese Publikation und für ihre Einladung, das nächste Treffen des neuen Komitees, ebenfalls verbunden mit einer wissenschaftlichen Tagung, 1998 in Spanien durchzuführen, und schließlich den Teilnehmern und Referenten für ihre Mitarbeit, die den Erfolg der Weimarer Konferenz ausmacht.

Diese Veröffentlichung erscheint als Heft XXVI der Reihe ›ICOMOS – Hefte des Deutschen Nationalkomitees‹ und in optimistischem Glauben an die Zukunft des neuen Komitees zugleich als Heft Nr. 1 einer neuen Schriftenreihe des Internationalen ICOMOS-Komitees für Rechts-, Verwaltungs- und Finanzfragen. Bei der Gestaltung des vorliegenden Bandes haben wir uns bemüht, die etwas trockene juristische Materie mit einem Anflug von Selbstironie durch eine Zeichnung von Tiepolo und Karikaturen von Daumier aufzulockern.

Werner von Trützschler

NORMAN PALMER

Non-Corporate Voluntary Associations

A leading academic lawyer has detected in unincorporated associations evidence of the English talent for avoiding detailed inquiry into institutions and concepts which seem to work, for fear of exposing their rampant irrationality: Professor Roger Rideout "Limited Liability of Unincorporated Associations" (1996) CLP 187. But unincorporated associations might also be seen as reflecting a further idiosyncrasy, the ability of English law to create a juridical whole which is less than the sum of its parts.

The unincorporated association is a curious anomaly which remains under-explored in English law. It can consist wholly of incorporated bodies. It frequently co-exists with a trust, as where trustees of the association hold its money or property in trust for its members in accordance with the rules of the association, and it can be either charitable or non-charitable. In theory, its lack of incorporation means that the unincorporated association "has no legal entity": Halsbury, Laws of England (4th ed.) "Contract" vol 9 para 344. Indeed, no formalities would seem to be necessary to the foundation of an unincorporated association at all, other than in relation to its name. And yet it seems to possess at least one of the advantages of incorporation without inflicting on its members the formality of that process. That advantage is the limited liability of its members (discussed further below). The point was powerfully made by Lord Lindley in *Wise v Perpetual Trustee Co* (1903) AC 139:

"Clubs are associations of a peculiar nature. They are societies the members of which are perpetually changing. They are not partnerships; they are not associations for gain; and the feature which distinguishes them from other societies is that no member as such becomes liable to pay to the funds of the society or to anyone else any money beyond the subscriptions required by the rules of the club so long as he remains a member. It is upon this fundamental condition, not usually expressed but understood by everyone, that clubs are formed; and this distinguishing feature has been often judicially recognised."

But this apparent immunity is bought at a heavy price. The disadvantages of unincorporated associations include their inability to sue (or be sued) in their own name, their contractual disability, and the difficulties which attend their ownership of property. These drawbacks may well make the unincorporated association an unfit vehicle for heritage management and protection.

Central feature

The essence of the unincorporated association has been long debated, but it now seems clear that it lies in the existence of a system set up by a group of individuals with the object of pursuing certain common aims (Rideout, 190). On that analysis, neither a common purpose nor a common fund or common property would appear *per se* determinative. A common purpose is crucial but not by itself sufficient; a common fund is neither. Thus it was that in *Conservative Central Office v Burrell* (1982) 2 All ER 1 at 7, CA, Brightman LJ spoke of an unincorporated association as an organisation having "an identifiable membership bound together by identifiable rules". These rules had to define the "bond of association" among members and show where control rested; and they would need to have been made on an identifiable occasion. Money, such as donations to the body in question, can be pooled for purposes, and through legal vehicles, other than that of an unincorporated association.

Closely allied to the notion of a common system is that of alliance by contract. An unincorporated association is said to depend vitally on contract, whether express or implied; the requirement is so pervasive that it is said that the courts will readily perceive a contract where they wish to find an unincorporated association. It is important to emphasise that the relevant contracts are purely among the members inter se; there is no such thing as a contract by each member separately with the association. The 'inter se' contract represents about the only occasion where members may be fully liable, and even then only for wrongs against the aggrieved member. It is not unlikely that the contract in question will represent one of those instances where English law waives the normal formality of a matching offer and acceptance: see *Clarke v Dunraven, The Satanita* (1897) AC 59. The trust concept may be a common characteristic of unincorporated associations but it is not (in comparison to contract) fundamental.

Typical instances

Members' clubs are a paradigm case: groups of members which meet for social, recreational or educative purposes and accept uniform rules for the governance of their activities. Other examples are unincorporated charitable institutions and campaign groups. Certain other collective groups have, however, attained the status of a quasi-corporation by law, sharing some of the qualities of conventional corporations, such as the ability to be sued in the association's name: registered friendly societies, trustee savings banks and (until the abolition of this status by statute) trade unions. Literary and scientific societies are a further special class with certain statutory privileges, considered below.

Litigation status

As already noted, unincorporated associations cannot under English law sue or be sued in their own name: *London Association for the Protection of Trade v Greenlands* (1916) 2 AC 15, HL. By the Rules of the Supreme Court, however, (Order 15 rule 12, for which there is a County Court equivalent) one or more of the members of the association may sue or be sued on behalf of all members having the same interest in the action, provided they are fairly representative of the general body of members. This is substantially no more than a reflection of the general rule permitting class actions. But the device is clumsy and largely ineffective. Rideout (op cit supra) has said that the difficulty exists solely in the judicial mind and could be resolved by a simple enabling or permission-giving statute. He also suggests that a way around the general immunity/disability problem might be found by suing the committee (and/or any trustees) where the rules permit the committee to contract on behalf of members. But not all rules so provide. (Contrast the recent decision of the Federal Court of Australia in *Abrook v Peter R Bennett Investment Services Ltd* (1997) unreported 1st August, where O'Loughlin J held that the company law principle in *Foss v Harbottle* (1843) 2 Hare 461 is not confined to incorporated companies, but may apply to any association of persons which is bound by common purpose and collective management and which can be described as a separate legal entity (in this case, an unincorporated friendly society whose member investors sought the right to commence action directly against the society's investment advisers)).

Property

Unless its purposes are charitable, an unincorporated association cannot hold property in its own name otherwise than by virtue of a contract among the members for the time being: *Re Recher's Will Trusts, National Westminster Bank Ltd v National Anti-Vivisection Society Ltd* (1972) Ch 526. It follows that where a testator makes an absolute gift to an unincorporated association this cannot take its literal effect. Rather, the gift will take effect as a gift to the Treasurer to be held by him on a bare trust for, or as a fiduciary agent for, the members acting in a general meeting or via their committee, as laid down in the association's rules, which bind the members in contract. Gifts of shares or land will take effect as gifts to the association's trustees, equivalently restricted.

The property position goes some way towards explaining what appears to be a judicial policy of reluctance to interfere in the affairs of unincorporated associations. Certainly this appears so where members fall out among themselves. It has been held that a member who seeks an injunction against the unincorporated association has no sufficient property right because he has at most only a residual interest in funds or other property held in the name of the association, and that the unavailability of an injunction spells an absence of jurisdiction to intervene in the association's affairs: cf. *Dawkins v Antrobus* (1881) 17 Ch D 615.

Power to contract

Lacking legal personality, unincorporated associations cannot enter into, or sue or be sued upon, contracts and are not bound by the acts of their supposed 'agents'. Nor can unincorporated associations authorise an officer to sue or be sued on such contracts on their behalf unless this power is expressly conferred by statute (eg, the Friendly Societies Act 1896 s 94); the mere existence of rules purporting to give the association this power is not enough: *Gray v Pearson* (1870) LR 5 CP 568.

Limited liability

The members of an unincorporated association, unlike the partners in a partnership, are not, by virtue of their membership alone, liable for the debts incurred "by" the association. The general rule is that, unless they are trading (in which event the principles of partnership law seem inevitably to apply) all unincorporated associations and their members enjoy limited liability. Apart from partnerships, the rule of limited liability applies to associations generally; it is to be compared with the joint and several liability of trustees. The liability of each individual member is (like that of the shareholder in a corporation/company) generally limited to that member's agreed subscription. In the words of Rideout (op cit, 188):

> "As with shareholding so with association membership, one pays a subscription and allows the purposes which one wishes to pursue to be carried out without any risk unless one is so ill-advised as to take a direct hand in that pursuit."

Any more extensive liability on the part of the individual member would have to be based on agency (in a case of contract) and vicarious liability (in a case of tort).

Contract

An outside party who claims in contract must show a sufficient bond of authority between the person who created or undertook the obligation and the member who is sued on it. In general, the latter is answerable only where he personally gave the order for the incurring of the liability, or expressly or impliedly authorised its being given on his behalf (though here, as in general, later ratification of an unauthorised order will suffice: *Bradley Egg Farm v Clifford* (1943) 2 All ER 378, CA).

Joining in a resolution to place the relevant order, or pledging one's personal liability on the association's behalf, would probably suffice, but short of such conduct there is probably little that would involve the member in liability. The suggestion that courts would imply a general authority on the part of members in such circumstances is arguably subject to the following objections:

1. To imply authority, it may be necessary to satisfy the normal common law test for the implication of terms in fact, that the implication is essential to lend commercial efficacy to the relationship. It is hard to detect this element in the situation under debate.
2. The implication of a general authority could potentially mean that every individual member could sue (as well as be sued) as a principal on the contract, a situation which could prove awkward for the outside party;
3. The implication could also mean that the committees themselves could not sue or be sued because they are merely agents, unless there is a prospect of an action against them for breach of warranty of authority, or unless it were agreed that they should contract both as principals and agents. But the latter may well be too complex an implication to gain credence.

On balance, courts appear more likely to imply an indemnity among ordinary members once "front-line" liability has been incurred by the committee or other resolving members, than to enlarge the front-line liability itself by implying initial authority from every member. It seems no coincidence

that the cases on members' liability involve, almost without exception, parties to the relevant resolution.

Tort

In a case of tort, the court will ask itself whether the wrong was committed in the course of the individual member's business, or possibly whether it was committed by a person to whom the member delegated any part of his duty of care towards the victim. It would be an optimistic litigant who saw here a broad avenue along which to pursue individual members for the tortious acts of the committee.

General

This adds up to a fairly restrictive range of liability and supports Rideout's recommendation, op cit, that if one has a purpose to pursue it is advisable to form an association. Of course, the association's funds are also generally immune, although Lloyd (1953) 16 MLR 359 argues that these can be reached if the transaction is backed by all the members.

Literary and Scientific Institutions

Special provision for such bodies is made by the Literary and Scientific Institutions Act 1854 (a statute which applies to both incorporated and unincorporated societies) and certain other legislation. While charitable objects are not necessary, there must be an element of instruction in an institution's purposes for it to qualify as a society within the Act; mere recreation or enjoyment are not enough. The characteristics and privileges of these institutions are fully discussed by Bamforth and Palmer in Halsbury, Laws of England (4th ed, reissue, 1997) vol 28, "Libraries and other Scientific and Cultural Institutions", paras 465-497.

Such societies have some (albeit limited) power to hold land and other property. If not established or conducted for profit, and if having main objects concerned with science, literature or the fine arts such as to entitle them to be regarded as charitable institutions, they may be exempt from full rates on property, from income tax and corporation tax and from other imposts.

There is also provision for actions to be brought (and defended) in the name of the president, chairman, principal secretary, clerk or (according to the society's rules) other senior officer of the society.

The proposed Council (EEC) Regulation on the Statute for a European Association

This proposal, first published in 1992 and amended in 1993, aims to enable two or more certain legal entities having their central administration within different member states to form, without losing their special national characteristics, a trans-Community association, co-operative society or mutual society in order to take advantage of the Single Market. The EA would have to be established for a purpose in the general interest or to promote its trade or professional interest and would have to devote its profits to the pursuit of its objectives rather than dividing them among its members. Those UK legal entities which would qualify for this purpose would include companies limited by guarantee, organisations incorporated by Royal Charter or Act of Parliament and all institutions established for exclusively charitable purposes. All three of the proposed new entities would have distinct legal personality, power to conclude contracts and to acquire property etc, and liability limited to their assets: Art 2(3). The proposals were considered insufficient, and a further review of legislative convergence within member states was ordered, at the 29 May 1996 Plenary Session of the Economic and Social Committee. But the proposal is clearly of interest to those involved with the work of charitable unincorporated associations and it may eventually strengthen their (hitherto tenuous) claim to adoption as the chosen model for heritage management.

Conclusion

It is tempting to regard the unincorporated association as having substantial advantages over the limited liability company. Not least, it seems to offer a more extensive limitation of liability, in that outside claimants cannot attack association funds: the association, being non-existent, has no property. Further, individual members cannot dispose of their interests. And, since the unincorporated association is non-trading, its controlling personnel (in contrast to company directors) may more easily avoid the potential collision between commercial and charitable functions which has been identified in relation to companies.

The reality, one suspects, is more austere. It is unclear how far the liability of members of an unincorporated association is truly limited; in this context (as elsewhere) principles which apply to clubs may not apply in unqualified form to unincorporated associations generally. It might, in any event, be objected that limited liability is not a prime consideration in determining the appropriate structure for a transnational body committed to heritage management. On the other hand, the lack of legal entity is a serious hindrance (for example, with regard to the receipt of bequests) and suggests the need for a distinct and formally-structured recipient and/or management and/or litigant body, in support of the unincorporated association. Allied to the vague condition of the underlying law, these considerations suggest a clear need for further exploration before this model for heritage management emerges as a strong contender.



JUDITH HILL

The Company Structure

The purpose of this paper is to consider the constitution of a company as a possible appropriate structure for the private protection and maintenance of monuments. The examination will be carried out by reference to English law but it would appear that the salient features of English law are largely paralleled in other legal systems.

There is a very good reason for carrying out this examination by reference to English law. The English legal system does not yet have a special kind of incorporated body designed purely for not-for-profit activities. Thus, as a matter of practice, the English legal system does currently use the structure of a company as a vehicle for the protection of the heritage. This means that there are practical examples available supplying conclusions to be drawn which can prove or disprove any theory derived from legal concepts.

The first question to address is what is meant by a company in this context. In its most basic form, a company is created when a group of people, operating together, employ some legal mechanism whereby they create, out of that co-operation, a legal entity which has a separate legal identity distinct from those of the individuals involved.

All legal systems have a number of mechanisms for achieving incorporation. Under English law a body can be incorporated by Royal Charter; by its own individual statute; under the Industrial and Provident Societies Acts; as a Friendly Society, as well as under the Companies Acts. There is even machinery (currently under the Charities Act 1993) whereby the trustees of a trust can incorporate the trustee body alone, leaving the trust and their role as trustees intact.

If one examines very briefly the characteristics of these different types of incorporated body, most can swiftly be discounted for the purposes of this exercise. Bodies incorporated by their own particular statute tend in the English system to be quasi public bodies, such as national museums, and are thus outside the remit of this discussion. Similarly, bodies incorporated by Royal Charter have either been established for a very long time, or are being established to further government policy. They tend, therefore, to be schools, universities, hospitals and institutions of that nature. An Industrial and Provident Society's constitution must by law follow a very rigid format, which is not easily adapted to the preservation of the heritage. Thus the types of corporate body to be considered for the purposes of this discussion are those incorporated under the Companies Act 1985.

Legal systems other than the UK similarly all have a number of different types of incorporation, though in Sweden there is only one type that affords the benefit of limited liability. France, indeed, to a casual observer appears to have a different kind of incorporated body for every conceivable type of activity! Be that as it may, all jurisdictions have a corporate body equivalent to the company which has broadly similar characteristics. These are:

separate legal personality;

the limitation of liability for the debts of the company to the company's assets;

the concept of fragmented ownership with the individual entitlement of separate owners being represented by shares in the company;

a similar structure of government, having the members of the company meeting in regular general meetings with the management of the company delegated to a management board.

There is one distinction here between the different jurisdictions, in that many jurisdictions require a company to have a further supervisory board to oversee the management board, but that is perhaps a point of detail. Most jurisdictions also distinguish between public companies where the shares are freely available to members of the public and can be bought and sold on the Stock Exchange, and private companies where the ownership and transfer of the shares is more restricted and the shares are not quoted and purchasable through the market.

Accordingly, it seems safe to assume that for the purposes of examining the company as a suitable vehicle for maintenance of the heritage, English law is sufficiently similar to that of other jurisdictions, to justify confining the examination to consideration of the forms under English law.

There are two types of companies incorporated under the Companies Acts: a company limited by shares on the one hand and a company limited by guarantee on the other. In a company limited by shares the liability of the shareholders to meet the debts of the company is limited to the amount paid for the shares at the outset. Once the shares have been allotted to an individual at a particular figure and that figure has been fully paid up, whether by the original owner or a subsequent owner, then the shareholder of the individual shares will not be liable for any further sums in respect of debts incurred by the company. In the case of a company limited by guarantee the situation is precisely the opposite. A member of such a company does not actually subscribe any money at all unless and until the company reaches a situation where it is unable to pay its debts. Instead the member, when he becomes a member, whenever that might be, agrees to guarantee the company's debts up to a certain sum. Should the time ever come when the company needs to call upon the guarantee, it is then that the member must provide the sum in question. This is usually somewhere between £ 1 and £ 10 so the guarantee is scarcely an onerous one.

The two types of companies tend to be used for totally different purposes. A company limited by shares is a vehicle for investment. Shareholders buy differing numbers of shares and receive a corresponding proportion of the income of the company and its assets on dissolution. It is used for normal

commercial ventures. A company limited by guarantee on the other hand does not allow for any distinction between the financial involvement of the various members of the company. Thus the members all guarantee the same sum and all share equally in any dissolution. It is this type of company which in England would be used for the preservation of the heritage, and it is probably only its equivalent in other jurisdictions that would similarly be appropriate for this purpose.

In fact, in England, unlike many other jurisdictions the preservation of the heritage is capable of qualifying as a charitable purpose. Provided the company limited by guarantee has a memorandum which prohibits the distribution of the assets to the members on any winding up and requires instead that the assets be passed over to a similar charitable body, the company will almost certainly qualify as a charity. It will accordingly have to register with the Charity Commission. Whilst this may add a slight complication to the lives of those running the company, since it would introduce another level of regulation by the Charity Commission in addition to the regulations imposed by virtue of the Companies Acts, most companies would regard this as more than outweighed by the benefits of charitable status which it brings, not least the relief from certain taxes. Accordingly, in most cases those establishing companies designed to preserve a heritage asset will take steps necessary to ensure that registration as a charity is possible. This will mean, for example, including in the memorandum a prohibition against the remuneration of the directors and ensuring that the company's activities do not involve political activism.

All of what has been said so far is really by way of introduction to explain why, in considering how appropriate a vehicle the company is for the protection of the heritage, this paper will do so by reference to the charitable company limited by guarantee. Its suitability for this task will be examined under five heads as follows: Limited Liability; Conflict of Duties; Answerability; Flexibility and General Concept.

1. Limited Liability

As has been said above, it is a common characteristic of a company that it has separate legal personality. It is also a common characteristic that this is carried through to its logical conclusion, namely that the activities of the company are not those of its shareholders, and vice versa. Thus, creditors of the company are unable, should the assets of the company be insufficient, to look to the shareholders to make good the shortfall. This clearly makes it a very attractive vehicle for use in the preservation of the heritage. Ownership of stately homes or even of monuments can be a rather risky endeavour since they tend to cost a good deal to maintain. In addition a large number of visitors to such a monument means a large number of opportunities for such visitors to harm themselves in some way, particularly where the heavy costs of maintenance have meant that such maintenance is perhaps not carried out as thoroughly as it might be. Visitors who have suffered harm as a result tend to look to the owner for compensation. It would, therefore, be very difficult to find people ready to take on responsibilty for the maintenance of such a monument if their personal assets would be at risk as a result.

If this limited liability is good for those running the organisation, however, it is not necessarily good for the monument or heritage asset itself. In 1993 the company which ran the Chatterly Whitfield Mining Museum went into liquidation and the museum's collection was sold for the benefit of the creditors. This event sent shock waves through the museum community in the United Kingdom. As a result museums which are currently being set up as corporate bodies tend to ensure that the ownership of the collection is in a separate company (or perhaps even a trust). This means that should the company running the museum get into financial difficulties the collections would not be available to meet the operating deficit. This, of course, brings a number of difficulties of its own which are outside the scope of this discussion. The point serves, however, to indicate the limitations of the company structure in this regard.

2. Conflict of Duties

There are fundamental conflicts between the fiduciary duties of a company director and the fiduciary duties of a trustee of a charity whose objects are the preservation of the heritage.

Such a trustee is under a duty to care for the item of heritage entrusted to him and to do so in a way that benefits the public. This will usually involve a degree of public access. The fiduciary duties of a company director on the other hand are primarily to act in the interest of the company. He must in principle consider first the interests of the company's creditors, at least up to the extent of the company's indebtedness to them. Secondly he owes a duty to the members of the company for the continued business of the company for their benefit. Thirdly he must be concerned with the interests of the company's employees. Whilst the carrying out of his heritage objects might be said to fall within the second of these duties, nonetheless it is clear that, as a company director, his concerns and fiduciary duties are much wider than the more focused requirements of simply protecting and maintaining the heritage.

Under English law this has recently been proved beyond peradventure when in the recent case of Re ARMS (Multiple Sclerosis Research Limited; 'The Times', 29 November 1996) the court held that a legacy left under a will to a corporate charity which had since gone into liquidation (though was not yet dissolved) should pass to the creditors of the company rather than be applied elsewhere in the furthering of objects similar to those of the charity. This clearly was not in any way the intention of the testator.

3. Answerability

There are two aspects to this: first answerability to an external regulator, and secondly answerability to an internal membership. Given that ancient monuments are part of the heritage and given that in England a company protecting them will normally have the benefit of tax relief, it is clearly in the interests of the public that those running such companies should be answerable to public regulators. The problem with a charitable company, of course, is that it is answerable to two such regulators. As a company, the directors must produce their accounts in a certain format and send them in each year to the Registrar of Companies, together with an annual return, specifying details relating to membership and the board of directors. This information is available to the public at large. As a charity, however, similar information, but prepared in a different format, must also be sent to the Charity Commission where it will again be available to the public to inspect. Whilst this can be irritating, the information required by both regulators is not vastly dissimilar and the duplication of effort is not of major concern to those who have to operate in this way.

The same can by no means always be said of answerability to the membership, if "membership" means membership for the purpose of the Companies Acts. Many charitable companies will wish to have a large membership. This gives them a body of individuals who are committed to the aims of the organisation and who are likely to donate funds to it. They may even be required to pay an annual subscription which is a useful means of securing regular core funding. Those companies who are well advised, however, will ensure that such "membership" is not the same thing as membership for the purpose of the Companies Acts. This can be achieved by referring to such individuals as "Supporters" or "Friends" or even "Associate Members". To do otherwise means that any individual who has an interest in the particular monument being maintained by the company and who is prepared to guarantee £1 in support of the company's ultimate debts can become a member of the company with full constitutional rights. This gives such an individual voting rights at the annual general meeting and a role in appointing the directors of the company. It also means that no general meeting, either annual or special, can be held, and no business passed at that meeting, unless appropriate notice has been given in writing to each member. Any changes, therefore, to the constitution of the company, however minor and however necessary in the interests of smooth administration, become a major exercise which will cost the company significant sums in postage alone. Worse still, it exposes the company to exploitation. It is usually only a vociferous committed minority who will bother to turn up to an annual general meeting, whilst those who are content with the way things are going tend not to exert themselves. It is thus by no means unusual to see a corporate charity being taken over by a small faction of the membership, who may not be motivated by altogether altruistic concerns. Whilst the principles of democracy cannot be questioned, it is very dubious whether they are the ideal principles by which to run a body dedicated to the preservation of historic monuments.

4. Flexibility

From the point of view of flexibility, however, the company structure does have a great deal to offer those seeking to protect the heritage. Within the corporate structure, it is possible to give differing powers and voting rights to different classes of member. Similarly, because the members ultimately control the appointment of directors and also control changes to the memorandum and articles of association this fact can be used to supply checks and balances to the powers of the directors in running the charity. By structuring, for example, the membership or the criteria for directorship one way or another, subtle variations of control can be put in place. Where, for example, a company is established to protect a particular monument and the original promoters do not have the time to devote themselves to running the charity, they may, nonetheless, wish to make sure that it goes along the track that they have envisaged in establishing it. In such circumstances, they might become the members of the company and, perhaps, be given enhanced powers of sacking or appointing directors. In this way the original promoters can effectively keep overall control of what happens.

5. General Concept

The company is primarily a creature of commerce. Its underlying principles are those of ownership and profit. These conflict directly with the public-spirited and disinterested job of caring for the heritage. Two quite separate bodies of law govern a charitable company and the two are likely more often than not to be in conflict. For example, the standard of care required of a charity trustee is based on trust law and requires a trustee, in carrying out the charity's affairs, to exercise the same degree of care as an ordinary businessman would when carrying out his own. The standard of care required of a company director is based on commercial reality and is less stringent. It remains very unclear how far the obligations of trust law are imported into company law when assessing the standard of care required of a director of a charitable company. Similarly, a company director can use the company's funds to insure himself against the results of his own negligence. A charity trustee cannot. There is continued disagreement between the Charity Commission and charity lawyers as to which of these rules applies to the director of a charitable company.

Thus, any person running a company whose purpose is the preservation of the heritage must constantly be balancing the requirements of company law on the one hand, which is designed for commercial organisations whose shareholders have invested money in the business and who are looking to make a profit from it, and the requirements of charity law on the other, which is designed to govern non-profit distributing entities carrying out works for the benefit of the public whose members have no financial stake in the organisation. It is not to be wondered at if sometimes the schizophrenia that this approach engenders leads to some rather anomalous results.

This paper began by making the point that English law has not yet developed a specific type of incorporated body designed for not-for-profit organisations. It will end on the same theme. Some two or three years ago a working party was established to consider the problems that charities were encountering because the constitutional forms available to a charity were all primarily designed for some other purpose. A survey of 1,500 charities was carried out and a response rate obtained of approximately 40%. The replies indicated that many charities had had considerable difficulties as a result of their constitutional structure. Research was also commissioned into the practices of other jurisdictions in this regard. The working party concluded that there is a demonstrable need for there to be a new form of legal structure available to charities which will be an incorporated body offering limited liability but will not be a company. The proposals for this new structure are at a fairly advanced stage and are largely based on structures established in other jurisdictions for not-for-profit activity. The Charity Commis-

sion is very much in favour of the proposal and the Government also seems inclined to support it.

All of this would seem to be proof, if proof were needed, that those who practice this type of law in England are satisfied that the company, even the charitable company limited by guarantee, is not, in the final analysis, an appropriate form of structure for the carrying out of not-for-profit activities which include the protection and maintenance of the heritage. Until such time as the new structure has been developed, however, it remains the most appropriate alternative.



FRITS W. HONDIUS

Foundations

At the approach of the year 2000 it is interesting to examine what expectations people had some time ago about foundations at that fateful point in time.

About thirty years ago, Alan Pifer, President of the Carnegie Corporation of New York , pronounced in Kansas City an address entitled "The Foundation in the Year 2000"[1]; I myself presented ten years ago in The Hague a study taking stock of foundation laws worldwide.

Mr Pifer followed a seemingly safe method of predicting the future. On the basis of available statistics on the number of US foundations and their annual expenditure in 1968, as compared to the situation thirty years earlier, he extrapolated that there would be a vast number of foundations in 2000, but a decline in average resources. By pure mathematical calculation, he arrived at the astronomical figure of 1,400,000 US foundations with a total sum of $ 48 billion to spend. The annual grant-making per foundation would decline however from $ 117 thousand in 1936 to $ 34 thousand in the year 2000, all this without taking into account the devaluation of the dollar over sixty years. So, many more applications for foundation grants would have to be turned down, but one could advise each applicant : "there are more than a million other foundations with whom you can try your luck".

Mr Pifer's scenario, like that of Malthus, will not come true. While between 1936 and 1968, the number of foundations had increased 70-fold, it has just doubled over the 30 years that followed. The Council on Foundations in Washington[2] estimates that by the year 2000, there will be 43,000 US foundations having approximately US $ 235 billion (depending on the stock market), to spend among them (i. e. $ 546 thousand per foundation).

Yet, Mr Pifer's note of warning was useful. He reminded us that increasing the number of foundations does not necessarily mean increasing the amount of foundation money available for noble causes, such as heritage conservation. We were recently informed of the excellent initiative of the French Minister of Culture to set up a Fondation pour le Patrimoine[3]. But will this new foundation generate new funds for heritage? Or will it simply be a new competitor for existing funds?

The number of charitable causes is on the increase which means that more and more causes compete for support from the same finite pool of charitable funds and donations. Just to mention one new cause which is very popular in ex-Communist countries and has already consumed vast sums of money: it is loosely called 'civil society', i. e. activities in support of citizens' voluntary action for the benefit of society. This receives support from new funders, such as the Soros foundations. An interesting question which a reporter might wish to put to Mr Soros is this one: "If you had not invented the "open society", would you have considered giving your money for heritage conservation?" While new causes may open up new fountains of support it is also the case that some funders simply shift from time to time their grant-making policies. Since heritage, almost per definition, has always been around, there is a risk that its continued presence is also taken too much for granted and not given a sufficiently high priority, except after major calamities such as floods, earthquakes, fire or war.

When the first draft of my own study on foundations, written together with Professor van der Ploeg (Free University, Amsterdam) for ultimate publication in the International Encyclopedia of Comparative Law, was finalised in 1987, we indicated that there were then in Central and Eastern Europe hardly any foundations. Only a few years later, we have had to swallow those words and thoroughly revise our study. In Central and Eastern Europe there are today thousands of foundations and many foundation laws or draft laws.

In a more recent study, submitted in 1994 to the Vienna Symposium on Legal Aspects of International Trade in Art, I have called the foundation a "time honoured model for heritage conservation"[4]. Foundations fulfil a wide array of functions with regard to heritage conservation. First and foremost, the property of heritage objects can be entrusted to foundations. The purpose clause in a foundation's constitution can help ensure that the building or site will only be used for the specified purpose (e. g. museum, concert hall). This is an advantage over state ownership or private ownership which does not necessarily guarantee use of the building in keeping with its historical importance. Secondly, foundations can channel support for a monument or site. Apart from grant-making (as envisaged by the French Fondation du Patrimoine) a foundation can handle a fund-raising campaign. Thirdly, foundations can act as organizers of activities taking place within a monument (e. g. concerts) even where the building itself is not a foundation, but for example State property. Fourth, foundations can promote the training of heritage craftsmen, one of the best known examples being the European Centre for heritage craft training which was created in 1977 by Sfora-Galeazzo Sforza in Venice. Finally, foundations can help to promote public awareness about heritage and reward outstanding achievements in heritage conservation. I recall in this connection the prizes awarded by the Aga Khan Foundation.

At the end of my Vienna paper I have made two recommendations for action and I am pleased to note that on both, action is now being taken. First, I asked that a serious effort be made to define more clearly in foundation laws or tax laws the notion of "heritage" as a charitable purpose. To most people in the street "heritage" means practically the opposite of what we in this room wish it to mean. The general notion of heritage is property which on the death of the owner is dispersed among his heirs-at-law. We in the conference room do not wish it to be dispersed but to be kept together and conserved. Lack of an internationally agreed definition leads to difficulties with regard to transborder giving for heritage and with regard to tax treatment. I have noted with pleasure that attempts are now being made at the international level at defining "heritage", for example in an interesting document emanating from the Council of Europe's Heritage Committee defining, for approval by the Committee of Ministers[5], cultural heritage as "any material or non material vestige of human endeavour and any trace of human activities in the natural environment". I note, however, that this definition was drafted not with regard to heritage in general but for purposes of heritage education. I hope that it will also satisfy the need for defining heritage in other contexts and that the cultural heritage experts concerned, before finalising their work, will consult their colleagues in Ministries of Justice and Finance.

The conformity of this definition with the definitions already adopted in the Council of Europe Conventions on the Protection of the Archaeological and Architectural Heritage, of 1969, 1985 and 1992 (ETS N°66, 121 and 143) should also be carefully considered.[6]

The second recommendation which I made in my Vienna paper is that tax treatment of cross-frontier giving in favour of the heritage should be improved. In my capacity of Chief Trustee of the Europhil Trust, I called and presided in December 1996 a Round Table in Bratislava on "Tax Treatment of NGOs" which ended with the adoption of the "Bratislava Declaration" on that subject. I will come back to this matter at the end of my paper.

Foundations and their development in the Civil Law

I am very pleased to take the floor after Dr Kearns of the University of Leicester. I am from Strasbourg, which has a partnership with Leicester. Dr Kearns has spoken about the Common Law, about charitable trusts. I will address the Civil Law, about foundations which are so-called legal persons. A century ago, there was a conversation about the same topic between the two famous professors of Law from England and from the Continent: Maitland and Von Gierke. "My dear Professor Gierke" said Maitland, "I still do not understand your legal persons". "Lieber Herr Kollege", Gierke answered "nor do I understand your trust".

It would be an over- simplification to pretend that Europe, and indeed the world, is divided into two camps: at one side the trusts, charities and non-profit organisations of the Common Law (Great Britain and Ireland, the Commonwealth, North America), and at the other side the foundations and other non-governmental legal persons of the Civil Law (Continental Europe and the Russian Federation, Latin America and some countries of Africa and Asia) .

At the Common Law side, it is true that countries there share certain legal characteristics, such as reliance on the courts to give guidance as to the meaning of the law and a variety of legal forms for public benefit purposes served by charitable trusts or non-profit organisations and that neither in England nor in the USA the term "foundation" has as such a legal significance, except as a term of art. But there are important differences too between the laws relating to foundations on both sides of the Atlantic. In England the crucial factor with regard to charities is that these bodies, whatever their form, must be dedicated to a public benefit purpose recognised under the 1993 Charities Act and subject to the scrutiny of the Charity Commissioners for England and Wales. It is also a fundamental English rule, which turns sometimes into an obsession, that charities should not transgress the border between voluntary action and political activism, on the ground that only the Parliament in Westminister decides what is for the common good. This means that during the present suspense before the May 1997 general elections, nobody can say what is the common good.

In the United States, foundations have always been in the forefront of social and political change and not in any way subservient to the US Congress – as is being demonstrated at present by the foundations of the Soros network (one of these has just been thrown out of Belarus on the accusation of interfering with that country's internal politics). However, in the USA there is another criterion designed to set foundations apart from the main movers on the national scene, i. e. business corporations. Foundations and business corporations are opposites: profit-making vs non profit making. The only federal institution capable of telling the difference is the US Internal Revenue Service.The holy writ of American foundations law is Section 501 (c) (3) of the Internal Revenue Code. This American concern about non-profit organisations, 'non-profits' for short, causes some confusion in the former communist countries of Central and Eastern Europe, which are in the process of reforming their laws both in the field of the market economy and the field of voluntary organisations. Private ownership of and income from capital, and various taxes on income thus earned, are still a novelty to many of those countries as proved by the present disarray in Albania. Distinguishing the voluntary sector in those countries by means of the criterion of 'non profit making', as recommended by some well-meaning American organisations (e. g. ICNL) is unhelpful. The concept most meaningful both to Common Law and to Civil Law countries, to Albania as well as Australia, is that of 'non-governmental organisation' (NGO). This concept was coined fifty years ago in Article 71 of the UN Charter and is recognised as useful by all other international organisations, such as Unesco, UNHCR, World Bank,Council of Europe, Unicef, etc.[7]

Historical differences

The legal régime governing foundations in the so-called Civil Law countries is far from uniform. The presumed common legal bond between these countries – mainly continental Europe (with the exception of Scandinavia), all of Latin America and some other parts of the world (in the wake of colonial empires) – is the heritage of Roman Law, the Corpus Juris Civilis, followed in the 19th century by the French Code Civil and at the dawn of the 20th century by the German BGB. It is true that Roman law and in particular its reception into canon law has provided a fertile basis for the law on foundations. This has had important consequences. In the countries of Roman Catholic tradition – which means the whole of Europe until the Reformation and, thereafter, the countries which remained Roman Catholic – the law governing foundations was not civil law at all, but law deriving from the church and outside the statute books of the State. This has remained so until the French Revolution.

The great codification work of Napoleon, which has left a deep impact on countries both in the traditional Roman Catholic sphere and the Protestant parts of Northwestern Europe – countries which since became known as 'Civil Law' countries – had no consequences for foundation law, except for the universal recognition of the existence of legal persons. Even today, one will look in vain for the word *fondation* in the French Civil Code, the prototype of all civil codes. This anomaly is explained by the fact that the French Revolution and its philosophers were promoting the notion of *contrat social,* the great consensus between the citizen and the (central) State which had no scope for geographic or functional intermediaries such as cities, guilds, corporations or foundations. It was only in 1901, a century after the Code Civil, that France legalised associations and only as recently as ten years ago, in 1987, that France adopted a first sectoral law regulating a group of foundations, i. e. enterprise foundations.[8] There still is no general French law on foundations, but only an administrative practice and a "regal" tradition. In certain respects, the charity law of England and Wales has an affinity with foundation law of France in that in both countries a public body (the Charity Commissioners for England and Wales and the Conseil d'Etat in France) sovereignly decides whether a foundation serves the public benefit *(charitable* in England, *d'utilité publique* in France) and thereby is worthy of public recognition.

The comparison seems to stop here for against a paltry few hundred foundations in France there are a huge number of charities in England, about 180,000, but we should bear in mind that the latter include many associations which in France form a separate category, almost half a million strong.

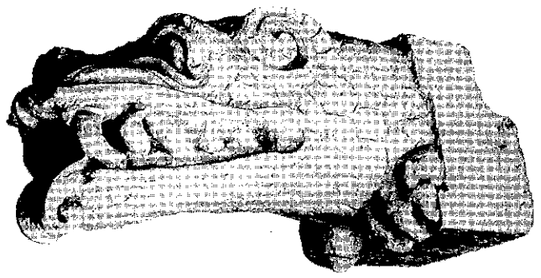
The common European origin of foundations is in the church which acquired the property of houses and places for worship *(venerabiles domus atque locus)* many of which today enjoy the status of monuments and sites, the 'M' and 'S' of ICOMOS, and property dedicated to charity *(piae causae)* such as hospitals, schools, etc. The legal model of these institutions, which had their equivalent in the *wakf* and *habous* established under Islam, originally resembled the trust, i. e. property administered by a priest and his successors not for himself but for a noble purpose designated by the living or deceased founder. The foundation, thus established, had no independent existence of its own. This variant is still encountered today, even in Civil Law countries in respect of smaller endowments, for example for scholarships, prizes or hospital beds. It is less appropriate, however, as a vehicle for larger endowments, especially those involving immovable property: almshouses, hostels for pilgrims, etc. and it was this type of charitable bodies, indicated in German as *Anstaltsstiftungen* ('institution foundations'), which set the tone for Civil Law foundations: legal persons consisting of, or owning, property dedicated to a purpose and administered in accordance with the rules laid down in its charter. Eventually, and in particular in times of prosperity, there developed a new type of charitable body, i. e. the foundation endowed with a capital from which grants could be made for beneficial purposes, the *Hauptgeldstiftungen.* The distinction between foundations solely serving and financing a fixed activity, such as the management of a hospital or a museum, and foundations supporting activities undertaken by others still exists today and is reflected in the terms *operational foundation* (for example the Fondation Gianadda) and *grant-giving foundation* (e. g. the Volkswagen Stiftung). In most legal systems, the term 'foundation' itself gives no guidance as to which of the two categories a foundation is in, a constant source of frustration for people seeking a grant.

The considerable size of the properties acquired over time by the church and ecclesiastical orders for purposes of worship and charity, outside the jurisdiction and taxation powers of secular rulers, aroused the envy of the latter. Repeatedly, strong rulers have placed limits on *mortmain,* i. e. the making of gifts of land to charitable corporations. In countries traditionally belonging to the Roman Catholic world, e. g. Belgium or France, such restrictions still exist and pose an additional problem to foundations incorporating monuments or sites. In recent times, communist régimes showed a similar dislike of the independence of foundations and put an end to many of them (e. g. in Communist Poland and Czechoslovakia). It was only during the declining years of communism that the régimes in power discovered the seductive charms of foundations for collecting private financial support from non-communist sources.

In France, there still is a strong *étatique* attitude towards foundations. It took de Gaulle himself and five of his Government Ministers to sign the decree setting up the Fondation de France. The Fondation Vasarely, a genuine monuments-and-sites foundation in Aix-en-Provence, had to wait many years before obtaining recognition by the State in 1981. However, things have turned sour and recently, after an incredible juridico-political drama, the State dealt this foundation a fatal blow by presenting it with a bill for 18 million francs in tax arrears. The creator and founder, Victor Vasarely, did not survive his foundation. He died in Paris on 15 March last, aged 84.[9]

Disengagement of foundations from the church in Civil Law countries

A second historical stage in the development of foundations is that after the Reformation the bond between foundations and the church was slackened in the countries of Northwestern Europe. Comforted by trade, commerce and the growth



Dr. Hondius and his wife donated in 1992 two gargoyles to their Gothic-style college in Oxford, St. Cross. This being the year of Columbus, they opted for a pre-Columbian motif, the quetzalcoatl, who bears a striking resemblance with medieval gargoyles of Europe, although there had been absolutely no contact between the two cultures. The recipient at the English side being a charity, the transaction should pose no legal problem, especially as it took place within the European Union.

of a strong civil society, prosperous citizens, mixing civic pride and social responsibility, created foundations, independent of church and State, usually of the *Anstaltsstiftung* type (old people's homes, museums, etc.), some of which still exist today, for example the Teylers Foundation in Haarlem (Netherlands), a museum and literary society created by testament.

After the industrial revolution, the phenomenon of creation of foundations by wealthy citizens or big corporations (Rockefeller, Ford, Wellcome, Nobel, Bosch, Van Leer) became a hallmark of non-Latin, non-Catholic countries, both Common and Civil Law. The State was involved only as supervisor or *parens patriae,* not as the fountain of legality. In fact, foundations are subject to a mixture of private law and public law; they are carriers of private funds dedicated to goals of public interest.

Eventually, the concept of foundations generated by commercial and industrial wealth has entered into the mores of all market economy countries, including those of the Latin world, such as Spain and Italy.

Common legal characteristics of foundations

The historical development mentioned above has set the pattern for foundation law in all Civil Law countries, the principal aspect of this law being that foundations are considered legal persons which can participate in civil life on the same basis as natural persons. However, just as there are certain mechanisms whereby the proper functioning of natural persons in day-to-day life are controlled: parents over children, guardians over incapable adults, employers over employees, thus society has also instituted certain mechanisms of control over legal persons, including foundations. In all countries, there is an equivalent of *état civil* (registration of natural persons) for legal persons. There are public records in which foundations are registered. In all countries the courts exercise jurisdiction and can take decisions where foundations fail or violate the law.

There is still a fundamental dividing line running through Civil Law countries with regard to the question whether a foundation needs for its existence the prior consent or participation of a State body. Such consent is required under the laws of Austria, Belgium, France, Germany (*Land* level), Italy, Greece and Luxembourg. In other countries, while foundations cannot exist legally unless registered (e. g. Albania, Belarus, Bulgaria, Croatia, Cyprus, Estonia, Finland, Hungary, Latvia, Lithuania, Norway, Poland, Portugal, Romania, Slovakia, Slovenia, Spain, Switzerland, Ukraine), such registration can be refused by the public authority keeping the register only if the foundation does not meet the formal conditions laid down in the law.

In Denmark, Netherlands, Sweden, and Switzerland registration is required only for certain types of foundation and the possession of legal personality does not depend on registration.[10]

It is interesting to note that after the demise of communism most Central and Eastern European countries have sided with the liberal group of countries where prior State consent is not required. But it should also be noted that several Central and East European legislators have laid down such detailed rules on registration, operation and supervision, showing a certain lack of confidence in the self-regulatory capacity of the civil society, that this amounts to a *de facto* prior consent rule.

Some countries in both Western and Eastern Europe require a minimum initial capital as a precondition for the existence of a foundation : Austria (1 million Schillinge), Denmark (250 thousand crowns for non-commercial and 300 thousand for commercial foundations), France (5 million francs), Norway (50 thousand crowns), Slovakia (100 thousand crowns). The critics of this requirement point out that the objective can better be met by the requirement appearing in several laws that a foundation must be capable of acquiring the means necessary for its fulfilment.

Monuments and sites as objects of foundations

There are certain differences to be found in national laws with regard to the question how permissible purposes of foundations are formulated, varying between complete liberty of choice for the founders (e. g. Netherlands, all the law requires is "a given purpose") and a strict enumeration of purposes by the law, often with a general clause added to cover non-enumerated purposes.

For our present paper, we are interested in the question to what extent monuments and sites can count as charitable objects. While this ought to be the case for all countries, it is puzzling that very few countries list monuments and sites explicitly among foundation purposes. We have come across just two laws where this is the case, those of Poland and Spain. Other countries will treat monuments as such under 'culture' or 'art', whereas beneficial uses of monuments may

be counted, as the case may be, under the heads of 'religion', 'education' etc. as sites may qualify as 'cultural', 'recreational' or 'protection of the environment'.

Monuments and sites sometimes will fit into the omnibus clauses contained in foundation laws (Albania CC art 54 "social usefulness"; Austria StFG art 1(1) "gemeinnützige Aufgaben"; Costa Rica, Law 5338, "educational, charitable, artistic, literary, scientific or other").

More frequently, monuments and sites appear in tax laws on deductibility of charitable donations, not only in the case of donations to foundations but also in the case of direct donations to a monument (e. g. for the reconstruction of a publicly owned building).

The Polish Foundations Act 1984 specifically mentions in its article 1 "... protection of the environment and protection of historical monuments."

The Spanish Foundations Act 1994 indicates in article 2 (1) that purposes to be served by foundations should be of "general interest". There follows a list which does not mention monuments and sites (but which can be considered as included under headings such as "culture" and "environment").

Paragraph (3) forbids the establishment of foundations for the benefit of close relatives of the founder. However, paragraph (4) indicates that foundations set up for "conservation and restoration of objects of the historical Spanish heritage in conformity with Law 16/1985 on Spanish Historical Heritage" are not bound by this restriction. They may favour such relatives if the persons concerned comply with the obligation to admit visitors and to publicly display objects.

Economic activity and taxation

There are two specific aspects of foundation laws which require our special attention where heritage foundations are concerned: economic activity and taxation.

Economic activity by foundations, in support of their statutory purposes, is not in contradiction to their character as 'non-profit bodies'. However, all legal systems prohibit foundations from making payments to the members of their governing bodies or, on liquidation, from distributing the reliquat to these or to the original founder or his heirs.

Economic activity has two principal aspects: if and to what extent it is permissible and what is the tax treatment accorded to it ? It is often very delicate to draw the line between economic activity directly related to the achievement of the purposes of the foundation and other, unrelated business. Most museums run a catalogue, video and souvenir stand, a buffet and sometimes a restaurant. All this is part of their normal operation and as such permissible. As a commercial activity it will fall under the general tax rules, in particular where the service or product is offered in competition with local enterprises, such as souvenir shops and restaurants. But entrance tickets, registration fees for conferences, work donated by volunteers are a different story. They form part of the direct annual income of the foundation, along with donations, bequests and subsidies and should not be regarded as 'profit'.

In most countries of the Civil Law, foundations and their benefactors enjoy a privileged tax treatment. Exceptionally, Lithuania does not grant any fiscal facilities to benefactors. There are two main problems in the fiscal field: considerable differences between the tax treatment in different countries and absence of fiscal incentives for transfrontier giving. The spectrum of tax concessions offered to foundations and their benefactors is of a bewildering variety. It should be mentioned here that two countries, Belgium and Germany, even have punitive tax on foundations to compensate for the fact that the State cannot impose death duties on heirs to foundations which are, in principle, immortal.

Conclusion

It is not possible to review in this paper in detail the tax treatment of foundations dedicated to monuments and sites. It is a veritable minefield, as Woody Allen recently discovered in Venice when he visited the ruins of the Fenice theatre after the fire to see if he could help and was almost arrested for trespassing into a protected site. There is a strong case for greater unity and harmonisation and for rules to take into account transborder giving. The support of monuments and sites is an international cause *par excellence.* There exist special tax books to guide potential donors and beneficiaries through the forest of laws and case law, some of which seem to come about by what Debra Morris calls the "chaos theory".[11]

As I have mentioned before, the Europhil Trust recently held a Round Table in Bratislava and adopted there on 17 December 1996 a 'Declaration on Tax Treatment of NGOs' (which include foundations).[12] It happened to be the day when Mr Kofi Annan was elected United Nations Secretary General, so by a fortunate chance the Declaration was one of the first items on his desk. A follow-up action is now underway, i. e. the drafting of common minimum rules on tax treatment of NGOs. I wish to make a strong plea to those who will be involved in this activity. Do not try to extort from governments special privileges for this or that category of charitable action: for refugees, for sport, for environment, for national minorities, for women or, for that matter, for monuments and sites. Your case will be stronger if you make a united front and ask for just and equitable tax treatment of all good causes. You will remember, in this connection, that a heritage foundation may serve several other heads of charity along with architectural heritage, such as music (Bath festival), education (Schloss Klessheim), archaeology and art (Fondation Pierre Gianadda)

Footnotes

1 Alan Pifer, The Foundation in the Year 2000, New York 1968.
2 Information kindly supplied by fax by John A. Edie, General Counsel.
3 'Le Monde', 19 February and 29 March 1996. Once more, as in the case of the Fondation de France, the French Republic has created a body invested with the prestige of the State. It has been established by Law and defined as "a private national institution associating the State and patronage for safeguarding the cultural and natural heritage." The Senate approved the bill after changing the system of designation of the Foundation's president from appointment by the Government into election by the board members.
4 Frits Hondius, 'The Foundation: Time-honoured Model for Heritage Conservation,' in: Legal Aspects of International Trade in Art, Volume V, Paris/New York, 1996 .
5 Council of Europe, Cultural Heritage Committee, Draft Recommendation of the Committee of Ministers to member States concerning heritage education, CC-PAT (97)O15 rev, 14 March 1997.
6 Convention N° 66 on the Protection of Archaeological Heritage, 1969 : "...all remains and objects, or any traces of human existence" (Article 1); Article 1 of the Convention N° 121 on Protection of Architectural Heritage 1985 lists "monuments, groups of buildings and sites; Convention N° 143 on Archaeological Heritage 1992 adds that heritage is "a source of collective memory".
7 Cf; Charter of the United Nations signed in San Francisco on 26 June 1945, Article 71. Theoretically, commercial companies also qualify as NGOs and in fact they do under Article 25 of the European Human Rights Convention enabling 'non-governmental organisations' to lodge complaints. Normally, however, they are not classified together with associations and foundations.
8 Loi N° 87-573 du 23 juillet 1987 sur le développement du mécénat relative aux fondations.
9 'Le Monde', 18 March 1997.
10 Sources: Council of Europe, Multilateral meeting on Associations and Foundations, Strasbourg 27-29 November 1996, Summary table of replies to questionnaire; Ulrich Drobnig, 'Zur Entwicklung des Stiftungsrechts in Osteuropa', Festschrift für Ernst-Joachim Mestmäcker, Baden-Baden, 1996.
11 Ms Morris's report will be included in the work mentioned below (next footnote).
12 The proceedings of this Round Table will be published by Kluwer Law International. The Declaration calls on (i) governments to enact tax legislation favouring NGOs and their benefactors, (ii) intergovernmental organisations to promote the recognition of transborder giving and (iii) the Europhil Trust to initiate a working party to prepare common international standards for favorable and equal treatment of NGOs and their benefactors.



PAUL KEARNS

Monuments in the Law of Trusts

This paper is designed to illustrate the private sponsorship of the protection and maintenance of monuments in the context of the English law of trusts. It will first examine the nature of a trust, a concept unfamiliar to many continental lawyers, then proceed to focus on the types of trust that most directly affect monuments, giving case law illustrations. Regrettably, most of the law in this area is somewhat archaic so the legal language may seem foreign even to English lawyers. It is hoped that despite this difficulty, the basic framework of the characteristic operation of trusts law relating to monuments will be tolerably clear. The relevant non-charitable purpose trusts and charitable trusts originate in the aims of a settlor or testator who, for present purposes, can be considered a private sponsor of the trusts he sets out to achieve, though this is not the language habitually used in the English law.

A peculiarly English phenomenon, that has spread to kindred legal systems, a trust is a relationship, recognised by Equity[1], initiated by the settlor or testator, which arises when property is vested by him or her in persons called trustees who are obliged to hold such property for the benefit of other persons called beneficiaries. The interest of the beneficiaries will usually be laid down in the instrument creating the trust, but may be implied or imposed by law. The subject matter of the trust must be some form of property. The beneficiaries' interests are proprietary in the sense that they can be bought and sold, given away or disposed of by will, but they will cease to exist if the legal estate in the property comes into the hands of a bona fide purchaser for value without notice of the beneficial interest. For the purposes of this article, such a description of a trust is adequate, the precise definition of a trust being generally considered by all experts to be elusive[2].

Trusts can be classified in a plethora of ways. On one analysis, there can be simple and special trusts, statutory trusts, implied and resulting trusts, constructive trusts and express trusts. Within the category of express trusts are executed and executory trusts, completely and incompletely constituted trusts, private and public trusts, discretionary and fixed trusts, protective trusts, secret trusts and, the most important trusts regarding monuments, non-charitable purpose trusts and charitable trusts.

For a trust to be valid, three certainties must be present: certainty of words, certainty of subject and certainty of object. First, with regard to certainty of words, since "Equity looks to the intent rather than the form", it is unnecessary to use specific technical expressions to constitute a trust. All that needs to be conclusively ascertained is an intention to set up a trust. Respecting certainty of subject, only if the property subject to the trust is clearly identified can the trust be valid; and, finally, regarding certainty of object, for the trust to be valid it must be for the benefit of individuals, except if it is a particular brand of non-charitable purpose trust or a charitable trust, which happen to be the two most usual situations in which we find monuments featuring. When a settlor declares a trust he must also comply with any formalities as well as satisfy "the three certainties", and unless he has declared himself trustee, he must do everything he can to ensure that the trust property is transferred to the trustees. If no steps are taken to transfer the property, or further action is required by the settlor to effect such a transfer, the trust will be deemed incompletely constituted.

Let us now examine monuments in first, non-charitable purpose trusts, and second, in charitable trusts, in both of which contexts monuments are most often in issue in contrast to other trust environments.

Non-charitable purpose trusts

Whereas a private trust is essentially a (valid) trust in favour of ascertainable individuals and a charitable trust is a (valid) trust for public purposes, which are treated in law as charitable, a question for consideration is whether or not it is possible to establish a (valid) trust for non-charitable purposes. These are sometimes referred to as trusts of imperfect obligation and as a general rule they are void. However, there are a number of exceptions which have arisen to the general rule including trusts for building or maintaining monuments and sites, tombs and graves.

In the case of *Re Hooper*[3], a testator left trustees £1000 to provide, "so far as they can do so and ... for as long as may be practicable", for the care of: (a) a grave and monument in Torquay cemetery, England; (b) the care and upkeep of a vault containing the remains of the testator's wife and daughter; (c) the care and upkeep of a grave and monument in Ipswich, England; (d) the care and upkeep of a tablet and window in a church, to the memory of various members of the testator's family. Maugham J. held that the first three aforementioned gifts for the care and upkeep of the graves were non-charitable but were nevertheless valid purpose trusts which had also been limited in perpetuity[4]. As the trustees were willing to carry out the purposes, it was held that they should be permitted to do so. The fourth aforementioned gift was held to be charitable, the implications of such decision we will deal with later[5]. In *Trimmer v Danby*[6], the testator here also gave £1000 to his executors but directed them "to lay out and expend the same to erect a monument to my memory in St. Paul's Cathedral, among those of my brothers in art". The bequest was upheld by Kindersley V-C who commented thus: "I do not suppose that there would be anyone who could compel the executors to carry out this bequest and raise the monument; but if the residuary legatees or the trustees insist upon the trust being executed, my opinion is that this Court is bound to see it carried out. I think, therefore, that as the trustees insist upon the sum of £1000 being laid out according to the direction in the will, that sum must be set apart for the purpose." Significantly, the rule against purpose trusts in general is directed mainly in this monuments category against bequests and gifts which involve the maintenance of a monument, tomb or grave, as this would go on indefinitely, as emphasised in the case of *Mussett v Bingle*[7]. Here, the testator gave £300 to be applied in the erection of a monument to his wife's first husband, and £200, the interest of which was to be applied in keeping up the monument. It was held that the latter direction was void for perpetuity[8].

In the case of *McCaig v University of Glasgow*[9] the testator left all of his substantial estate to be used to build statues of himself, together with towers in conspicuous places on his estates; and Lord Kyllachy said in judgment, viz. "I suppose it would be hardly contended ... if the purposes ... were to be slightly varied, and the trustees were, for instance, directed to lay the truster's estate waste, and keep it so; or to turn the income of the estate into money, and throw the money yearly into the sea; or to expend income in annual or monthly funeral services in the testator's memory..." No such purpose, he opined, would be consistent with public policy. Similarly, in another Scottish case, *McCaig's Trustees v Kirk-Session Etc.*[10], the testatrix directed that eleven bronze statues costing not less than £1,000 each should be erected in Scotland to various members of her family. This form of memorial was also refused validity because it was considered wasteful and of benefit to nobody.

The Court of Appeal case of *Re Endacott*[11] involved a trust the purpose of which was held "of far too wide and uncertain a nature"[11] to qualify within the class of monument cases cited because it was a gift of about £20,000 to the North Tawton Devon Parish Council for the purpose of providing some useful memorial to the testator. As also suggested by the Scottish cases discussed, it would seem that there is a particular reluctance on the part of the courts to uphold grandiose schemes as opposed to reasonable ones, a policy actually articulated in the case of *Re Astor*[12], though not in the context of monuments. The Law Reform Committee[13] endorsed this approach and recommended that it should be permissible to use the income of "a limited sum of money" for the maintenance of a grave, tomb or monument (in perpetuity). The Parish Councils And Burial Authorities (Miscellaneous Provisions) Act 1970 now provides that a burial authority or a local authority may agree with any person in consideration of the payment of a sum by him, to maintain (a) a grave, vault, tombstone, or other memorial in a burial ground or crematorium provided or maintained by the authority and (b) a monument or other memorial to any person situated in any place within the area of the authority to which the authority has a right of access but with the caveat that no agreement may impose on the authority an obligation with respect to maintenance for a period exceeding ninety-nine years from the date of that agreement.

Charitable trusts

1. General

A trust by the terms of which the income is to be applied exclusively for charitable purposes is treated very favourably by the law. Such a trust is valid even though it is a purpose trust. The Attorney-General is in charge of enforcing it and it may exist perpetually. Many extant charitable trusts were founded over five hundred years ago. It is unproblematic if the trust fails to provide with reasonable certainty its charitable objectives because certainty of intention to apply monies for charitable purposes is sufficient; and if there is doubt as to the specific charitable purpose, the Charity Commissioners or the court, or in some cases the Crown, will construct a charitable scheme.

As long ago as 1601, the Statute of Elizabeth[14] was passed and in accord with it Commissioners were appointed to supervise the enforcement of charitable gifts and to monitor the abuse of charitable gifts, a circumstance that had come about after the Reformation. The preamble to the Statute listed the most common and important charitable purposes. Although the Statute was repealed by the Mortmain and Charitable Uses Act 1888, the preamble was expressly retained. Even though it itself was repealed by S. 38 (4) of the Charities Act 1960, its effect as an index of charitable purposes is preserved in the case law.

In the case of *Commissioners for Special Purposes of Income Tax v Pemsel*[15], Lord MacNaghten summarised the scope of charitable trusts. "Charity in its legal sense," he said, "comprises four principal divisions: trusts for the relief of poverty; trusts for the advancement of education; trusts for the advancement of religion; and trusts for other purposes beneficial to the community not falling under any of the preceding heads." The subject of monuments and sites is not restricted to any of these heads, and we shall see that it is a transversal category falling under one or another head depending on the facts of the trust in question. As Viscount Simonds said in *IRC v Baddeley*[16], "There is no limit to the number and diversity of ways in which a man will seek to benefit his fellow men". If the courts can find an analogy between an object already held to be charitable and a new object claimed to be charitable, a new charitable trust will result. Where a gift is made to one charity with a gift over to another in the occurrence of certain events, the gift is devoted to charity throughout and there is only a change of charitable objects. So, in *Re Tyler*[17], a gift to charity A, subject to that charity maintaining the testator's tomb and, if it failed to do so, a gift over to charity B, was valid. However, if A had not been a charity in this case, the gift would have been void.

Monuments, memorials and sites are prominent in the law of charitable trusts. In *Re King*[18], for example, a bequest for the erection of a stained glass window in a church was primarily intended by the testator as a memorial to himself but this did not prevent the gift being considered as charitable under the head of advancement of religion. In *Re British School of Egyptian Archaeology*[19], the pertinent trusts were under scrutiny for charitability by Harman J. The trusts' terms were "to excavate, to discover antiquities, to hold exhibitions, to publish works and to promote the training and assistance of students": all in relation to Egypt. The conclusion reached by Harman J. here was that the purposes were charitable as being educational. He also implicitly accepted that the object of archaeological research was charitable as an independent unit. In *Re Pinion*, it was held that the trusts' object was to perpetuate the testator's own name and repute of his family as a monument to them rather than to serve public utility or educational needs. The subject of the trusts was the testator's studio and its various "objets d'art". In a memorable judgment Harmann L.J. stated: "I can conceive of no useful object to be served in foisting upon the public this mass of junk." So it is not every memorial that will satisfy the English test for charitability, and the judgment in *Re Pinion*[20] implies a threshold of artistic merit that a monument has to transcend before it can be held of charitable character *per se*.

Gifts for providing and maintaining places of worship are charitable under the head of religion[21], as are the provision of furniture and ornaments in such places[22] and the maintenance of any part of the fabric of a church such as the chancel[23], the bells[24], the organ[25] and the churchyard site or burial ground[26]. Gifts to maintain a parsonage or vicarage are also charitable[27]. Under the head of "Trusts of other purposes beneficial to the community", the preservation of sites of historic interest or natural beauty are also held to be charitable[28], as are botanical gardens[29].

2. Cy près

When a charitable trust fails, the cy-près doctrine, derived from Anglo-French, may be applicable. Unter this doctrine, the courts will, where appropriate, apply the property of a failed charitable trust as nearly as possible to the original object for which it was given. Before 1960, when the Charities Act 1960 came into force, it was only possible to apply the cy-près principle where the object of a trust had become impossible or impracticable. It was not permitted to apply the cy-près rules in a case where the trust was deemed a financially wasteful way of affecting the charitable object or where it was considered that, in view of the changing needs of society, the charitable object was no longer appropriate. To eradicate the problem s.13 of the Charities Act 1960 was enacted. It provides that in certain set circumstances the original purposes of a charitable gift can be modified so the property can be applied cy-près; for example, where the original purposes, in whole or in part, have been as far as may be fulfilled or cannot be carried out, or, at least, cannot be effected according to the directions or spirit of the gift. In theory the cy-près doctrine can accommodate trusts pertaining to monuments but to date there are no practical examples that have come before the courts.

3. Exclusive charitability

To be charitable, the purpose of a trust must be exclusively charitable and not merely include purposes which are charitable. Where a trust's purposes are deemed beyond the limits of legal charity the court may reach one of a few solutions. It can decide that the non-charitable purposes are only incidental so the trust remains vital. Conversely, it can decide the trust is void because it could, for example, wholly serve non-charitable purposes. Finally, the trust fund could be separated into parts, some being applicable to charity and some not. However, this particular step can only be taken where the terms of the trust instrument can be interpreted as directing such a division. For a settlor attempting to create a charitable trust involving monuments and sites, it would be relatively easy to satisfy the "exclusively charitable" requirement for a valid charitable trust by focusing the trust clearly only on its (supposed) charitable subject, linking it only with what are already established charitable purposes, for example, and keeping keen attention on its public benefit.

4. Tax exemptions

In *Dingle v Turner*[30], Lord Cross stated: "Charities automatically enjoy fiscal privileges which with the increased burden of taxation have become more and more important and in deciding that such and such a trust is a charitable trust the court is endowing it with a substantial annual subsidy at the expense of the taxpaper..." In England, the income of a charity applied for the charitable objects of that charity is exempt from income tax[31], corporation tax[32], national insurance surcharge[33] and capital gains tax[34], and a charity has the advantages of lower stamp duties and remission from VAT in certain circumtances. There is also a fifty per.cent. remission of rates on hereditaments occupied by the charity wholly or mainly for its charitable purposes, and a remission from rates at the discretion of the local authority. More specifically, no charge is made to Inheritance Tax in respect of transfers to the National Gallery, British Museum, National Trust, local authorities, government departments, universi-

ties and various other museums and galleries. A court is naturally cautious to grant charitable status to trusts when the significant tax advantage motive underpins the plea for charitability. In the context of charitable trusts pertaining to monuments and sites, the removal of such financial burdens is undeniably attractive but it is obviously wise as well as candid to ensure the (supposed) charitable purpose and (alleged) public benefit are the central and unambiguous kernel of the trust, and reason for the trust, when aspiring to charitable status.

Conclusion

In conclusion, the law of trusts presents a novel paradigm for continental lawyers unfamiliar with its somewhat idiosyncratic frames of reference. In the specific context of monuments and sites we are to be grateful that the English law often sees fit to privilege trusts for immovable cultural heritage as either valid non-charitable purpose trusts or charitable trusts. It is to be hoped that the criteria discerned from the trusts case law for the creation of both valid monument purpose trusts and charitable trusts are sufficiently comprehensible to an international audience to be practically useful should the occasion of the use of the trust mechanism arise. In the course of the continued contemporary private sponsorship of museums and sites within the jurisdictions of the Anglo-American legal family, the Equitable framework for favourable and efficient handling of monument and site issues is now more predictable in practice than some of the older seemingly *ad hoc* case law decisions may appear to indicate. The trust is a benefit for the genuine not a snare for the unwary.



Footnotes

1 Equity is a branch of the English law which, before the Judicature Act 1873 came into force, was applied and administered by the Court of Chancery: the field of equity is delineated by a series of historical events, and not by *a priori* plan or theory. The division between law and equity is less marked than it was over a century ago, but it is still necessary for various reasons to know whether a rule originates at law or in equity. There is not space to deal with those here. See, further, Pettit, *Equity And the Law of Trusts*, (4th. ed.), Chapters 1 and 2.
2 Many attempts have been made to define a trust but none is completely satisfactory. See, further,*Halsbury's Laws of England* (3rd. ed.) Vol. 38, pp. 809-810; also Underhill, *Law of Trusts And Trustees* (13th. ed), p.1, and Keeton and Sheridan *Law of Trusts* (10th. ed.), pp. 2-6.
3 [1932] 1 Ch. 38.
4 The "perpetuity rule" is one of the ways in which the English law has insisted on the observance of a practical policy against the tying up of property for an undue length of time. Its detail need not be considered here.
5 *Infra*, Charitable Trusts, main text.
6 (1856) 25 L. J Ch 424.
7 [1876] WN 170.
8 See note 4 *Supra*.
9 (1907) SC 231.
10 (1915) SC 426.
11 [1960] Ch. 232.
12 [1952] Ch. 534.
13 Fourth Report (1955), s. 53.
14 More officially known as the Statute of Charitable Uses.
15 [1891] AC 531 at 583.
16 [1955] AC 572.
17 [1891] Ch. 252.
18 [1923] 1 Ch. 243.
19 [1954] 1 WLR. 546, [1954] 1 A11 ER 887.
20 [1965] Ch. 85.
21 *Re Parker* (1859) 4 H & N 666.
22 *Re Manser* [1905] 1 Ch. 68.
23 *Hoare v Osborne* (1866) L R 1 Eq 585.
24 *Turner v Ogden (1787) 1 Cox 396.*
25 *Attorney-General v Oakover* (1936) 1 Ver. Sen. 536.
26 *Re Vaughan* (1886) 33 Ch. D. 187.
27 *Attorney-General v Bishop of Chester* (1787) 1 Bro. CC. 444.
28 See *Re Verrall* (1916) 1 Ch. 100; *Re Cranston* [1949] 1 Ch. 523.
29 *Harrison v Southampton Corp.* (1854) 2 Sm. & G. 387.
30 [1972] AC 601.
31 ICTA 1970 s. 360.
32 ICTA 1970 s. 250 (4).
33 FA 1977 s. 55.
34 CGTA 1979 S. 145

FRANZ NEUWIRTH

Funding the Restoration of the Architectural Heritage

The Austrian Experience

Austria is a federal state – it consists of nine federal provinces *(Länder)*. In compliance with the Austrian constitution protection of monuments falls within the scope of federal administration whereas questions of regional planning, building regulations (including townscape care) and nature protection fall within the legislation and responsibility of the federal provinces. European levels of national, regional and local administration correspond within the Austrian borders to federal authorities, provinces and municipalities. Most taxes are collected by federal authorities and refunded to regional and local governments through tax compensation although regional and local governments have the right to collect taxes within their scope of interest in certain cases.

Monuments – grants and tax deductions

Monument protection in Austria is regulated by the Law for the Protection of Monuments enacted in 1923 and amended in 1978 and 1990. Monuments according to this law are all immovable and movable objects created by man whose preservation is of public interest because of their artistic, historic and further cultural importance. The Federal Office of Historical Monuments *(Bundesdenkmalamt)* is given the authority to decide if such a public interest exists. This office is under the authority of the Federal Ministry for Education and Cultural Affairs, which also has responsibility for appeals in administrative proceedings.

A special characteristic in Austria is that for objects within public ownership (federal and regional authorities, local communities) and for the property of religious communities this public interest and therefore their protection is given in principle in the form of a legal presumption as long as the Federal Office of Historical Monuments does not state the contrary after having decided the matter upon request of the owner. Monuments within private ownership, however, must be officially designated as of public interest by the *Bundesdenkmalamt.* Criteria for listing, however, are the same, whether the object is within public or private ownership.

Such a monument officially designated as protected may not be demolished without the permission of the *Bundesdenkmalamt,* may not be altered in its appearance, and the sale or mortgaging of the monument need the permission of the *Bundesdenkmalamt* (in case of public ownership) or prompt reporting to the *Bundesdenkmalamt* (in case of private ownership).

Although Austrian legislation does not contain any obligation by the owner of a monument for its maintenance the purposeful neglect of necessary preservation work which could be afforded is punishable.

Federal subsidies may be granted for maintenance and restoration of listed monuments although there is no legal claim for them. This kind of grant is given in most cases for costs exceeding normal maintenance expenditure for upkeep, repair, restoration and revitalization of monuments. Although in special cases higher federal subsidies are granted, an average of 12 % of eligible costs may be expected.Therefore the average amount of a federal grant lies under the percentage of normal value added tax (20 %). Besides this federal grant, for which only monuments listed according to the Federal Law for the Protection of Monuments are eligible, the applicant may receive considerably higher public subsidies as regional and local authorities grant public subsidies for the same objects.

The 1990 amendment to the Law for the Protection of Monuments and the 1989 Tax Legislation amendment *(Abgabenänderungsgesetz)* allow monument owners certain tax benefits for expenditures within the scope of preservation and conservation in the form of an anticipatory write-off. Depending on the source of income (free profession, agriculture, trade or leasing and letting) certain costs can be deducted from income taxes equally over a ten-year period (compared to 25-50 years for normal houses) if the monument is used for commercial purposes, or equally over 15 years (compared to 67 years for normal houses) if the monument is let or rented. The Federal Office of Historical Monuments must certify that deducted costs cover work that was in the interest of preservation. The purchase of a monument is not considered as an expenditure eligible for this tax deduction.

The *Bundesdenkmalamt* is also responsible for cultural assets of archaeological and prehistorical value. Archaeological findings have to be reported and fall automatically under preservation legislation for six weeks after discovery. Afterwards the *Bundesdenkmalamt* decides if a public interest in its preservation is given in the particular case. Emergency excavations which have to be carried out after such findings also may be supported by federal grants.

Donations to the Federal Office of Historical Monuments can be deducted from income tax rating up to 10 % of the previous year's income after the 1988 Income Tax Law. However, any designation indicating which monument should receive the money can be only a proposal but not a precondition for the donation.

Townscape – facade restoration program, townscape preservation funds

A special kind of public support for the restoration of facades *(Fassadenrestaurierungsaktion)* is granted by the Federal Ministry for Education and Cultural Affairs. This special funding possibility is supported by federal, provincial and local government in cooperation. Eligible for this subsidy ranging from 30 % to a maximum of 60 % of eligible restoration costs are village and town facades whose preservation has been considered as desirable by the *Bundesdenkmalamt* on request of the respective community. Undoubtedly the aim and purpose of this initiative is to improve the ambiente not only of monuments but also of their surroundings and to achieve an improvement of townscape in general. This initiative is not only carried out in towns but also in villages thus being an appropriate support for the Council of Europe's campaign for the preservation and maintenance of the rural architectural heritage.

It has already been stressed that building legislation is in the jurisdiction of the federal provinces. In consequence each federal province has its own building regulation which explicitly takes care of the preservation of townscape. The legal possibility to protect ensembles by the federal law on historic monuments was only achieved after its amendment in 1978. Thus the federal provinces adopted different laws for the protection of townscapes and historic town centers.

In 1972 Vienna (which also constitutes one of the nine federal provinces) passed an amendment to its building regulation providing zones of protection for historic areas. Simultaneously a Historic Town Center Preservation Fund *(Altstadterhaltungsfonds)* was established and fed by a 10 % tax on radio and television fees (radio and television in Austria are not private). Allocated by an advisory board the fund can be applied to loans, interest payments, securities or grant aid for preservation work within the protected zones that is not eligible for financial assistance through other city or federal programs and that is beyond the financial means of the owner. Refloating loans are fed in the fund.

In 1967 the town of Salzburg became the first Austrian city to adopt regional legislation to protect the historic town center *(Altstadterhaltungsgesetz).*

In 1974 similar laws followed for the city of Graz and the province of Salzburg. Within a certain zone of protection no changes are permitted without consent.

Historic Town Center Preservation Funds have been established in the respective towns to support preservation measures within the protected zone which are in the public

interest. In Salzburg property owners have a legal claim to support from the fund, to the extent that additional costs were incurred because of the obligations of the supervising Historic Town Center Commission *(Altstadterhaltungskommission)*. Additional costs are defined as those that exceed the normal building code. The funds consist of appropriations from the towns and appropriate provinces (varying from a 60:40 to a 50:50 ratio), repayments of loans made earlier, proceeds from the fund's assets and foundation donations.

In 1976 the federal province of Tyrol enacted a similar Historic Center Preservation Law followed by the provinces of Styria in 1977 and Carinthia in 1979.

Among the most notable community preservation efforts are the measures undertaken by the town of Krems in the province of Lower Austria. Krems, which was one of the three Austrian pilot projects presented on the occasion of European Architectural Heritage Year 1975 together with the towns of Salzburg and Rust, has for a long time participated (through an advisory committee) in the permit process for all cases involving new construction, demolition, renovation or minor alterations (such as facade repaintings) in the historic center. In 1959 the town initiated a grant program for rehabilitation. In order to prevent hardships on low and middle income tenants because of renovation measures in the historic town center, a program of rent assistance in publicly owned buildings was established in 1960. An ordinance in 1974 supplemented this program by focusing on the subsidy of the unprofitable aspects of renovation, such as the cost of temporary relocation of tenants during the construction period.

The community of Krems has established a revolving fund to provide private owners with interest free loans for restoration work on facades. The loans have to be repaid half yearly within ten years.The respective debt is rated in the deed pool on the last place. This seems to be the only example in Austria where after establishment and an appropriate initial period such a revolving fund is largely fed by repayments.

Buildings older than 20 years – Improvement Law for Housing *(Wohnhausverbesserung)*

Within the framework of the Federal Law of Housing Improvement *(Wohnungsverbesserungsgesetz)* the federal provinces have issued ordinances by which the improvement of housing conditions and insufficient sanitary installations of housing units older than 20 years is supported by joint federal and provincial loans, annuity interest and lodging allowances and suretyship. Landlords, owners and tenants may apply for public grants for apartments which must not exceed a certain maximum size. In accordance with the income and size of the supported family and the amount and kind of sanitation work, support may be given up to the entire costs of work carried out. The amount of a grant depends also on legislative provisions such as for instance the different provincial laws for townscape protection. In cases of particular need rent support can be granted whenever an increase of the rent which became necessary to cover the costs for revitalization cannot be afforded by the tenant of the apartment.

Such grants are given for practically all measures for improvement and restoration for apartments not exceeding a certain maximum area and under the condition that the costs of the improvement of the apartment do not exceed comparable costs of a new apartment and that the rent expected by the restoration may seem economically reasonable:

- Construction of common installations such as elevators, central heating, central laundries, connection with long distance heating systems.
- Improvement of existing or construction of new water and energy supply and sanitary units
- Division of bigger units in order to gain small and medium sized apartments.
- Modification in buildings to create small and medium sized apartments.
- Improvement of thermal and acoustic insulation.
- Measures to improve the residential needs of the old and handicapped.
- Construction of shelter rooms.
- Necessary conservation and restoration measures in old apartments in old buildings.

Development and extension of buildings – Housing Promotion Law *(Wohnbauförderung)*

In compliance with the provisions of the Federal Law on Housing Promotion *(Wohnbauförderungsgesetz)* the federal provinces are to subsidize or to encourage the construction of small and middle sized apartments through new constructions or additional changes of existing buildings (development and extension) as well as through development and changes of existing buildings which are to be preserved under the Federal Monument Law or provincial laws for historic town center preservation.

As is the case with the Housing Improvement Law, this law is also aimed only at housing and gives support only to measures providing apartments or units up to a maximum size (130 to 150 square meters) or families whose annual income (depending on the number of children) must not exceed a certain level. In contrast to the Housing Improvement Law only landlords and owners are eligible though there are exceptional provisions in some federal provinces where also tenants are eligible for support of the development of attics and lofts. Support may be given as loans, annuity and interest allowances and suretyship.

This law has proved to be an important support for the revitalization of monuments and old structures which mostly need additional space by development and extension in order to meet the new requirements and to gain a financial balance of the project.

Improvement areas – urban redevelopment legislation *(Stadterneuerungsgsetz)*

The application of the provisions of the urban redevelopment legislation differs in practice, since it is seldom applied in the province of Lower Austria for instance, whereas most of the renovations in the federal province of Vienna are financed by provisions of this law.

The Federal Urban Renewal Law *(Stadterneuerungsgesetz)* provides for the designation of renovation districts and improvement quarters by the respective community. In accordance with the provisions of this law grant aids are being provided for up to 70 % of the total costs as well as loans for 12 years with an interest of 7.75 % (compared to the normal bank interest of 16 % average).

Besides mere renovation measures there is also support covering the preparatory investigation of buildings, architectural competitions, reports, construction of common garages, the costs of informing the involved population and public, as well as coverage of special costs (e.g.temporary relocation of tenants during construction period).

In case of single objects which are of greater importance for the townscape support may be given up to the full amount of the special measures which are necessary to meet these townscape requirements.

There are also certain tax benefits similar to those of the Federal Law for the Protection of Monuments. The costs of measures which are required by the Urban Renewal Law can be deducted from certain kinds of taxes.

Special regulations within rent legislation – Rent Law *(Mietengesetz)*

The strong tenant's protection provided in the Austrian Rent Law dates back to World War I and the time of crisis afterwards and regulates tenancies of small and medium sized apartments. The severe protection of tenants (there were cases reported of tenants letting their apartments or rooms to lodgers and charging them higher rents than they paid themselves) naturally caused a certain disinterest among landlords and owners in the maintenance of old buildings which were not likely to yield any profit. In consequence many objects were in a very neglected condition, causing a negative impact on the townscape.

According to the new rent legislation this strong protection of tenants is only valid in case of old tenancy agreements (dating from before the new rent legislation was enacted). This new rent legislation, according to which maximum prices for rents depend on the equipment of an apartment and the urban situation of the house, has to be applied for new contracts.

Amendments to the Rent Law enable in certain situations tenants to force landlords – or landlords to force tenants – to undertake measures to improve housing conditions. Grants for such modernization work within a housing unit can be obtained by either the landlord or the tenant according to possibilities mentioned earlier.

In case of listed buildings or protection according to one of the townscape protection laws or similar reasons of public interest, rent restrictions may be suspended in cases where the apartment is rented to a new tenant if the owner of the object has invested considerably in the restoration of the building. With this provision buyers are stimulated to invest and owners become interested in repairing historic buildings.

The Federal Law on Housing for Young Families *(Startwohnungsgesetz)* provides interest free loans for a period of 25 years up to the actual costs of restoration and repair work to obtain adequate modern housing conditions in rental apartments. These loans are granted under condition that the effective area of the apartment does not exceed a maximum of 90 square meters, the apartment has not been constructed after 1945 and that the applicants are not older than 30 years and their annual income does not exceed certain limits defined by the law.

Tax benefits – exemptions from the tax rating system *(Bewertungsgesetz)*

Rating values for real estate (buildings and parks) whose maintenance is of public interest because of their importance for the arts, history or science, especially listed buildings, have to be rated with only 30 % of their normal value if their average maintenance costs exceed the achieved income and further advantages.

Conclusion

The previously mentioned possibilities of funding the architectural heritage are quoted without indication of specific figures. Without knowledge of the detailed framework of federal, provincial and communal administration in Austria, such figures would mean nothing to a foreigner who does not know their background. (Figures on grant aid for monuments are without significance for the question of the total cost of funding the architectural heritage, for instance, since many monuments are in the possession of federal authorities which have to cover their maintenance from their normal budget and do not receive any grant aid at all. Nevertheless such costs would have to be rated also under funding the architectural heritage. However these figures do not appear in any budget under this item.)

In addition some remarks to illustrate the problems arising from the previously described financial system, which should help to benefit from the experience gained in Austria:

- Practical experience in funding of monuments shows a tendency away from many minor subventions as low percentage contribution to both high percentage support of important monuments and the full support of special pilot works. Especially the latter are of highest importance for the monuments. Support of preliminary research on the monument by experienced craftsmen and restorers makes tendering easier and guarantees a higher level of restoration work and a more precise calculation.
- Facade Restoration Campaigns proved successful and have been in many cases the decisive initiative towards townscape preservation and the sensitizing of the inhabitants. They must not lead to mere cosmetic treatment of facades with new construction behind. Such "Potemkin villages" are not the aim of support. In contrary they are thought of as an initiative for improvement of townscape and ensemble.
- Support of thermal and acoustic improvements in historic buildings has given rise to a problem. The conditions of support are based mostly on standards of new construction or new parts. However the standards refer to high rise buildings with figures that never occur in monuments and historic centers. Thus construction practices which have proved successful for centuries seem to be outdated at

once. It is necessary to enact special regulations for historic buildings in order to avoid a double danger: Either historic buildings do not correspond to the specific standards and subsequently are not eligible for this kind of support or disturbing parts that meet the requirements are incorporated into monuments thus impairing their appearance.
- Besides the aforementioned cases no tax benefits are provided for the restoration work on historic buildings whose maintenance is of public interest (the preservation of monuments is by law defined as being of public interest). Possible economic use of monuments is strictly checked by the likeliness of future profits. If no profits are forecast such an enterprise is treated as "voluptoire", i.e. hobby, and looses eligibility for the tax benefits of an economic enterprise.
- The anticipatory write-off provided by the tax legislation Amendment Law *(Abgabeänderungsgesetz)* from 1989 is not applicable to wage earning owners. This is a hardship for a large group of monument owners. A possible extension of tax benefits to this group is desirable. This would be a benefit to the Minister of Finance because the resulting increase of turnover would result in higher income from value added tax (and by the way reduce moonlighting).
- There is still a series of supports by regional, provincial and federal authorities in connection with the development of tourist traffic, foundation of enterprises and sanitation of rural assets which have not been mentioned in this report. All these cases have to be checked for their real benefit to the architectural heritage. This checking of eligibility is necessary because in certain cases it may have a detrimental effect on monuments by supporting only new construction for instance.
- Public support of monument owners without financial means is desirable; however, supporting the acquisition of monuments by people without the financial means necessary for their upkeep is problematic because it inevitably leads to subsequent public support which would mean an enhancement in value of the monument for its owner without the latter's contribution. In order to avoid possible speculation, this enhancement in value would have to be regarded as a profit when the monument is sold later.
- Regular publication of redundant monuments would be desirable in order to attract possible buyers and investors.
- Saving through building and loan associations *(Bausparkassen)* for housing promotion is publicly supported by tax write-off and can be considered as a kind of revolving fund. It has only begun to be also available for restoration work and should be more widely advertised.



Protection and Maintenance of Monuments: The Contribution of Organizing Sponsorships in Benin

The cultural heritage is and will continue to be the memory of a country. That is why, all over the world, its protection and maintenance constitutes one of our main preoccupations, whatever the difficulties (financial or other) that may confront a country. To achieve that aim, several processes are adopted, both from the government and from the private sector. In the case of Benin, what is the national approach through the legal possibilities of sponsorship and its practical realization?

The monuments and sites in Benin are composed of:
- Traditional constructions (depending on each region); examples include Kétou, Musée Honme Porto-Novo, Ganvie, Palais royaux d'Abomey and the Tata from Atacora.
- Colonial buildings of Portuguese architecture; examples include the mosque of Porto-Novo and the trading post of Ouidah.
- Some natural sites such as the waterfalls in Tanougou and Kota in the north of Benin.

Regarding management of the protection and maintenance of monuments in Benin, three cases can be considered:

The civil service: The main monuments and sites which have national importance such as the palaces from Port-Novo, Abomey, etc. and the big door Akaba Edena from Ketou belong to this category. They receive special treatment concerning protection and maintenance because a conservation specialist is on the spot. The funds devoted to this work come either from the state, from international or non-governmental organisations (e.g. the UNESCO). The technical central structure which is in charge of those monuments is the Cultural Heritage Direction at the Ministry of Culture and Communication of Benin.

The local communities: Those monuments and sites with regional importance and those constructed nowadays belong to the local communities. The Cultural Heritage Direction offers its technical competence to these local communities in order to preserve and conserve such cultural heritage, but the local communities are obliged to search for the necessary funds themselves.

The families: In this last case, the monuments and sites continue to be the informal properties of those families and lots of problems remain regarding their protection and maintenance. Among those problems we can note:
- There is a lack of technical competence to engage in correct restoration work.
- The necessity of contacting a professional conservationist is not always understood by the families.
- The laws are not restrictive enough to oblige the owners to refer to the advice of the Cultural Heritage Direction before starting any conservation work.
- Most of these monuments and sites are not well-known, others are unknown, so that it is really difficult to intervene.
- Sometimes historical monuments mean poverty for the owners and this may lead to their destruction. A new building is contructed at the same place. Another aspect of the problem is that the traditional materials of construction seem inappropriate for new buildings made of modern materials.

Legal possibilities of organizing sponsorship in the field of cultural heritage and its practical realization

Usually, organizing sponsorship in the field of cultural heritage in Benin finds its legal possibilities in the creation of a non-governmental organization (NGO). In an agreement between the government and the NGO, land can be given to the NGO for the construction of an office. Some exemptions from taxes (value added tax, contributions, etc.) may be granted.

The following examples are well-known in the field of cultural heritage: The ICOM workshop on the theme "Quel Musée pour l'Afrique? Patrimoine en devenir" Bénin-Togo-Ghana in 1991; the training courses PREMA organised in 1992 in Benin by ICCROM for museum technicians; the renovation of the exhibition rooms of the Historical Museum of Abomey and the development this site (ICCROM); the conservation of the "bas-reliefs" of Abomey by the Getty Conservation Institute; and the actual International University Course on Conservation of PREMA, which is going on in Benin and is organized by ICCROM as well.

Conclusion

As has been seen, the monuments and sites of Benin have a lot of problems in terms of protection and maintenance. The most important priorities are
- a systematic inventory of monuments and sites,
- a classification of those monuments and sites,
- an important programme of conservation.

The effect of organizing sponsorship is considerable, as we have seen. But considering what is left to do, the protection and maintenance of monuments and sites in Benin needs more.



Heritage Conservation in Bulgaria: Issues Relating to Private Sponsorship

Bulgaria is at the heart of the Balkan peninsula, occupying a territory of 42,857 square miles with a population of just under nine million. 681 AD saw the beginning of the first Bulgarian state in this land which had cradled and nourished the great civilisations of the ancient world. From prehistory onwards, human presence in it has left a heritage of unique material traces of artistic, architectural, technological, and domestic culture. The aesthetic and historical value of this heritage goes far beyond its interest for a single nation.

At present, some 40,000 monuments of culture, including individual structures as well as conservation areas and ensembles, enjoy special protection in Bulgaria. However, the mention of this number here is no more than a point of record and could hardly make a claim to enhancing the idea of my country's heritage potential.

National legislation concerning heritage began early on in Bulgaria's latest history, after the re-establishment of the State in 1878. The first statutes in the area were enacted by Parliament in 1888 and 1890. Advances in conservation practices went hand in hand with the creation of a more sophisticated legal environment by the major enactments of 1911 and 1936. Among other things, those provided absolute State title in certain categories of cultural monuments, special rules of disposal, and government preemption in the acquisition of cultural monuments, and, also, incentives and direct financial support for owner participation in conservation and restoration.

The sweeping political changes in the aftermath of World War Two started a process of radical change in the legal environment, organisation and management of heritage conservation. The forcible imposition of new untraditional economic relationships and mechanisms, and, above all, the new principles of property regulation resulted in a totally different approach to funding and a new structure of sources.

Conservation policies during the 1945-1969 period were governed by several pieces of secondary legislation strongly influenced by the relevant Soviet models. Concentrated in the Government were the basic powers and responsibilities in relation to almost every single aspect of heritage conservation. The foundation and motive force of this process was provided by the massive nationalisation of real property, the strong centralisation of government, the totalitarian approach to overall cultural policies, the hardline tendency of imposing ideological and political frames in social studies, art history and official art in order to justify the dominant political doctrine.

Although legally provided for, practically no public bodies or movements existed for the implementation of the protection of the heritage and as participants in the relevant political decision-making. Government monopoly in the area was finally enshrined in the Monuments of Culture and Museums Act of 1969 and several supporting regulations of the years 1976-1979 which are still valid today. A major distinctive feature of government policies in the area was the government's role as a principal source of funding, including government funding of the conservation and restoration of privately owned monuments. The latter were, almost in all cases, residential property, and, under the law, the government financed their conservation (unless the owner was willing to do so) for a mortgage on the value added to that part of the property which had been improved by conservation or restoration. The mortgage could only be called if the owner entered a legal transaction (e. g. sale) in that part of the property. Notably, owners of listed historic buildings were exempt from real property tax, but were subject to restrictions affecting the maintenance and disposal of their property.

Public owners or users (including government entities, public organisations, etc.) of monuments had to fund the design and implementation of conservation and restoration from their own budgets, i. e., again largely from government sources. In some cases, the religious denominations provided all or part of the money for the conservation and restoration of monuments owned by them. There were practically no entirely non-governmental fund-raising organisations or initiatives, with the exception of some isolated cases of private donation.

As you all know, the turn of the decade also marked a radical turning point in Bulgaria's political and socio-economic development. The difficult and painful process of shedding the burdens of the past and creating a modern effective system of heritage conservation is influenced by a number of factors that could be summarised as follows:

- the need for a new legal environment in almost every sphere of life; structural changes at all levels of government; the review and implementation of the principles of local self-government; an effective role of free public initiative and participation in all spheres of life and, in particular, as regards the formulation and implementation of national cultural policies; the re-establishment or creation of rights and conditions for the activities of various NGOs, e. g., religious communities, non-profit organisations, foundations, etc.;
- the rapid changes in economic life and the new structure and balance of property relationships following the enactment of restitution laws;
- the current grave economic and financial difficulties experienced at all levels and in all spheres of life; the high rate of inflation (exceeding 450 per cent for the first quarter of 1997 alone), affecting public spending for social welfare, culture, and heritage conservation in particular.

Despite the efforts of professionals in the area, and the existence of several drafts, a new heritage law has not been enacted yet. A first step in the promotion of private sponsorship and donation was made in 1995 by an amendment to the existing Monuments of Culture and Museums Act of 1969. In particular, the amendment provided for the deduction from taxable income or profit of funds made available by individuals or organisations to heritage research, conservation and protection projects. This, however, has done little to revive the old tradition of "good works" in Bulgaria and the source of funding it was supposed to encourage still forms a negligible proportion. Investment in heritage, as a gainful commercial activity, is not in any better state either.

The following are among the main reasons for this situation:

- The legal framework concerning the establishment of foundations and non-profit organisations also dates back to before the 1990s and is inadequate to present-day needs.
- In Bulgaria, NGOs in the field of heritage conservation (more than 25 of them at present) are usually set up by persons professionally or morally committed to the idea who, as a rule, are not among the "seriously rich". In most cases today, the donors on whom such NGOs would rely for funding prefer to focus on health care, social relief, etc., as apparently more vital. Relatively more successful as fund-raisers are those organisations set up specifically for the purpose of promoting the restoration and conservation of a *single* monument, e. g., a church or a small ensemble.
- There is a lack of awareness and practical experience concerning investment in heritage with a view to a particular economic gain, related to the tourist industry for instance.
- The authorities do not seem to understand that promoting donations or private investment in the field of conservation – by, say, a flexible taxation policy – while it may have the immediate effect of reducing budget revenue, will relieve the government from the burden of looking after the monument itself and may have the additional benefit of creating jobs.

Thus, government funding remains relatively significant for the time being, while it is strongly lacking in absolute terms – a mere USD 200,000 for 1996 against the 29 million allocated in 1981. Even though the allocation of the government subsidy by the Minister of Culture is based on expert opinion and selection from a broad range of nominations relying on a set of objective criteria, the available funding is barely enough to meet the emergency conservation needs of a negligible number of monuments. In such circumstances, the imminent threat of losing valuable national and world heritage is becoming increasingly real.

In all fairness, we must acknowledge the contribution made by foreign private foundations, like Samuel Crez, and national public-private organisations like the 13th Centenary of Bulgaria National Donor Fund.

On the other hand, the emerging market relations create more favourable opportunities for the reinstated owners of historic buildings to perform restoration and conservation, and for the adaptation of properties to modern uses. Given the situation I have just described, however, this also has its negative aspect due to the limited capacity for professional supervision in the absence of adequate funding support and a decentralised and deconcentrated administrative structure in conservation.

The Bulgarian National Committee of ICOMOS, which brings together most of the relevant professionals, spares no effort in taking the lead and acting as the government's partner in the necessary legislative and administrative reform. It works to raise the public awareness of national heritage issues and secure the commitment of a broad range of partners, including the business community, by explaining the possible direct and indirect benefits of conservation. In this respect, the holding of the 11th General Assembly of ICOMOS in Sofia in 1996 has had an appreciable effect.

Bulgaria has unequivocally pronounced its wish of acceding to European and broader international structures. It has already ratified several international instruments in the field of heritage, including: the European Convention on the Protection of Archaeological Heritage and the Convention on the Protection of the Architectural Heritage in Europe. Of course, we still have a long way to go in bringing the national legislation and daily practices into line with international standards. In this respect our participation in ICOMOS activities and, in particular, those of its International Committees, is extremely important both in a strictly professional sense and as a source of the knowledge and experience that we shall need during the transition period if we are to ensure the preservation of Bulgaria's heritage for ourselves and for the world.



MARC DENHEZ

Overall Framework for a Public-Private Sector Relationship in Canada

The issue of legal forms, e.g. as attached to philanthropy, has been around for centuries. Long ago, one tax certificate described property set aside for a religious institution, and the legalities were sufficiently exceptional that they required a personal attestation from the head of state. This complex legal form was deciphered – but the hieroglyphics had to be deciphered first. This was, of course, the Rosetta Stone.

Various forms all exist in Canada, including variations on trusts, non-profit corporations, foundations, charities etc. However, a review of mechanisms would be moot, because relatively few donations of real estate are made in Canada. This is largely for tax reasons. Canada has one of the few governments in the world that insists that it has

- a claim for capital gains tax
- on donated real estate.

In 1973 Canada set up a counterpart to the National Trust in England, but within two years its Board decided to change direction, because the general context (including the tax climate) was not conducive to such philanthropy. On the other hand, Canada developed some alternative forms (e.g. associations of renovators) which will be alluded to later.

In short, since my country found itself unable to "go through the front door" for the protection of certain properties as described in other countries, it was obliged to "go through the back door" – with certain promising effects, and a resulting "strategic vision" which may be fundamentally different from many other countries.

That is the focus of this presentation. The prospect of a grand tripartite alliance between heritage properties, governments and the private sector is one to which I have devoted much of the past twenty years of my career not only as a witness, but as a participant. For heritage properties, I am pleased to report two books coming forward this year: *The Heritage Strategy Planning Handbook* and *Legal and Financial Aspects of Architectural Conservation*. In the public sector, I worked with about twenty governments on heritage. Within the private sector, I chaired my country's committee on the future of its residential renovation industry, and helped launch our new code review and embryonic national renovation strategy. The idea of a grand partnership is not just theoretical: although it is an extremely slow process, it is actually happening.

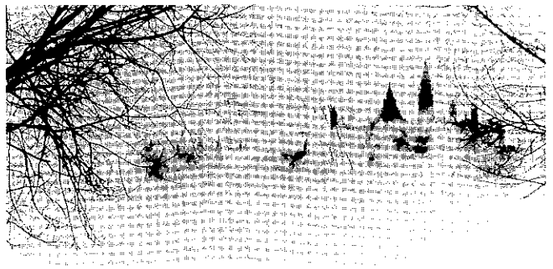
Comparative overview

The focus of this presentation goes beyond individual sponsorship, to the creation of an *overall national framework for private sector partnership* in the protection and revitalization of property. This legal subject enjoys an enormous body of precedent. The first known statute in this field was enacted by the Roman emperor Majorian in 457 AD, with a government veto on the private destruction of monuments along lines similar to the statutes which many lawyers still work with today. We also know of the work that started in 1666, in Sweden, to inventory (one by one) all heritage properties worthy of attention.

Some may wonder what Canada can contribute to this discussion of "monuments", particularly if "monuments" are restrictively defined as structures erected or retained for reasons *other than economics* (a definition with which I respectfully disagree). Although Canada's first known home dates from 20,000 BC, and although Canada is the only country whose name actually means "the place of the buildings", many still believe (as Voltaire did) that these "few acres of snow" have nothing of significance.

In reality, and leaving aside the above restrictive definition, Canada has the usual collection of buildings which might be objectively considered "monumental". It also has the usual collection of historic buildings. Canada also has communities listed among UNESCO's World Heritage cities and towns. However, if my country had to rely on listing buildings and districts one by one (on the Swedish model), it would be in trouble:

- *Per capita*, my country has listed one-fortieth of the buildings and districts which have been listed in the United Kingdom. When we look at the City of Westminster where over 80 % of the land is under some kind of heri-



The strategy of the heritage movement in Canada is based on the principle that beyond individual public-private partnerships for individual buildings and districts, it is essential to build national frameworks for re-use and rehabilitation of "the built enviroment" as a whole.

tage regime, that suggests that at Canada's current rate of listing, it will *never* come even close to catching up.
- Nor does my country's legal system foresee the protection of an entire *category* of buildings at a time. It has no system like Austria's, where all religious buildings are *automatically* protected – let alone a system like Turkey's, where there are over 50 categories of buildings which are protected not because they are on a "list", but because every building with *that use* is automatically protected.
- Nor does Canada have the same long tradition of urban planning, which created a *de facto* protective system in some major cities of the world.
- And unlike some other countries, my country has not developed our system of "environmental impact" controls to the point that *these* can be used extensively for the protection of buildings and districts.

So it is not surprising that some people may ask what Canada can offer to the world's legal strategy for heritage. However, I suggest that despite other shortcomings, there are still five areas where Canadian experience may be of use to the international heritage community, in *ascending* order of priority. These are:

1. the so-called "audacity" of some of our projects;
2. the philosophical alternative that we have been developing;
3. our work on codes and standards;
4. our evaluation of potential mistakes; and
5. (most importantly) strategic *planning for an overall framework* for public-private sector partnership.

"Raw material"

Being an advocate for heritage property in Canada is not for the faint-hearted. My favourite example is Old Town Yellowknife, the northernmost city in Canada. It is having laudable success with what some countries might consider to be extremely unlikely buildings. The oldest building dates from 1934.

If we can protect "monuments" like this – and we *are* protecting them – then there is *no limit* to the accomplishments which our colleagues in other countries may wish to consider for their own buildings.

Philosophy

This presentation, on strategies for building a national partnership, is not about *individual* properties, but rather how, as a national *community* of public and private sector stakeholders, we propose to deal with heritage on a systemic basis.

For too long, Canadian conservationists did not feel in control of events. They felt trapped in a reactive position, responding to individual crises *ad hoc*. In the early 1980s, therefore, ICOMOS Canada decided to look beyond special properties, to "the built environment as a whole". This was not because cultural arguments in Canada are politically weaker than in Europe (although that is true); nor was it a matter of opportunism, to ride the coattails of the ecological movement. Instead, ICOMOS Canada sincerely believes that
- we have an obligation to the human habitat as a whole, and that
- we are unlikely to overcome the obstacles to heritage buildings until we grasp and overcome the obstacles to the existing building stock as a whole.
- Furthermore, the international community was declaring that as a country, we should be doing "sustainable development" of *everything* that we invested in.

This is hard advice, but it came through loud and clear in the UN Declarations at the Earth Summit in Rio de Janeiro in 1992 and at the Habitat II Conference in Istanbul in 1996.

That meant looking at systems as a whole – and one such system is that of Canada's construction standards.

Codes and standards

We discovered that many cooperative owners would not be *allowed* to do good renovation even if they wanted to. As in many other countries, Canada's building standards were what we call "prescriptive-based" codes. They disregarded the fact that older buildings were often built with good but *different* technologies, and could be made *just as safe* as new buildings if alternative technologies were used – but these were *not allowed* by the codes.

When you allow only a single technology in codes, it may make otherwise safe economical renovations impossible. That leaves no alternative but for the building to deteriorate or be demolished.

In the 1980s, Canada therefore launched into the drafting of a second generation of codes, called "performance-based" codes. Although this work continues, Canada also launched a process in the 1990s for a third generation of codes, called "objective-based" codes. We believe that when this difficult process is completed (around 2001), we will have the most advanced building guidelines in the world, and that these will provide the right flexibility for rehabilitation projects.

Avoiding mistakes

Many people in ICOMOS Canada used to believe that we could solve the problems of our heritage buildings with the same old strategies as in so many other countries:
- we would impose a legal framework to regulate virtually every conceivable feature of heritage property including a veto to stop the private sector; and
- we would introduce economic "incentives", supposedly to compensate for the so-called "uncompetitive" position of older buildings.

As we conducted further research, however, we discovered that we were missing the point. Many buildings were *not* intrinsically uncompetitive; instead, their future was being made artificially fragile, because of the government's own policies (sometimes dating back fifty years). During the postwar years, the design of the country's tax system, accounting system and a host of other laws, which had been passed to favour new construction, also favoured demolition and discouraged rehabilitation. We had made almost every statutory mistake imaginable (at least now we have a better chance of recognizing a mistake when we see it).

Today, instead of focusing on financial subsidies, we believe that if we just got rid of the *dis*incentives, a level playing field would make heritage immensely more competitive than it is now. We also believe that other countries might learn some surprising things, if they did a similar analysis to the one we did.

I now turn to the most crucial point.

The new partnership

The strategy that is emerging today is not to avoid the challenges facing heritage properties, but to tackle them head-on. The intent is to bring people together not just for one building, but for several million buildings at a time.

We are in good company. I am personally working closely with the Canadian Home Builder's Association, the Canadian Renovators' Council and others to create a positive economic partnership for older buildings. Canada has set up a network of "renovators' councils" (i.e. associations of residential rehabilitation contractors) which are an interesting new forum to address ways to overcome the obstacles to widespread rehabilitation. For the first time, we are within striking distance of creating an actual framework for that kind of partnership, involving all the stakeholders:
- Negotiations are beginning over a future "national renovation strategy" to address some nine million residential buildings.
- In May 1996, after four years of effort, my own industry committee produced its report on the future of the residential renovation industry (entitled *Residential Renovation: the Industry Framework*). It was the first step towards a "sectoral strategic plan" so that as a country, we could *systematically* overcome the kinds of obstacles I have described here.
- In June 1996, the Canadian government then commissioned further work on an embryonic national renovation strategy, beginning with low-rise owner-occupied buildings (i.e. the first six million buildings). This work covers the *entire list* of obstacles facing the economic rehabilitation of buildings, from banking and codes to training.

Although this exercise covers only part of the built environment, and although the long process of consensus-building has barely begun, the wheels are in motion. The objective is to improve the climate for the rehabilitation of every building that has ever been built – including, obviously, the 750,000 houses built before World War I and other buildings of cultural significance. The intent, however, is not specifically "cultural": instead, it is to improve the building stock and "bring sustainable development to the human habitat."

Conclusion

For those who want *predictions* on the future of national partnerships for heritage, I believe the key is the following.
- The threat to our building stock didn't come out of nowhere. As lawyers, we believe that there is no such thing as an accident; every problem in this world has a *cause*. The challenges facing our older building stock are the result of systemic errors which we must dismantle.
- It is not good enough to tell owners what they *cannot* do: professionals and governments can join forces to make it as easy as possible for owners to identify what they should do.
- The time has come for *all interested parties to join in some strategic thinking* to solve the problems of our heritage. In today's competitive marketplace, it is simply not good enough to merely pray for the future of our heritage.

Our heritage buildings are more than just quaint tokens of a community's past. They are a "renewable resource". They are an investment which has been made over generations, and they help constitute "the environment" for our urban population. The proper upkeep and periodic upgrading of that environment is the key to "sustainable development" in an urban context; as such, they are the foundation of the livable city of tomorrow.



SARA CASTILLO VARGAS

Costa Rica's Legal Structures for Sponsorship and Protection of the Heritage

Costa Rica ia a small country with four million people and a 500 year history of post Colombus times, 221 of them under the rule of Spain, the rest as a democratic republic. The exuberant beauty of our land and richness of the forest and coastlines have overshadowed the relatively small and humble built heritage of our cities. A historic process characterized by civil organization and education has left us with a patrimony formed mostly by schools, churches and vernacular architecture. The emphasis placed on the ecological resources of the country made the Costa Ricans give not much value to their architectural structures.

In this frame the Costa Rican branch of ICOMOS was formed in 1983, under the legal structure of an *"Asociación"*, which is a non-governmental and non-profit organization,

with professional and cultural goals. According to the regulations in this field, this kind of organization enjoys some benefits as they assist the government and the community, providing an important service. As well, they must comply with a set of regulations about internal organization and the use of the resources. Their funding comes from members' fees, donations and any other legal source which the organization can find.

Legal forms of sponsorship: the case of ICOMOS

In our first years we did not have any other source than the good will and fees of 10 or 15 members who initially formed the group. Money for the basic expenses, like communications and stationary, was provided by the members who were always willing to put up the extra money needed for every activity.

In May 1989 President Oscar Arias signed the decree by which banana producers donated one *Colón* (the local currency unit) for each banana box exported, to help preserve the national historical heritage. This money was collected by the Banana National Association to be given to ICOMOS Costa Rica. This represented a historical deed from the government and from the banana producers for the conservation of architectural patrimony. This was indeed a novelty because the government did not apply another tax, but created a direct money transfer from the banana producers to an organization of the civil society, i.e. to ICOMOS. Thanks to this decree, an amount of 43,840,000 *colones* was collected, which is a considerable amount for a resourceless organization such as ours.

However, in March 1990, only 11 months later, the decree was abolished and the money collecting stopped. However the amount collected served as initial investment capital for the organization, which by means of profitable investment and an austere policy duplicated the money in 1996.

The interest of the money injected ICOMOS with new strength and projects. This allowed us to carry out a master plan for the historical center of Limón. This city, located in the Caribbean region, is of great importance because it has the richest multi-ethnic culture of indigenous and immigrant Afro and Asian origin, which is reflected in the architecture and the urban structure.

With these resources in 1996 ICOMOS finally bought an important property of great patrimonial value in the historic center of San José to establish its headquaters. This year we will start the restoration of the building which will permit us to make it a true center of culture and propagation of the heritage.

With the profits of the donations of the banana companies ICOMOS makes a yearly plan of activities in which education, promotion, propagation, restoration and patrimony defense are included. During this year we have worked with school children and young people's organizations, doing preservation workshops, with the Costa Rican Tourism Board and with State Universities. In the last years ICOMOS has contributed to the restoration of the National Theatre, the finest piece of European style architecture in San José, the excavation of two pre-Columbian sites and hundreds of other preservation activities.

In 1994 ICOMOS was declared an Association of Public Matter by the government. This declaration gives tax benefits for the purchase and import of goods. Up to the present, ICOMOS has not made use of this great advantage, but we believe that in the future it will represent an important income in the realization of projects and works.

Recently, ICOMOS has started to sell professional services by its members. An example of this is the contract signed with the Costa Rican Art Museum for the restoration of its building. This is a very promising activity because it fulfills two functions, one, financing ICOMOS and the other one, preserving the heritage.

Trying to face the reduction of the interest from the initial investment ICOMOS has carried out great efforts to pursue other sources for financing. For example, we are negotiating with the Costa Rican Export Chamber and the Holland government to finance a project for the restoration of an exceptionally beautiful historical park located in a port where most of our exports are done.

We are also dealing with companies of prefabricated houses for the promotion of traditional styles in different regions around the country.

A private painting enterprise will donate the necessary painting in the restoration of the ICOMOS house with the negotiation of an advertising board, which will give them the credit for the donation.

Although we have to take into account all that I have said, in a country where there is not a strong preservation culture, the efforts and resources of ICOMOS are little for the enormous work we have to continue to do.

Incentives for preservation

Since 1995 Costa Rica has new legislation for the protection of the architectural heritage. One of the innovations of this law is the incentive section for institutions from the government and in particular ones that preserve or sponsor the heritage. These incentives motivate the retaking of patrimony from the landowners, inhabitants and community. The previous legal outline promoted the purchase of property by the State, which was extremely expensive. The State did not have the resources to buy them and during this process the landowners preferred to demolish the buildings.

The new law establishes five kinds of incentives:

1) Deduction from income taxes: For donations and investments made for the preservation of patrimony and the improvements that the landowner or inhabitant has made for the sake of the already declared architectural historic structure.
2) Another incentive is the one dealing with deductions which permits exoneration of tax payments on land transferring and on luxurious buildings already declared of historical interest. This deduction also exempts the payment of any official stamp in the paperwork of construction approvals.
3) A third one is the authorization of investments and donations in which public institutions are allowed to make investments addressed to preserve and buy properties of architectural value.
4) A fourth incentive is the one related to fines and legacies. The law establishes that the money collected from fines due to violations to the same law must also be included in the budget of the Ministry of Culture for the preservation of patrimony.
5) The last incentive is lines of credit. It is a must for the Ministry of Culture to negotiate lines of credit with the State Banks for private and public entities with the purpose of financing restoration of goods of architectural and historical interest.

Finally the law establishes a tax of 15 % in addition to the basic rate of international mail service, which will be charged with a specific stamp that will illustrate Costa Rican monuments. These funds must be used to comply with the law for the preservation of patrimony.

We are very satisfied to see these dispositions in legal form; however due to the short period of application of this law and because of the lack of political force to make it a reality, none of these measures have been implemented in a meaningful way. In my opinion, in spite of the good intentions of the legislator, Costa Ricans have not learned to value our patrimony. The culture of architectural preservation cannot equal the culture of nature preservation. In our main cities the landowners are demolishing old edifications to build parking lots, considered an easy way to make money, turning the heart of our cities into an ugly collection of pavements, full of vehicles during the daytime and an emptiness with neither identity nor soul during the evening.



In ICOMOS we are making efforts for Costa Rica and for the Costa Ricans not to become empty spaces, without identity, history and soul, to be erased by the winds of modernizations and global economy.

VJEKOSLAV VIERDA

Presentation of the Legal Situation in Dubrovnik, Croatia

The legal framework for issues of maintenance and restoration of the monumental integrity of Dubrovnik is set by the international and national legal normatives regulating the status of historical monuments and the special status of the historical unity of Dubrovnik.

International regulations

The Republic of Croatia has been applying all the relevant international documents related to cultural monuments, both those that the Republic of Croatia has adopted directly, as well as those that have been taken over through the procedure of succession from the legal system of former Yugoslavia. This includes the international and European conventions and recommendations related to the protection of the cultural heritage (recommendations and conventions of UNESCO, of international non-governmental organizations such as ICCROM, ICOM, ICOMOS, IFLA, etc., recommendations and conventions of the Council of Europe, certain recommendations and resolutions of the European Union). The status of the historical centre of Dubrovnik is fundamentally denoted by its 1979 UNESCO status on the list of world heritage.

Croatian legislation

Croatian legislation comprises mainly the regulations valid for the territory of the Republic of Croatia within the former federation of Yugoslavia which the Republic of Croatia has incorporated into its own system, with minor alterations: the law on protection of cultural monuments, promulgated in 1967, with changes and amendments from 1977, 1986, 1991, 1993 and 1994; the basic law on the protection of monuments of culture from 1971; law on management of institutions of culture passed in 1993; law on restoration of the endangered historical unity of Dubrovnik from 1986, with alterations and amendments from 1989 and 1993; the resolution on the restoration of Croatian cultural heritage from 1992; equally, other regulations that affect this matter only in part (e.g. regulations on local government, territorial dissemination, supervision, construction, etc.). This demonstrates that Croatia is facing a huge job of finalizing the legal status in this field, both formally (adaptation to the legal system of Croatia and the new social system) and in the content, especially in the modernization of the regulations based on the recent achievements in protection, restoration and management of monuments of culture.

Organization of protection and restoration services

Protection service is an expert managing body acting through a system of art conservation departments, themselves organized centrally, i.e. within the Ministry of Culture as a separate unit, headed by the assistant to the minister of culture. Each county has a preservation department headed by an administrator. The Art Conservation Dept. deals with first-degree preservation prerogatives involving restoration, adaptation or any other intervention on a monument and supervises the monuments in its area with the power of administrative measures. The measures are of immediate effect, irrespective of the right of appeal that is to be submitted to the Ministry of Culture as the second-degree instance. Expert work includes the registration of movable and immovable monuments of culture, research and documentation, the restoration of monuments through a system of "protective work" financed by the Republic of Croatia through the Ministry of Culture, and restoration work where a restoration workshop exists.

The Art-Conservation Service is financed by the budget of the Ministry of Culture, the same way all state institutions

are financed, i.e. the staff are state (civil) servants classified in relative pay classes, while the factual restoration is financed through the programs of the so-called "protective work" as a separate part of the state budget assigned to culture, and from various revenues of the counties, cities and municipalities.

Dubrovnik



Monuments of utmost prominence, monumental units and areas with a high density of monuments of the highest category are covered by the Art-Conservation Service also through the institution of Chief Conservator, and by establishment of boards in charge of long-lasting and expensive restoration ventures (e.g. the Osijek Fortress, Diocletian's Palace in Split).

The monumental unit of Dubrovnik is the only one that enjoys a special status, because the restoration and administration of monuments of Dubrovnik has been regulated by a *lex specialis* – the Law on the Restoration of the Endangered Historical Unity of Dubrovnik (hereafter: the Law) which nowadays is in force only in those parts that are not contrary to the new system of Croatia. Promulgation of the Law and its acceptance by the new country recognize the special status of the monumental unity of Dubrovnik. The reason for the Law lies in the specificity of Dubrovnik, particularly because of the seismic instability. Dubrovnik lies in the seismically most sensitive zone in Croatia, where at some microlocations shakes of up to 10 degrees after Mercalli can be expected.

The Law establishes a systematic reinforcement of construction – of fundaments, main walls, stairways and roofs, so that such reinforced facilities would proportionally be less exposed to destruction in case of earthquake (constructive sanation). These works are covered from the budget assets for the restoration of Dubrovnik, including the documentation of the existing situation, photography, replicas, etc. so as to ensure a basis for a restoration in case of drastic damages caused by earthquake.

The Law also defines separate sources for the restoration and those funds do not make up part of the regular budget assets assigned to the restoration of historical monuments in the whole of Croatia. Based on the Law, funds are recruited also at local levels, from the revenues of VAT of the so-called "tourist consumption", from the participation of the city-sightseeing tickets, entrance fees to the City Walls, etc. Because of the warfare the "tourist consumption" produced no funds at the local level, so the restoration had to be fed by the budget and charities alone.

With the aim of ensuring a correct policy in restoration, the Law prescribes a complex administrative-supervising structure that looks after different facets of restoration and also after the Institute for the Restoration of Dubrovnik (IRD), founded as an *ex-lege* for the implementation of the Law.

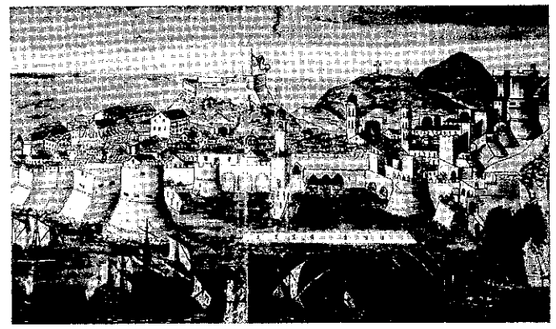
IRD is a professional institution in charge of the implementation of the Law until December 31, 1997. It operates as an independent organization within the Ministry of Culture; by the expiration date IRD must define its status by establishing a new founder, since its original parent (Commune of Dubrovnik) ceased to exist with the new territorial dissemination of Croatia. The most probable solution adopted would be transformation into a public company with two equal founders on the basis of an agreement between the Government of Croatia and the City of Dubrovnik. IRD is headed by its Chief Administrator appointed by the minister of culture, as are the members of the Board (Council) that includes one delegate each from the city, the county, the church and the Ministry of Culture. The implementation of the Law is supervised by the Parliamentary Board for the Restoration of Dubrovnik which in its turn designs annual and long-term planning and verifies each annual report. It is chaired by the vice-president of the Croatian Parliament, and its members are members of Parliament; experts and public personalities appointed individually by the Parliament; the ministers of culture, of public construction and of finance (by position); and the mayor of Dubrovnik and the prefect of the Dubrovnik-Neretva County. As a separate counseling body the Board appoints the Expert Committee that includes renowned experts in the field (conservators, art historians, architects, etc.) from Croatia and (five) world renowned experts in coordination with UNESCO.

The process of restoration itself is gradual. Nominations of projects for outright grants from the budget are brought jointly by the IRD Board and the relevant art-conservation and protection service in Dubrovnik, all according to the long-term plan. The project then passes the preparatory phase (documentation, archaeological research etc.), the phase of tender documentation, and then the phase of implementation. The Expert Committee reports on each and every phase, and the protection services issue temporary, and at a later stage also definite prerogatives, retaining the right to intervene at any of the phases according to the Law on protection of monuments of culture.

The specificity of the system requires that any action affecting the construction has a construction permit by another Ministry (i.e. not of Culture, but of Public Constuction, Environment and Housing) which often causes disputes that, indeed, were anticipated by Art. 12 of the Law of Construction. The application of this article is a classical example of the interference of authority, since the protection service as an organ of the Ministry of Culture maintains that it is up to the Ministry of Culture itself to decide what is (or is not) liable to this article; nonetheless the construction permit is available only if the intervention guarantees the optimal properties of a monument so that, after the intervention, the monument's properties are the same or better than before. But the Law on Construction prescribes the compulsory elements related to seismic resistance, physical properties, etc., and the restoration in a traditional manner cannot meet these requirements in a seismically active area like Dubrovnik. On the other hand, the Ministry of Public Construction, Environment and Housing maintains that a deflection from construction standards in a seismic area is so decisive that the solutions must meet the prescribed standards, even at the cost of losing the monumental properties altogether. The problem of authority interference is rendered even more complicated by the Ministry of Development and Renewal (in charge of restoration of facilities damaged by war) that supports the view of the Ministry of Public Construction since the interpretation of the Ministry of Culture, if applied, radically increases both the costs and the time needed.

The IRD performs construction sanations at no charge, i.e. any owner of a monument on the priority list is entitled to a sanation of the construction from the budget. The owner authorizes the IRD to act as his fiduciary. The IRD can also perform other works if so agreed with the owner, the IRD acting on behalf and in the account of the owner; those works are financed by non-budget means (owner's, charity, etc.). Based on a decree by the City of Dubrovnik, the facilities owned by the City are subject to IRD's contracting concessions and rent on behalf and on the account of the City of Dubrovnik. This is regulated by the Concession Law passed in 1992. This law is, however, too general, lacking application documents and therefore hardly applicable in practice, yet very rigid on concessions over historical monuments, requiring a consent on a state level for each individual concession over a monument. Similarly, the process of foundation and operation of foundations (liability of the Ministry of Administration) is expensive, complicated and time-taking. That is the reason why up to this day no foundation has been established, at least not one with the purpose of restoring a particular cultural monument. Equally, no concession over a monument has been granted in Dubrovnik.

Responsibility for maintenance is varied: city walls and forts by the non-governmental, non-profit organization Friends of Dubrovnik Heritage; squares, pavements and streets, bridges, parks and other public areas are the charge of a separate City Department for Infrastructure; housing and business amenities and the facilities of joint (mixed) property are administered by the City Department for Housing; the Old Port is under the care of the state body in charge of seaports. The IRD is involved only in the part that exceeds the level of regular maintenance, i.e. only when an expert treatment is required by the art-conservators.



Historic representation of Dubrovnik

Conclusion

It has become evident that the system is not transparent, i.e. that the liabilities are not distinctly separated on the state or local levels. The situation is rendered more complex still by the restoration of war damages that are financed by the Ministry of Development and Renewal if housing is involved and by the procedure of privatization of former socialist (-state) property and denationalization. The denationalization is complex enough by itself, since the re-possession rights over a property in case of absence of owners/legal successors belong directly to the state (public property) over which local authorities have no power, while at the same time the administration is managed on the local level.

The experts of the IRD have proposed an instruction for the application of Art. 12 of the Law on Renewal, a partial simplification of the management system of IRD by an appointment of a Managing Board by the co-founders, the abolishment of the dual procedure of expert certification between the relevant art-conservation services and the Expert Committee where the power would be assigned to the Committee. On the other hand, our members of Parliament will try to ease up financing by employing all possible modern forms, by a modernization and updating of the existing laws and amendments for the sake of their better transparency and a larger influence by the local community.



EDWIN ESPINAL HERNÁNDEZ

Marco legal de la restauracion de inmuebles en la Republica Dominicana

1. Antecedentes legislativos en torno a la restauración

El primer texto donde se hace referencia a la restauración de inmuebles en nuestra legislación es el Decreto No. 1164 del 3 de febrero de 1870, disposición que a su vez se erige como el punto de partida de la gestión del Estado dominicano para la protección de sus bienes culturales.

Este decreto determinaba que la "columna chata" de la cuesta de San Diego – declarada a través del mismo como Monumento Nacional junto al Alcázar de Colón – no podía ser restaurada por nadie, "bajo pretexto de su conservación u ornato", por constituir "parte de las cosas sagradas, perteneciente al culto católico" y recordar "el primer sacrificio ofrecido por el Cristianismo a la Divinidad en esta ciudad".

Con posterioridad a esta norma que imponía la obligación de no hacer ya señalada, no se encuentra, en lo que resta del siglo XIX hasta la segunda mitad del siglo XX, ninguna medida legislativa que toque de manera expresa la restauración de bienes inmuebles.

No es dable pensar que esta acción práctica sobre bienes culturales inmuebles fuera una de las facultades de la denominada "Comisión Conservadora de Monumentos Nacionales", ya que la ley de su creación – la No. 293 del 13 de febrero de 1932 – es específica al señalar que dicho organismo debía tomar "las disposiciones convenientes" para la conservación "de todos los edificios, obras y piezas", sobre los que debía ejercerse "vigilancia oficial". Recordemos que la conservación guarda una diferencia vital con la restauración y es que la primera "constituye una práctica sistemática encaminada a la protección y mantenimiento de la integridad del bien cultural" mientras que la segunda tiene por objetivo devolver o restituir al bien cultural "su aspecto original mediante el complemento de partes o elementos faltantes, destruídos o deteriorados por la acción del tiempo, de agentes naturales o del hombre" (Linares Ferreras, José "Museo, arquitectura y museografía", Fondo de Desarrollo de la Cultura-Dirección de Patrimonio Cultural-Ministerio de Cultura de Cuba, Ediciones JF, Madrid, 1994, p.172).

Esto además de que durante la vigencia de esta comisión, supuesta respuesta del Estado a la destrucción del patrimonio inmueble del país, existió el mayor extermino del pasado arquitectónico, despareciendo bajo la piqueta del "progreso" trujillista decenas de valiosas muestras en toda la nación, siendo muchas declaradas "peligro público" para proceder a su demolición y sustitución por edificios modernos de dudoso gusto estético.

1.1. La restauración en la legislación vigente

Es en el estatuto normativo actual donde el legislador ha regulado en forma expresa este tipo de intervención. Así, el Art. 11 de la Ley 318 del 14 de junio de 1968 prohibe la "alteración inconsulta" de cualquier bien perteneciente al patrimonio cultural por parte de sus propietarios o poseedores, siendo pasible aquel que infringa dicha medida de ser sancionado con prisión de seis meses a un año y multa de doscientos a dos mil pesos (Art. 15).

Ciertamente podría decirse que el legislador dominicano es opuesto a la restauración. En la Ley No. 492 del 27 de octubre de 1969 sobre Monumentos Nacionales así como en el Reglamento No. 4195 de la Oficina de Patrimonio Cultural del 20 de septiembre del mismo año es visible un mayor interés por la conservación, reparación y consolidación de los inmuebles pertenecientes al Patrimonio Monumental que por la restitución del aspecto original de los mismos (Ver Arts. 5, 6, 9, 12, 15, 16 y 23 de la Ley No. 492 y 3, 9 y 14 del Reglamento No. 4195).

En este tenor, el Art. 13 de la Ley 492 prohibe "todo intento de reconstrucción de los Monumentos, procurándose por todos los medios de la técnica, la conservación y consolidación, debiéndose restaurar lo que fuere indispensable, y dejar siempre reconocibles las adiciones".

2. La definición de "monumento". – La categoría de "Monumento Nacional".

Al mencionar este artículo la palabra "monumento", creemos que es necesario abrir un paréntesis en el curso de esta exposición para saber a cuáles inmuebles es aplicable la misma.

En toda la legislación no encontramos otro texto que nos señale que debe entenderse por tal y es de una lectura combinada de los artículos 257 del Código Penal y 2 de la Ley No. 318 de 1968 que podemos extraer la atrevida definición de que un monumento es "una construcción de señalado interés histórico o y artistico, destinado a la utilidad o al ornato público, y levantado o construido por la autoridad pública".

En efecto, el Art. 257 del Código Penal castiga con prisión y multa a quien opere la destrucción, derribo, mutilación o deterioro de "los monumentos, estatuas y otros objetos destinados a la utilidad o al ornato público, y levantados o construidos por la autoridad pública".

Por su parte, el Reglamento No. 4195 del 20 de septiembre de 1969, texto que regula el funcionamiento de la Oficina de Patrimonio Cultural, establece en su Art. 7 que los inmuebles especificados en el Art.2 de la Ley No. 318 de 1968 ostentarán el nombre de "Monumento Nacional". Dichos bienes son "los monumentos, ruinas y enterratorios de la arqueología precolombina, edificios coloniales, conjuntos urbanos y otras construcciones de señalado interés histórico y artístico, así como las estatuas, pirámides, coronas y tarjas destinadas a permanecer en un sitio público con carácter conmemorativo".

Este conjunto constituye la categoría denominada en el Art.1 de la misma ley como "Patrimonio Monumental", una las cuatro en las que se divide el Patrimonio Cultural de la Nación[1].

2.1. Del reconocimiento social a la declaratoria estatal

La denominación de "Monumento Nacional" a los inmuebles especificados anteriormente es otorgada mediante ley por parte del Congreso Nacional, previo el informe favorable y motivado de la Oficina de Patrimonio Cultural o de la Academia Dominicana de la Historia.

Debemos resaltar que esta categorización es el único medio que brinda el legislador para que los bienes inmuebles seleccionados poz la sociedad a fin de integrar el Patrimonio Monumental se consideren ciertamente protegidos. Recordemos que los elementos que integran el Patrimonio Cultural de la Nación son inicialmente pasivos; o sea, que existen independientemente de la selección que una comunidad hace de ellos para su conservación y conocimiento a través de las generaciones, atendiendo a que su valor trasciende su uso o función primitiva. Al reconocimiento del grupo humano con dicha universalidad debe seguir una imprescindible intervención del Estado. La valoración social que no esté seguida de una valoración estatal se considera vacía y su fuerza se derrumba en tanto no adquiere el rango de norma jurídica.

2.2. Monumentos Nacioncales y denominaciones espúreas

De los 104 Monumentos Nacionales declarados por la Ley No. 492 del 1969, solamente uno – la casa donde se firmó el Manifiesto de la Independencia de Cuba, en Montecristi – pertenece al siglo XIX[2]; los demás son yacimientos submarinos y arqueológicos aborígenes y monumentos arquitectónicos pertenecientes a la etapa de la colonia.

Por disposiciones más recientes se han considerado pertnecientes al Patrimonio Monumental otros hitos urbanos del siglo XIX, tales como el Cementerio de la Avenida Independencia de la ciudad de Santo Domingo, declarado "Monumento Histórico" (Decreto No. 557-87) y el antiguo edificio del Ayuntamiento de esa ciudad, ubicado en la calle Del Conde esquina Arzobispo Meriño, declarado "Patrimonio Monumental y Riqueza Histórica de la Nación" (Decreto No. 268-93 del 9 de octubre de 1993).

En Santiago fueron denominados "Patrimonio Nacional" la Catedral Santiago Apóstol (1868-1895), el Palacio Consistorial (1895-1896), la Fortaleza San Luis, la casa No. 113 de la calle 16 de Agosto, ya existente para 1895; la casa No. 26 de la calle Benito Monción, sobreviviente al incendio de 1863 y la residencia No. 113 de la calle España esquina Independencia, construida en 1895 (Decreto No. 172-91 del 29 de abril de 1991)[3].

De este siglo, los únicos inmuebles categorizados con la correcta denominación de "Monumento Nacional" son la Basílica de Nuestra Señora de la Altagracia en Higuey, por la Ley No.32 del 12 de octubre de 1970[4] y la obra levantada en la Playa de Tortuguero durante el gobierno del Dr. Salvador Jorge Blanco, en conmemoración del combate naval del 15 de marzo de 1844, por la Ley No. 249 del 12 de diciembre de 1984. Sin embargo, todo da a entender que estas designaciones no constituyeron una muestra de interés por parte del Estado en favor del enriquecimiento de nuestro patrimonio cultural. Esto lo evidencia el hecho de que las mismas no fueron hechas atendiendo al Reglamento de la Oficina de Patrimonio Cultural; la primera lo fue en base a la solicitud que dirigió el Poder Ejecutivo al Congreso Nacional a instancias de la "Junta Nacional Colectora Pro-Basílica de Nuestra Señora de la Altagracia" para que se honrara el referido templo con ese nombre, y la segunda en base a la Ley No. 49 del 8 de noviembre de 1966,sobre asignación de nombres de personas, vivas o muertas, a divisiones políticas, obras edificaciones y vías!

Pertenecientes a los principios de este siglo, en Santiago fueron elevados a la espúrea categoría de "Patrimonio Nacional" el Hotel Mercedes (1928-1930), el Edificio de Correos (1927-1928), la casa No. 15 de la calle Máximo Gómez esquina Sully Bonnelly, construida en 1906 y demolida en 1993; el edificio de la Logia Nuevo Mundo No. 5, construido en 1904; la casa No. 61 de la calle Sánchez, destruida en 1994 y la vivienda No. 58 de la calle Cuba (Decreto No. 172-91 del 29 de abril de 1991). De otro lado, en San Pedro de Macorís, una de las cuidades más sobresalientes en la presentacíon de modelos de los estilos neoclásico y ecléctico en el país[5], un total de doce propiedades, entre edificios y viviendas fueron colocados "bajo la protección" de la Oficina de Patrimonio Cultural (Decreto No. 138-92 del 29 de abril de 1992).

La arquitectura trujillista ha recibido lo que podríamos llamar un "reconocimiento indirecto" a través de varias obras, tales como el Monumento a los Héroes de la Restauración de Santiago, antiguo "Monumento a la Paz de Trujillo", declarado "de interés nacional" por la Ley No. 5724 del 29 de diciembre de 1961 y cuya remodelación fue puesta a cargo de la Dirección Nacional de Parques en 1987 (Decreto No. 3-87 del 5 de enero de ese año) y la "Casa de Caoba", propiedad del dictador Rafael L. Trujillo, cuyo sostenimiento y administración se asignaron a un Patronato, conformado por la Ley No. 44-87 del 2 de octubre de 1987.

Otro tanto pudiéramos decir del Castillo del Cerro y la Iglesia Parroquial de San Cristóbal, cuya restauración inició hace algún tiempo la Oficina de Patrimonio Cultural.

La declaratoria de parte de los cascos urbanos de Santiago de los Caballeros (Decreto No. 172-91 del 29 de abril de 1991), Montecristi (Decreto No. 403-87) y La Vega (Resolución de la Sala Capitular de su Ayuntamiento) como "Centros Históricos"; de la parte más antigua de Puerto Plata como "Zona Histórica" (Decreto No. 552-73 del 11 de septiembre de 1973); de un perímetro de San Pedro de Macorís como "Zona bajo la protección de la Oficina de Patrimonio Cultural" (Decreto No. 138-92 del 30 de abril de 1992) y de dos espacios superpuestos en la ciudad de Santo Domingo como "Ciudad Colonial" y "Zona Monumental" (Ley No. 492 del 27 de octubre de 1969), constituyen por igual valoraciones tácitas de la arquitectura de nuestro siglo: todas estas áreas no contienen representaciones únicas del desarrollo de las ciudades, sino que atesoran construcciones de diversos períodos, entre ellos del siglo XX.

2.3. La ley y los Monumentos Nacionales. – Papel de la Oficina de Patrimonio Cultural. -Protección.-

Es la Ley No. 492 del 27 de octubre de 1969 la que trata más ampliamente todo lo relativo a los Monumentos Nacionales. En su Art.5 dispone que la tutela y protección de los mismos es ejercida por la Oficina de Patrimonio Cultural, cuerpo

técnico creado mediante Decreto No. 1397 del 15 de junio de 1967, cuyo objetivo principal es la orientación, coordinación y ejecución de las iniciativas y planes relacionados con el Patrimonio Monumental del país[6].

Su Reglamento determina que en relación a estos inmuebles le compete:

- Vigilar las obras que se realizaren en los edificios declarados como tales. Procederá a suspenderlas si creyere que no se ejecutan con arreglo a lo acordado (Art. 8).
- Otorgar permisos de colocación de anuncios en los mismos cuando lo considere oportuno (Art. 13).
- Dar las directivas para su mejor conservación cuando a alguno de ellos se proyecte darle un nuevo destino (Art. 14).

La Ley No. 492 señala que dentro de este mismo campo de acción le corresponde:

- Su vigilancia, conservación y reparación, así como la organización y desarrollo de los servicios para atenderlos (Art. 5).
- La formulación de las solicitudes para su declaración como tales (Art.7).
- Dar autorización previa para toda obra de reparación, reforma o modificación en los mismos (Art. 9).
- Detener o autorizar la continuación de reformas en propiedades públicas o particulares declaradas Monumentos Nacionales (Art. 11).
- La organización y desarrollo de los servicios para su consolidación y conservación (Art. 12).
- Costear total o parcialmente las obras imprescindibles de consolidación en un Monumento Nacional de propiedad privada cuando quede debidamente justificada la carencia de recursos del propietario o usuario (Art. 16).
- Determinar las condiciones y garantías con que los Monumentos Nacionales propiedad de entidades civiles y religiosas podrán ser enajenados a particulares o a otras personas jurídicas (Art. 17).
- La posibilidad de proponer el régimen de visita a los Monumentos que dependan directamente de ella y de fijar la suma que cobrará como derecho de entrada a ellos (Art. 26).

2.4. Obligación del Estado y los particulares. -Participación pública.-

La Ley No.492 establece además la obligación recíproca de conservación de los Monumentos Nacionales para con el Estado y sus propietarios (suerte de función socio-cultural de la propiedad) y prevé un tratamiento fiscal de excepción para los inmuebles del dominio privado que estén sujetos a las prescripciones establecidas en relación con los mismos.

En lo que se refiere a la declaratoria de algún bien del Patrimonio Monumental como Monumento Nacional, la ley concede lo que podríamos llamar una "acción popular", es decir, faculta a cualquier particular, comisión provincial o autoridad municipal a proponer su adscripción e iniciar el trámite respectivo.

Fija asimismo las restricciones y modalidades que deben incidir sobre la propiedad de los Monumentos Nacionales: la más importante es la que establece que el bien queda bajo la tutela y protección de la Oficina de Patrimonio Cultural, pero sólo en lo que respecta a su valor cultural, ya que el propietario conserva sobre él el derecho de dominio.

A propósito de modificaciones de que puedan ser objeto los Monumentos Nacionales, la ley declara inalterables las características de autenticidad del contenido arquitectónico, histórico, pintoresco, de belleza natural, etc. al igual que las de su expresión formal, relación con el medio y visibilidad.

3. Instituciones competentes para guiar trabajos de restauración.-Reciente término de su conflicto de jurisdicción.-

Las instituciones a las que compete guiar en nuestro país la modalidad práctica de intervención conocida como restauración son: 1) la Oficina de Patrimonio Cultural, creada mediante Decreto No. 1397 del 15 de junio de 1967, la cual tiene como función principal "la realización, coordinación y ejecución de las iniciativas y planes que se lleven a la práctica" relacionados con el Patrimonio Monumental de la Nación (Art. 1 del Reglamento); y, 2) la "Comisión para la consolidación y ambientación de los monumentos históricos de la ciudad de Santo Domingo", mejor conocida como Comisión de Monumentos. Esta fue creada a través del Decreto No. 2123 del 30 de abril de 1972 y mediante Decreto No. 276-97 del 14 de junio de 1997 fue convertida en un organismo adscrito a la Oficina de Patrimonio Cultural, terminando así con una coexistencia injustificada de 25 años.

La Comisión de Monumentos, exclusivamente dentro del ámbito de la ciudad capital "y sus vecindades" y por facultad de la Ley No. 326 del 2 de mayo de 1972, tenía las atribuciones de la Oficina de Patrimonio Cultural en lo que se refiere a la restauración y ambientación de monumentos y conjuntos monumentales. Pero pese a esta separación de competencias, la Oficina de Patrimonio Cultural ejecutaba tareas de restauración y ambientación de edificios en Santo Domingo, especialmente en la Zona Colonial. La Oficina de Patrimonio Cultural, al ver limitada su potestad por la Ley 326, sólo debía guiar o fiscalizar los trabajos de la Comisión de Monumentos, pero concedía tradicionalmente una extensión interpretativa ajena al contenido de sus facultades en relación a Santo Domingo. Así, de los RD$353.3 millones invertidos por el Estado entre los años 1986-1995 en la restauración y puesta en valor de monumentos y casas coloniales, la OPC fue la responsable del manejo de RD$107,171,737.60, según publicaciones de la Oficina Nacional de Presupuesto frente a los RD$26,769,365.16 que durante el mismo período fueron manejados por la Comisión de Monumentos (Rosario Adames, Fausto "El patrimonio nacional convertido en botín y repartido", Revista Rumbo No. 74, p. 9 y 12).

Además de que no existía prevalencia jerárquica de una sobre otra, ya que ambas fueron creadas por decreto, hay que señalar que la Comisión de Monumentos no surgió como consecuencia de una planificación, sino por la fuerza de las circunstancias y a los fines de un orden político superior. El fuerte sismo que en el mes de junio de 1971 produjo daños en los más sobresalientes monumentos de Santo Domingo motivó que el Presidente Balaguer creara este organismo ejecutivo, de carácter pretendidamente complementario a la OPC, especializado en dos áreas específicas (restauración y ambientación) pero en realidad de funcionamiento paralelo.

Las motivaciones que le dieron origen fueron subsanadas en ocho años a partir de su creación, por lo que al término de este período debió ser disuelta, amén de que la OPC tiene mayores atribuciones sobre los inmuebles objeto de restauración y ambientación por parte de la misma (Ver Arts. 5, 7, 9, 11, 14, 17, 19 y 26 de la Ley No. 492 y 3, 8, 13 y 14 del Reglamento No. 4195).

3.1 Lineamientos para la restauración. – Divergencias entre criterios oficiales y particulares. –

Si bien el criterio en la restauración de inmuebles ha de ser fijado por la Oficina de Patrimonio Cultural y la Comisión de Monumentos – ésta ultima para el caso específico de Santo Domingo – éste depende en la mayoría de los casos de los propios arquitectos restauradores, quienes siguen las diversas tendencias metodológicas que existen en dicho campo a nivel mundial.

O sea, estos profesionales no parten de las consideraciones normativas de la OPC o la Comisión de Monumentos, sino que toman en cada caso, la solución que de acuerdo a su orientación se supone es la más adecuada. Estas soluciones, si bien muchas veces se apoyan en las normas internacionales sobre la materia, no están siempre guiadas por un principio de coherencia y, en consecuencia, por una política institucional.

Las obras de restauración llevadas a cabo, específicamente en los monumentos y ambientes urbanos coloniales de la ciudad de Santo Domingo, con bases metodológicas completamente diferentes, han dado lugar a grandes conflictos profesionales.

A este respecto ha señalado el Arq. Roberto Bergés: "En apariencia se ha realizado una labor de grandes alcances. Es un hecho incontrovertible que el proceso de revalorización arquitectónica en Santo Domingo ha tenido importancia y relevancia incluso a nivel internacional. Existen, sin embargo, factores discordantes y opiniones conflictivas sobre filosofía y metodología que han incidido negativamente en todo el proceso" (Bergés, Roberto "Preservación arquitectónica en la República Dominicana: métodos divergentes", Revista "Casas Reales" No. 9, mayo – agosto 1979, p. 51).

En estas labores se desconoce la disposición del Art. 13 de la Ley 492 de 1969 de "restaurar lo que fuere indispensable, y dejar siempre reconocibles las adiciones", puesto que como han referido los arquitectos Bergés y Manuel Salvador Gautier, se introducen elementos totalmente ajenos a la concepción estética inicial del edificio y elementos añadidos que imitan con exactitud la obra original o que aparentan haber sido realizados siglos atrás (Bergés, op. cit y Gautier, Manuel Salvador "Criterios para la restauración de la ciudad de Santo Domingo", Revista "Casas Reales", julio-diciembre 1977, p. 50). Igualmente se sustituyen elementos originales (caso de vigas de caoba cambiadas por losas de hormigón para aprovechar la madera en la fabricación de muebles, empañetamiento con cemento de paredes del siglo XVI – caso del edificio del Hotel Francés – y variación de los pisos de mármol barcelonés de principios de siglo de la Catedral de Santo Domingo por pisos modernos) y a veces se pasa de la restauración al puro "invento" (fuerte de San Gil y ermita de San Antón, de acuerdo al Dr. Marcio Veloz Maggiolo) (Ver Revista Rumbo Nos. 74, 75 y 76 de julio de 1995, artículos de Fausto Rosario Adames).

3.2 La restauración de inmuebles y la falta de incentivos estatales.-

Hay que referir que la Ley No. 492 establecía un régimen de exenciones impositivas para todo propietario que restaurase un inmueble o su fachada siguiendo las pautas de la Oficina de Patrimonio Cultural, o la Comisión de Monumentos en el caso de Santo Domingo (exoneración del pago total o parcial del Impuesto sobre la Renta y libertad de pactar el precio de alquiler con el inquilino por cinco años).

Mediante la Ley No. 567 del 28 de septiembre de 1973, estas disposiciones fueron modificadas: la liberalidad de fijar el precio del alquiler y la exoneración de pago del Impuesto sobre la Renta fueron elevadas a veinte años para todos aquellos propietarios de Monumentos Nacionales que los restauraran de acuerdo a los lineamientos de la Oficina de Patrimonio Cultural y la Comisión de Monumentos. Esta prescripción alcanzaba además a los inmuebles que se encontrasen ubicados en el sector colonial de la ciudad de Santo Domingo o de otras localidades del interior del país, así como los que se hallaren dentro de los sectores de influencia de los grandes Monumentos Nacionales.

La restauración guiada por las directrices de los organismos citados liberaba igualemente, conforme la nueva ley, del pago de impuesto municipal o nacional, tanto en la tramitación de planos como en la ejecución de las obras.

Pero los efectos de estas compensaciones a la obligatoriedad de conservar esos bienes culturales quedaron, también por vía de la modificación operada por la Ley 567, limitados en el tiempo. El Art. 3 de la Ley estatuye que: Los inmuebles declarados Monumentos Nacionales, que no sean restaurados en el plazo de un año a partir de la promulgación de la presente ley, quedarán declarados de utilidad pública y de interés social.

Deja claro este texto que la previsión del legislador de 1969 de que los beneficios instituidos favorecerían a determinados propietarios a partir del momento en que procedieran a la restauración de sus inmuebles sin importar la fecha en que este tipo de intervención se realizase, vino a restringirse al período de un año. En otras palabras, los propietarios de inmuebles declarados Monumentos Nacionales por la Ley 492 de 1969 que no los restauraron en el lapso que corrió entre el 28 de septiembre de 1973 y el 28 de septiembre de 1974 perdieron la posibilidad de acogerse a las exoneraciones previstas, pasando a ser unos virtuales detentadores precarios, pues la penalidad consecuente es la declaratoria ipso facto de utilidad pública e interés social, como refiere el Art. 3 de la Ley 567 de 1973.

Así las cosas, no existe actualmente en nuestro ordenamiento legal ninguna retribución en favor de aquellos que restauren sus propiedades. Esta ausencia de compensación es la que, a nuestro juicio, genera la conducta indiferente de la ciudadanía ante la pérdida cada vez más creciente de nuestros elementos patrimoniales y la de los propios dueños de inmuebles que representan un interés cultural para el Estado, para quienes no es rentable de ninguna manera la restauración de sus viviendas. De ahí que las oferten en venta o congelen su reparación por mucho tiempo, con lo que aceleran su deterioro y posibilitan finalmente su demolición.



Notes

1 Las demás son Patrimonio Folklórico, Patrimonio Documental y Patrimonio Artístico (Art. 1 de la Ley No. 318 del 14 de junio de 1968).

2 En un evidente lapsus, esta vivienda fue declarada "Monumento Histórico" mediante la Ley No. 241 del 19 de noviembre de 1984.

3 Estas declaratorias, además de haber sido hechas en base a factores o elementos de juicio heterogéneos, son irregulares y de pleno derecho, inexistentes. El Reglamento No. 4195 del 20 de septiembre de 1969 de la Oficina de Patrimonio Cultural estatuye claramente en su Art. 7 que los bienes pertenecientes a la categoría "Patrimonio Monumental" serán designados como "Monumento Nacional" por ley. Contrariamente, todos estos inmuebles han sido declarados por decreto y con una denominación diferente a la de "Monumento Nacional".
Con este proceder, el Poder Ejecutivo ha invadido la esfera del Poder Legislativo, organismo que, legalmente, es el único con facultad para incluir dentro de la categoría de "Monumento Nacional "aquellos inmuebles que reúnan las condiciones para ser denominados como tales.
Lo establecido en un texto legal sólo puede ser válidamente modificado por otro texto legal. El Poder Ejecutivo se ha subrogado la competencia que otorgó al Congreso Nacional; no ha derogado el Reglamento No. 4195, por lo que lo estatuido en su Art. 7 conserva todo su valor.

4 Colección de Leyes, Resoluciones, Decretos y Reglamentos de los Poderes Legislativo y Ejecutivo de la República, año 1970, Tomo I, Imprenta J.R. Vda. García Sucs., Santo Domingo, 1971, p. 422

5 Delmonte Urraca, Manuel "San Pedro de Macorís: "Sultana" que despierta, conservando sus viejas características y encanto", Listín Diario, 16 de julio de 1989, p. 12.

6 Art. 1 Decreto No. 1397 y Art. 1 del Reglamento No. 4195.

SOPHIE MOUSSETTE

Sponsorship and its Legal Forms in France

First of all, I would like to thank the German National Committee of ICOMOS and the University of Katowice/Poland for the organisation of this seminar on legal structures of private sponsorship and participation in the protection and maintenance of monuments. I would like to greet the speakers who have dealt with the issue of the legal forms in their own country. It was very important to have a comparative view of the legal forms.

I am going to explain the different legal forms in France. Prior to that, I raise again the importance of private sponsorship in France: In fact the private sponsorship granted by firms is evaluated at about 800 million francs. For private persons, it is very difficult to know exactly the value of their expenses; it is about one or two billion francs. These numbers concern all the "public interest" sectors, such as culture, health, the environment, etc.

When studying firms' sponsorship, we can observe that protection and maintenance of monuments is often chosen by the firms: 9 % of the firms' choice is the protection of monuments. Some actions are focused on monument restoration or archeology. For example, the foundation *"Pays de France"* created by the *Credit Agricole Bank* helped rural monument restoration. Another example is that a number of firms concentrated their efforts on restoring the old Stock Exchange in Lille, the Parliament of Bretagne in Rennes that burned in 1995 or the old leaded glass windows in the Cathedral of Chartres.

Some firms have chosen the restoration of works of art in museums. *The Paris National Bank* is interested in this sector, in collaboration with E.D.F. The *Elf* foundation has focused its work on submarine archeology, particularly at the site of Alexandria. The *Rhône Poulenc* foundation gives its support to monuments in the Imperial city of Hué, in Vietnam.

The scope of the legal forms in France is a challenging and difficult question, which raises other ones: what is the definition of these legal forms? What kind of legal forms belong to the sector of protection of monuments?

First I want to talk about the associative sector. It is the most important and diversified one. There are three sorts of associations, according to the law:
- Undeclared associations, without any legal status.
- Declared associations, ruled by the 1901 Act.
- Public utility associations, specially registered, which constitute a small part of declared associations.

We know very little about undeclared associations: churches or informal neighbourhood groups. Declared associations are the most widely spread category. The 1901 Act is the most liberal and flexible legal status of the French law. And it is the main reason why this status has not changed ever since. Very diversified organisations chose that legal status, individual persons have created legal associations to restore monuments or to buy pictures for museums. (The most important is *La Société des Amis du Musée du Louvre.)* The 1901 Act explains that an association is "a convention consisting of two or more individual persons who permanently put in common knowledge or activity, with another aim than sharing profits".

The creation of an association must be declared at the *"préfecture"*, a local authority. Today, the number of declared associations is unknown; 600 000 to 700 000 is an estimation. Declared associations are created also by legal persons, by firms that want to enter into partnership with another firm, for monument maintenance. For instance, the association for sponsorship of Evry (a middle-sized town near Paris) comprises many medium-sized firms. The actions are multiple: young artists' exhibitions, etc.

Declared associations have a limited legal capacity: for instance, they cannot own real estate or receive legacies, this limited capacitys goes back to the beginning of the 20th century. On the other hand, the State and declared associations benefit from tax-exemption: from taxes on income and profits, but from VAT too (only for the first six sales a year). Gifts to declared associations are deductible up to 3 % of taxable income and up to 2/1000 of the enterprise turnover.

Public utility associations have to be approved as such by the *Conseil d'Etat*, at the end of a two year procedure. Most of them are health or welfare charities. Public utility associations have a full legal capacity: they can own real estate and financial assets. Gifts to public utility associations are deductible up to 5 % of taxable income and legacies are encouraged by inheritance tax exemption.

Foundations enjoy the same tax privileges as public utility associations. They also have a full legal capacity and they own real estate and financial assets. There are few private foundations in France, only 428 in 1990. Since the law of 23 July 1987 on sponsorship development, the term foundation is protected; only an organisation which is approved by the legal authority of the Prime Minister and the Conseil d'Etat can be created. The reason why there are few private foundations in France is that they must have a large capital: 5 million francs. These foundations have, contrary to associations, a broad legal capacity: they can do all the civil acts, they can own houses or buildings (for instance a castle which they manage).

These foundations are managed by a council whose members are the founders, qualified persons in the arts and representatives of legal authority.

A special characteristic of foundations is that a private person has a large control of legal authority (control of the account, of the foundation activities, of the endowment and, by the council, of all the acts arranged by the foundation). As you can read in the newspaper, some foundations have financial problems; the government has organised a great debate about the functioning of this legal form. I think a new law might be passed next year.

I want now to explain the activities of a new particular foundation called *"Fondation du Patrimoine"*. This foundation has been created by law. Its capital of 30 million francs comes from the gifts of ten important firms. Its activities will be based on the conservation and preservation of national monuments as are the activities of National Heritage in Great Britain. The foundation can protect and contribute to the renovation of monuments (castles, pictures, etc.). Its council is composed of representatives of the firms which are the founders, qualified personalities, and also mayors of large towns. This foundation can accept gifts and endowments from other firms and even from particulars.

This presentation would be inclomplete without mention of another form called foundation. It is an account which someone can open in a large foundation. The large foundations and authorized foundations can act as a shelter for particulars or firms. The legal mechanism is the same as the trust: someone may invest money for sponsorship actions. But it is the foundation which realizes these actions. The most well-known of these typical foundations is the *"Fondation de France"* or the *"Institut de France"*. The *"Fondation de France"* was created 25 years ago and shelters today about 100 foundation accounts.

To encourage sponsorship, the French government and the legislator created new legal forms, situated between the association and the foundation which we have considered.

This new form is called the "firm foundation". This firm foundation can only be created by firms and aims at sponsorship. Firm foundations are created for five years or longer. Firm foundations have the same limited legal capacity as associations. For instance, firm foundations cannot receive legacies or gifts. The firm grants money to the foundation: at the creation, the firm must pay about one million francs for five years.

A council composed by the founders manages the firm foundation. And firm foundations are created also by legal authority of *le préfet*. Today, there are about 50 firm foundations: for instance *La Poste* has created a firm foundation in sponsorship of songs and theater.



HUGBERT FLITNER

Organizational Forms for Private Sponsorship in Germany and Presentation of the Alfred Toepfer Stiftung F.V.S.

Under the legal system of the Federal Republic of Germany there are essentially *three types of organisation* available for private sector activity and sponsorship in the area of monument preservation:
1. The association *(Verein)*
2. The limited company *(GmbH)*
3. The foundation under civil law *(Stiftung)*

The association is the most common organisational form for all forms of activity within the private sector. There are over 240,000 associations in Germany.

By contrast, the corresponding Directory of the Federal Association of German Foundations 1994 only lists around 5600 foundations. There are no statistics about charitable limited companies. The number of limited companies is about 610,000 in total.

These forms of organisation have the following *differing characteristics:*

The association has members, of whom there must be at least seven when it is set up, but of whom there are usually more. Its distinguishing features are the uncomplicated way

in which its members may join and leave and the large influence on the management they may have.

The *limited company* also has members, but, as a general principle, fewer (at least one). In this case, the members are called partners *(Gesellschafter)*. By law they can only be held liable for a sum up to the capital invested. This sum must be at least DM 50, 000 in total, and at least DM 500 per partner. Joining and leaving a company is more difficult than is the case with an association.

The *foundation* has neither members nor partners, but is obliged to prove its access to capital or other properties. This may also take the form of claims against the founder.

A *common feature* of all three forms of organisation is that they each constitute a legal entity. To be a legal entity they require *statutes* which must be passed by the appropriate decision-making body. In the case of the *association*, this is the general assembly of its members The statutes lay out the purpose, name and location of the institution as well as its internal organisation. Charitable organisations must also declare their charitable function in their statutes.

Besides the general assembly of members the other legally prescribed authority within the association is the managing board. The board represents the association in legal matters. The statutes may regulate its powers in detail, as is the case with further authorities such as committees, advisory bodies and boards of trustees. A great deal of freedom to regulate is accorded in this area.

The internal organisation of the *limited company* is, by contrast, regulated in detail by a specific German Limited Companies Law. It should be noted that the limited company is a principal form of organisations in the business world. The extensive and complicated regulations apply for charitable limited companies as well, which is why these are only present in those areas of cultural life where business aspects are important – as with theatres, operas or big science research institutions.

The highest authority within the limited company is the partners' meeting. Its distinguishing feature is the dominant role played by the managing director. He has practically unlimited power to act.

The *foundation* is governed by the Foundation Council as its highest authority, to which normally a Managing Board or a Managing Director reports.

An association becomes a *legal entity* when it is entered into the List of Associations *(Vereinsregister)*; a limited company when it is entered into the List of Trading Companies *(Handelsregister)*. Both lists are maintained at the District Court *(Amtsgericht)* in the city where the organisations are based.

Only the foundation requires state permission. This is granted by the Foundation Regulatory Authority *(Stiftungsaufsicht)* of the Federal State where the foundation is based. This authority carries out the legal supervision of the foundation. The supervision of the foundation within its field of activity is the responsibility of the relevant Ministry and in larger states is often delegated to the provincial government *(Regierungspräsidenten)*.

The *charitable status* of such institutions and also their tax benefits are determined according to criteria which are described in detail in the the German Excise Law (§§ 52 ff. *Abgabenordnung)*. According to these tax regulations it is necessary that the purposes of the institution should exclusively, directly and without self-interest serve the general welfare in a material, cultural or moral sense. If this is the case, then the institutions are freed from corporation profits tax, trade tax and land tax, but not from purchase tax on real estate. They receive a preliminary certification of charitable status from the relevant tax authority. The certification is preliminary because the authorities may check at any time whether the activities of the institution actually fulfil the conditions of the statutes and the tax law. Whether the institution can be freed from sales tax is dependent on the extent to which it carries out a task comparable to that of a local authority body. This is checked by the responsible State authority – in most cases this is the Education Ministry.

Foundations

First let me explain the philosophy of foundations. I will begin with the word itself. The German word *"stiften"* or *"Stiftung"* means *"Founding""*, which is one of the oldest Indo-Germanic words (whose ultimate origin has not yet been fully clarified). The earliest meaning of the word incorporates the concepts of the founding of buildings. Something is being erected which is to last a long time and which will at the same time provide an impetus towards something new. If we opt for newer definitions of foundations, these indicate essentially that a foundation should involve a lasting commitment of assets to purposes devoted to the public good. This means non-profit-making charitable, social and religious purposes.

Why do we have foundations at all? You will say: for tax reasons. Correct. I have already spoken about this. But tax cannot be the reason why the foundation has established itself as one of the oldest and most significant institutions in human civilisation long before the invention of taxes.

There are considerations about the fact that nothing can be donated without **reason**. According to a very old ritual each gift is connected with a reciprocal gift. Think of the formulations when giving something to another person. When he has thanked you for this gift you say "You are welcome". That means, you are invited to bring me the reciprocal gift. I allege that foundations also work to receive something, but what?

From the **earliest times** human beings associated their hopes and fears with sacrifices that were supposed to favourably influence their fate. Since then countless **foundations were based around cults**. Here you will find one of the prime purposes of foundations: namely the preservation of the religious cult and the commemoration of the deceased. Foundations dedicated to the memory of people are therefore very widespread and one could almost say that this ancient driving force has continued to be essential right up to the present day.

These **memorial foundations** are generally dedicated to *the arts*, which at one time seemed more likely to be permanent than they do today. Many theatres, concert halls, art galleries and museums are emblazoned with the *names of their founders*: Carnegie Hall, the Guggenheim Museum or the Gulbenkian Museums are just a few of the countless examples. This type of foundation also likes to be linked with monuments and heritage.

With the advent of **Christianity** the foundation concept developed to include another motive: **Caritas**. This is the commandment to love one's neighbour, to care for the sick, the old, widows and orphans: those who had a particularly raw deal in olden days. Eternal life is to Christians what posthumous glory was to the Ancients. However, the church learned very quickly to interpose itself between the benefactor and his good deed.

These Christian foundations devote themselves to the sphere of *welfare* and comprise monasteries, orphanages, old people's homes, infirmaries, and also schools for the poor and workshops for the disabled. They bear the *name* of their founder (in the manner of the Fuggerei in Augsburg) less often than that of a saint or a description of their aims. Among the holy designations, it is the Evangelists (John and Luke), the disciples (such as Peter or James) or the Holy Trinity (the Holy Ghost, the Good Shepherd) which provide the foundations *("Stifte")* with their names.

Protestantism gave the foundation special impetus.

The Protestant **Puritan** regards worldly wealth as a symbol of God's favour and this obliges him not only to be virtuous but also charitable. In addition to charity, its objectives usually lie in the field of education.

With the **Enlightenment** came **philanthropy**. This concept focused on people and their everyday environment to try to achieve improvements in it.

These **philanthropic foundations** are devoted to *improving the world*, introducing innovations in towns and in the country and have, as their primary goal, *the promotion of virtues, education and the sciences.*

The *names* of such foundations are frequently determined by their aims (the Patriotic Society..., the Foundation for the Promotion of...) or else they are named after a famous person who is associated with those aims.

Patronage today contains all these elements in varying proportions, but is characterised above all by its introduction of a *political emphasis* into the social and economic sphere. This may well be linked to the fact that today's major donors are increasingly often powerful **institutions**, such as banks, large companies, or even important public bodies. Examples include the Ford Foundation, Volkswagen Foundation, or Bertelsmann Foundation.

In comparison, the individual patron is relatively rare. Major patrons in the classical sense are now few and far between, but the number of small and medium-sized donations and charitable bequests on the part of individuals (such as those managed by the collective foundation, the *Benefactors' Association for the German Sciences*, or those represented amongst the members of the *Federal Association of German Foundations*) is growing.

Today's foundations often *call themselves* after the important owners of the donor company: e.g. Fritz Thyssen, Alfred Krupp von Bohlen, Robert Bosch etc. Indeed, a flick through the registers of foundations shows that today's foundations like their names to reflect their benefactor or his family. This is perhaps intended to counteract the depersonalisation of commercial life and multinational company development.

The Alfred Toepfer Stiftung F.V.S.

The **F.V.S. Foundation** was founded by a Hamburgian merchant. His name, which after his death was added to the name of the foundation, was Alfred Toepfer. He started his charitable activities already in the mid-1920s. His main activity in the first years was the financing of youth hostels. Once the youth hostels organisation started to be used by the Hitler movement, Toepfer turned in 1935 to establishing cultural awards. The F.V.S. Foundation was at this time the first private organisation which dealt with cultural prizes. Even here he could not prevent the Reich Chamber of Writers *(Reichsschrifttumskammer)* from taking control and after a period of arrest in 1937, he was pressed to surrender leadership of the foundation to a state-incorporated authority for Germans living in foreign countries *(Volksdeutsche Mittelstelle)*. After the war and a period of internment Alfred Toepfer was able to regain control of his foundation. Its work began anew in 1949 with a European Award for Agriculture. It is in this context that the Europa Prize for the Preservation of Monuments has its origins.

The Europa Prize for the Preservation of Monuments

On 26 October 1973, the Council of Ministers of the Council of Europe passed a series of statements of principle concerning the practical support of government departments and local authorities in the protection of monuments and places of cultural interest under their care. The subsequent series of meetings on the subject culminated in the Amsterdam Conference which rounded off the European Monument Year 1975.

As part of the preparation for this European Monument Year the Council of Europe held a conference in Zurich from 4-7 July 1973 which was organised by Europa Nostra. As representative of the Lüneburg Heath Nature Park Association Alfred Toepfer took part in this conference.

According to his notes, Toepfer held conversations on the conference with the President of Europa Nostra, Duncan Sandys. On the afternoon of 6 July 1973 he addressed the conference.

"I'll start with a couple of comments on some of this morning's speeches: anyone who restores old buildings often has to find a sensible future use for them. Here, for instance, are some examples – and maybe some encouragement.

The foundations associated with me have turned a completely derelict old tanner's house in Strasbourg which dates from 1566 into accommodation for conferences and overnight stays. In the Lüneburg Heath Nature Conservation Park old Lower Saxon farmhouses have been made available to European youth groups and meetings following a complete restoration. In Hamburg old houses from the 17th and 18th centuries have been rebuilt with exact attention to historical detail and used to provide easy-to-run, cheap flats with modern facilities for so-called elderly women and men, over the ages of 60 and 65 respectively. And in France, in the vicinity of Paris, the ruins of the old walls of an early medieval monastery farm with a substantial tract of agricultural land attached have been thoroughly restored and the buildings are now used for the accommodation of people and, as far as it is possible, of machinery as well.

Wherever it is possible and sensible, do not forget to furnish old squares and buildings etc. with the living green of trees, shrubs and flowers.

The Hamburgian F.V.S. Foundation is prepared to establish a Europa Award for the Preservation of Monuments with the value of 25,000 German Marks p.a. and a European Gold Medal for the Preservation of Monuments, which might perhaps carry the name of Michelangelo. The former would be to reward individuals who have made an exemplary contribution to monument preservation; the Gold Medal to reward governments and local authorities. Decisions would be taken by a Board of Trustees under the chairmanship of your President and a representative of the Concil of Europe."

After intensive consultations with many experts Alfred Toepfer nominated for the **first Board of Advisors** *(Preiskuratorium)* of the Europa Award for the Preservation of Monuments the following persons: Prof. Ashworth, GB; Prof. De Angelis d'Ossat, Italy; Prof. Dercsényi, Hungary; Prof. Frodl, Austria; Harald Langberg, Denmark; Prof. Malinowski, Poland; Mr. Vassas, France; Prof. Wortmann, Hannover (advisory member).

In the next years the following joined the board Mrs. Aulenti, Italy; Mr. Boiret, France; Dr. Ebert, Hamburg; Prof. Geza Entz, Hungary; Prof. Gebeßler, Stuttgart; Prof. Munk Hansen, Denmark; Prof. Machatschek, Austria; Prof. Malinowski, Poland; Prof. Perbellini, Italy; Prof. Sedlmayr, Hungary; Prof. Swiechowski, Poland.

Prof. Asworth has been a member of the board from the beginning up until today.

After Frodl († 1985) Harald Langberg (1981-92) became chairman of the board, followed by the current chairman, Prof. Machatschek.

At its **constitutive meeting** on 9 August 1974 the Board of Trustees selected Professor Dr. Jan Zachwatowicz from Warsaw to be the first recipient of the prize. Prof. Zachwatowicz was director of the Polish Conservation Office after the war and was entrusted with the task of rebuilding the capital. The Prize was a sign of recognition and appreciation of the work he had started during the war to rescue, restore and secure the historical appearance of the most heavily destroyed cities in Poland.

The first prize in 1974 was connected with 3 gold medals:

One was awarded to the Alsacian city of Colmar for the exemplary renewal of the tanners' quarter and other parts of the old town; the second went to the small Danish town of Svaneke on the Island of Bornholm for the retention of old houses and the appearance of the town as it had been handed down through the ages. In both cases the award ceremonies in the town halls were accompanied by public festivals which the founder also took part in. Colmar's Gold Medal led to a special grant of 3.9 million FF by the French state for the renovation of the old town.

The third medal was intended for the former French Minister of Culture, André Malraux, and was awarded to him by the Board of Trustees in recognition of the French Monument Preservation Law from 4 August 1962 which he introduced and which bears his name ("Le Malraux"). For the Board, this law was of decisive importance in the development of monument preservation legislation in Europe and beyond.

You will find the names of subsequent **recipients** of the Awards in the Prize booklets of our foundation, which document the award ceremonies each year. The last one reports about the prize of 1995. It is the 21st report in total. If you look through all these reports in both the laudations and the speeches of thanks, you will find the entire spectrum of thoughts on the subject of monument preservation reflected.

At the moment the Foundation intends to evaluate this material and to integrate it into a full analysis. The foundation itself is very keen to see the results.

The European National Trust

Alfred Toepfer even had the youth hostels built with the preservation of monuments and the landscape in mind. By acquiring four estate farms, Herrenhaus Siggen near Oldenburg in Holstein, the Brümmerhof and Hof Thansen in the Lüneburg Heath, and the Kalkhorst estate in Mecklenburg, Toepfer began systematically to convert valuable old farm buildings for contemporary uses. The same happened with the monastic farm in Chesnay near Paris which Toepfer mentioned in his speech. It was adapted for his Basle Goethe-Foundation and used for agriculture. The aforementioned tanner's house in Strasbourg is used by the Basle Goethe-Foundation as accommodation for its guests and conferences.

In the 1960s Toepfer devoted a great deal of energy to the preservation and expansion of the Lüneburg Heath Nature Park. He was concerned about not only the natural environment but also the economic viability of the area. Thus he converted old farms into roadhouses; and in order to facilitate an expansion of the number of flocks of heath sheep which keep the grass between the heather plants short and fertilise the soil, he established stalls whose thatched roofs fitted into the countryside. Altogether he spent more than 50 millon German Marks only for the Lüneburg Heath.

Alfred Toepfer acquired the Beyling Stift in Hamburg for the Carl-Toepfer-Foundation, which his brother had set up after the war. He surrounded this home for the elderly with a selection of reconstructed old Hamburg facades. Although these had never before stood in this location, their proximity to the Museum for the History of Hamburg means that they serve as an exemplary collection as well as contributing to a harmonious residential area. Today the Brahms House and the Hamburg Low German Library with its 6000 volumes of literature in ancient German are also to be found here.

Certainly these examples of his activity in the area of monument preservation do not meet modern standards of historical accuracy. Toepfer was a merchant who thought in practical categories and who also acted with utility in mind. When he acquired the foundation buildings which are worthy of preservation, the idea that he was making a reasonable investment was always in the background. For a foundation dedicated to the conservation of nature, monuments and regional identity, it is a question of **credibility** that it should take those matters into consideration which coincide with its actual aims. This is particularly the case when as a result the investment remains less profitable in comparison to, say, modern business premises. According to my findings many American foundations have often rescued buildings from dereliction by moving into them with their administrative staff. This is what the Thyssen-Foundation in Cologne did.

Another aspect of this process is, for example, that a foundation dedicated to the preservation of the countryside should not invest in windmills, even when that may be profitable and the area already has a number of windmills. A foundation loses its credibility if its investment activities contradict its aims. I consider this a question of foundation ethics; it seems to me to be a first principle which should be respected by all foundations.

In contrast to the area of natural conservation and the mentioned investments of the foundation the Alfred Toepfer Stiftung F.V. S. has up until now not become directly involved in the preservation of monuments or regional identities. Such activity would consume its capital very quickly.

It has, however, considered whether the preservation of cultivated landscapes might not be improved by adopting in Germany and Europe the British model of the **National Trust**, whose significance extends to the entire Commonwealth. In his report commissioned by the foundation Graf Strachwitz of Maecenata Management GmbH in Munich advised against such a solution for Germany. He argued that, since there are such a number of institutions charged with the preservation of monuments here, a National Trust would be in competition with these from its inception. Furthermore, he argued, such a solution would be neither practicable nor desirable. Instead, he suggested that tasks of crucial importance, such as further training of technical personnel and the clarification of fundamental positions, should be organised centrally, and in this way the individual functions of a National Trust taken over.

His report is correct in that the federal structure of the German state on the one hand and the reduction in the number of buildings worthy of listed status in Germany and in other European countries on the other hand makes the creation of a National Trust fundamentally problematic. The National Trust acquires and administers its properties in such a way that they are able to finance themselves, whereas here it will be much more difficult to find a sufficient number of properties which fulfil these criteria.

And yet it seems to me that this is not impossible. For this reason, I am of the opinion that one could start to construct on a very small scale a European National Trust to which every country and every citizen could contribute buildings and objects provided that the costs of maintenance can be covered. The necessary management skills can be learnt from the British National Trust. It might be able and possibly willing to take on the administering tasks at first for this Trust.

The legal conditions to allow such a project to proceed must be provided by a European Law drawn up in Brussels which would create those legal and tax possibilities which are at the moment only provided for in Great Britain. It is for this that I have pleaded and I do hope it may find your agreement and support.



KARL WILHELM POHL

The German Foundation for the Protection of Monuments

"A future for our past" was the motto when the German Foundation for the Protection of Monuments was founded in 1985 at Schloß Gracht near Bonn. The former President of the German Federal Republic Dr. Richard von Weizsäcker became patron of this private trust. Its task is to support the preservation and restoration of important cultural monuments in Germany. Another aim of this trust is to foster the idea of monument preservation in the public. The foundation's starting capital of 500,000 German Marks (DM) was donated by 23 renowned German companies.

With the opening of the Eastern border in 1989 the Foundation's mission gained a new dimension. The commitment of many citizens was necessary in order not to lose landmarks in towns and villages built in earlier centuries, irretrievable testimonies of what generations before us had created. The frightening pictures of endangered buildings and ruined (worn out) old towns in former East Germany led to an unparalleled relief action.

The total funds spent by the Foundation went up from 640,000 DM in 1989 to 3,100,000 DM in 1991. The great public interest in saving endangered monuments, especially in the new federal states, led in 1991 to the Foundation's admission into the circle of recipients of the funds raised by the *"GlücksSpirale"* lottery run by German public television. Since 1991 the sum of 277 million DM could be made available for 857 endangered monuments, through a combination of lottery funds, temporary government grants and many private donations. 735 of these monuments are located in the eastern part of the Republic.

Both public and private money for monument preservation is however declining.

Despite the proud number of projects only one application out of four could be accepted for a grant by the Foundation in 1996. Among the projects supported in 1996 were 122 town and village churches, 14 monasteries, 28 castles, 68 town residences, six technical monuments, two parks, 12 public buildings, nine archaeological sites and two town gates. In many cases only through the Foundation's private funds could additional public funds be claimed for such endangered monuments. The Foundation's financial contribu-

tions then supplement the Government's fund. But the former should not and cannot replace the latter.

For the selection of objects for support the Foundation works closely with both local and federal authorities for the protection of historical monuments. In addition the Foundation is being advised by a Scientific Commission which consists of architects, art historians, conservators and historians, who suggest projects for assistance to the board. Assitance by the Foundation includes funds, organizational and administrational consultancy, temporary or final takeover of especially endangered objects, or help in finding new and suitable use as well as supporters. The members of the Scientific Commission as well as the board members and the curators work in an honorary capacity.

Today more than 70,000 private supporters assist the German Foundation. Altogether about 3 million DM have been made available for the preservation of historical monuments by private donors. This figure gives proof of the public's great esteem for its entrusted environment. Cultural and developed landscapes have been formed throughout the centuries by means of mighty citadels and castles, magnificent town residences, town gates and town halls, technical monuments, various historical parks or by richly equipped monasteries and village churches. They constitute quality of life and create the identity of man. They convey familiarity and security. In them history itself becomes perceptible both by the senses and the spirit. The responsibility gladly accepted by the citizens for their mutual cultural heritage after the fall of the Berlin wall has become an example for joining the people after the German reunification.

The Foundation has been supporting the European Heritage Days since 1993 and coordinates in Germany the "Day of the Open Monument", as a means of lobbying for the protection of historical monuments. In 1996 three million citizens visited more than 5,500 monuments not usually open to the public on the second Sunday in September. These visitors prove the continually rising public interest in maintenance of monuments since the European Year of Monument Preservation in 1975. Every year an impressive alliance is formed between experts and citizens which has to be reckoned with in today's cultural-political debate.

The Foundation conveys information about its activities through a wide public relations network. Only those people can be won for active cooperation who know about the necessity and the problems of monument preservation. Here the magazine *Monuments* has become an important device. Six times a year it reports on the projects the Foundation promotes. As the "magazine for monument culture in Germany" *Monuments* at the same time offers a forum for topical questions, discussions and problems of monument maintenance. The strong interest in the long-hidden cultural scene in the east of Germany is being reflected by the great demand for the art-historical trips organized by the magazine.

The notion of monument preservation is carried to a wide audience with the help of the media. Since setting up the Foundation, reports and free advertisements have been published about it in 12,804 editions of newspapers and magazines with 7253 million copies.

By founding the "Centre of Training Courses for Crafts and Monument Maintenance" in Görlitz the Foundation supports the training of qualified craftsmen in techniques relevant for monument maintenance. Here the participants are informed about historical techniques as well as the latest results in research on restoration methods. The exchange of experiences between craftsmen, architects and curators of monuments is particularly important.

Protection of historical monuments has become an important economic factor, not only for tourism but also for medium-sized artisan's workshops in the building trade. The Foundation, together with the Central Association of German Crafts, donated the "Federal Prize for Crafts in Maintaining Monuments" to assure that private monument owners use qualified workshops for suitable restoration works. The monument owners as well as the artisan's workshops involved are honoured with this prize in two federal states per year.

Another example for public-private partnership is the establishment in 1992 of the "Brandenburg Castles Ltd." by the Foundation and the federal state of Brandenburg, an organization which tries to maintain monuments after basic restoration by putting them to suitable use. The Foundation also offers another possibility by holding in trust personalized donations for individual projects. Regular maintenance can be secured permanently with the interest earned on foundation capital provided by individuals or companies.

500,000 individual monuments in the old federal states and more than 350,000 individual monuments and around 180 communities with historic old towns in the new federal states need restoration and maintenance.

Only if citizens and public institutions dedicate themselves to this task will future generations have a chance to use these testimonies of the past as a source for understanding the present and shaping the future. May those help save the past who are willing and able.



Hans Heinrich Ritter v. Srbik

The Messerschmitt Foundation

Prof. Dr. Ing. h.c. Willy Messerschmitt was born in Frankfurt am Main on June 26, 1898, the son of an established middle-class family (owners of the "Weinhaus Messerschmitt") from Bamberg, and grew up in Franconia. After initial involvement with the construction of gliders he achieved worldwide fame as a brilliant designer of aircrafts, first within his own firm in Bamberg, then at the Bayerische Flugzeugwerke GmbH and subsequently at the Messerschmitt AG in Augsburg. In particular his model designs for the fighter planes ME 109, ME 110 and ME 262 (the first production-line jet aircraft in the world) and for the ME 108 travel plane (the "Typhoon", launched in production with over 1000 planes) have gone down in the history of aviation technology as great achievements.

Professor Messerschmitt's developments and his outstanding industrial successes have been covered from the perspective of technology and military politics in numerous publications. Reference should also be made to the rebuilding of the German aviation industry and the revival of the Messerschmitt plant after World War II and to Messerschmitt's successful work in the postwar decades.

After 1945 Messerschmitt had to start from the beginning again. There was once more a creative phase during which he was compelled to turn his attention to other technological problems. Among other things he developed a new sewing machine, drew up elements for prefabricated houses, and designed the well-known Messerschmitt "cabin scooter", the small car of the 1950s. In the course of time he was again able to devote himself to his favorite interest, aeronautics, and his work was instrumental in enabling German aviation and space technology to regain its worldwide reputation after the war. His distinguished lifework reached its organizational conclusion, after various mergers, in the largest German firm for aviation and space technology, the Messerschmitt-Bölkow-Blohm GmbH (MBB) in Ottobrunn close to Munich. In 1990 this firm was incorporated into the aggregate complex of the Daimler-Benz subsidiary Deutsche Aero Space (DASA).

It was during the last years of his long and fruitful work that the Messerschmitt Stiftung (Messerschmitt Foundation) was established with the intention of preserving the founder's substantial industrial fortune after his death. The original purpose, designated when the foundation was set up in 1969, was to support the rising scientific generation in the field of aviation and space technology, but Willy Messerschmitt subsequently altered the aims of the foundation. The motives which led him to this change became clear in detailed discussions between Messerschmitt and my father, Dr. Hans Heinrich von Srbik. My father was an intimate friend of Willy Messerschmitt during three decades of close cooperation and counseling on his financial interests; Messerschmitt ask him to take over for life the chairmanship of the foundation's board of directors.

Even during the period of the Allied prohibition that kept him from being involved in aircraft development or its theory, Willy Messerschmitt never gave up the hope of returning the German aircraft industry to its worldwide top position and of catching up – through his own personal efforts, despite the years of abstinence – with worldwide developments in technological standards, in particular those of the U.S. industry. In an era of more and more complicated technology and increasingly widespread electronics, even in airplane construction, Messerschmitt remained convinced that the German aviation industry should guard against resolving major problems only by means of the additive cooperation of large teams of specialists, thereby losing the creative strength of individuals. Moreover conventional steps in development would not be enough to recapture the lost advantage in international competition. Messerschmitt was further convinced that the next – perhaps for the present the last – really decisive step in aircraft development would be in the use of the vertical takeoff. Within the framework of the rebuilding of the Messerschmitt AG, significant resources and all of Willy Messerschmitt's efforts were applied to this idea; up to the final years of his life he devoted all his mental and physical strength to this theme, producing detailed structural studies and scientific works. The fact that the management of the merged firm barely supported these ideas and eventually shelved the "Rotor Jet" (the working title for an aircraft that lifts up and sinks by means of rotors) – the very project that Messerschmitt held to be the direction for the future – was the great disappointment of the last phase of his life.

This prompted him, as he confided in a depressed mood in many conversations, to change the original dedication of the Messerschmitt Stiftung from problems in the fields of acronautics and astronautics to the "maintenance and preservation of German artistic and cultural monuments at home and abroad." He anchored these objectives in the foundation's new statutes. This new dedication was nevertheless in accord with Willy Messerschmitt's interests. As a brilliant engineer and technical designer he always allowed himself to be guided by artistic impulses. Each of his creations bears such a seal. His aircrafts were of great aerodynamic beauty; they were distinguished by the greatest achievable lightness and at the same time by an exactness of detail in construction which simplified, increased the efficiency and optimized a design which was at once congruent with its purpose. Thus the artistic element was always manifest in Messerschmitt's works. In addition to realization of his own works he was always interested in art and to a high degree in music. His

creative talent and his musical inclinations, combined with a national consciousness that remained unbroken through all the catastrophes and setbacks of the times, thus logically determined the dedication and scope of a foundation which should serve the preservation of the *German artistic and cultural heritage*. With the death of Professor Messerschmitt on September 15, 1978, the foundation entered upon the inheritance of his idealistic legacy and his industrial fortune.

An essential criterium for the foundation's work is to consciously focus efforts on the protection of those objects that – to rephrase the great art historian Hans Sedlmayr, who followed the work of the foundation with pleasure – can be considered a definite part of the "humanistic stage" of our culture and whose loss would diminish the hope for a renewal of the "lost middle." A circle of highly qualified individuals who make up the foundation's six-member advisory board supports the board of directors (comparable to trustees), which selects the projects. These cooperative efforts are supported by the joint conviction that the danger of loss of cultural goods is great and that speed is essential if the foundation's projects are to be effective. In its selection of projects the board of directors is guided by the idea that, in addition to major tasks in preservation that must in general be in the hands of the public authorities, there is also an urgent need for preservation of a wealth of medium-sized and smaller art monuments that are the object of increasing interest but for which funds are scarce. It is precisely these monuments that, as a whole, make up our rich but endangered cultural landscape. Putting the foundation's help to work here represents a "cultural environmental protection" which has at least as much value as the ecological objectives that receive so much attention today.

Not only secular but also sacred art monuments are of importance to the foundation; we are however conscious that the protection of the physical fabric of the latter, as significant as it may be in aesthetic and art historical terms, can only achieve full significance in the context of a spiritual-religious renewal.

The foundation initially chose to limit the emphasis of its work to the southern German region, in particular Bavaria and North and South Tyrol. Already there are many buildings with a brass plaque indicating restoration by the Messerschmitt Stiftung. The foundation's funds have been made available for work on the preservation of churches, chapels and wayside crosses, farmhouses and townhouses, palaces and castles as well as a wealth of smaller monuments. One of the first projects in Bavaria was the conservation of some 120 epitaphs on the exterior walls of the Church of Our Lady in Munich, followed by the restoration of the doors of the pilgrimage church in Aufkirchen on Starnberg Lake and the conservation of the medieval frescoes in Urschalling. Subsequent projects have included the restoration of several very significant winged altarpieces and of the Augustus Fountain in Augsburg.

With the sale of MBB's shares to Daimler-Benz the foundation entered a new phase of development in several respects. On the one hand this meant an end to active participation in the history of German aeronautics and astronautics, a step that after six decades of substantial influence in the field – reflected even in the name MBB – represented a decisive change. The Europeanizing of space and aviation science and the new dimensions of worldwide competition made it necessary to put the firm in the hands of a global concern such as Daimler Benz if Messerschmitt's intent to be technologically in the lead, or at least on par with the leaders, was to be realized. In accordance with the foundation's mission we supplemented this important step with a contract which ensures that we retain a small share in Daimler Benz Aero Space and that one of the concern's works, either in Augsburg or in Manching, will officially bear the name "Messerschmitt-Werk". Finally a member of the Daimler Benz Konzern was appointed to our advisory board in order to document our desire to preserve Messerschmitt's aeronautical legacy in the future together with Daimler Benz.

This transition also signified a turning point for the foundation economically. From its beginnings, the foundation's largest asset was its shares in the MBB; however they did not provide us with any financial yield because the expansion of the ambitious Airbus program demanded one increase in capital after the other, thus draining the foundation's financial strength. The sale of the MBB shares, as hard as it was in terms of tradition, multiplied the foundation's capabilities for getting involved in monument protection. The timing also proved to be extremely fortunate. The resolution of the East-West confrontation with the end of the Cold War led to a comprehensive restructuring of the aeronautics and armaments industry. This was combined with substantial costs which the foundation would no longer have been able to shoulder.

Thus, at the right moment and equipped with new financial possibilities, we were well prepared to meet the opening of the East. Even before the wall came down, as it was already becoming clear that the German Democratic Republic could not continue in its present form, an initial visit took place with the director of the preservation office in East Berlin. In ideology-free discussions he asked if the foundation might be able to help acquire marble for the restoration of the two figures by Schinkel's *Neue Wache*. He explained that he first became aware of the foundation through a project he saw as a tourist in Lienz in eastern Tyrol; he had since been following the foundation's activities attentively. We later traveled together to Potsdam, where he showed me his greatest problem project, the Belvedere on the Klausberg. Only makeshift protective measures could be considered, complete restoration was only a dream.

It was with such impressions that I returned to Munich. A few weeks later I was in contact with Professor Otto von Simson from the Friends of Prussian Palaces, and he too mentioned the Belvedere. In a memorable advisory board meeting, which took place under the impression of the fast-moving developments taking place by then in the GDR, we resolved in February 1989 to make restoration of the Belvedere a major project of the Messerschmitt Stiftung. In particular former Bavarian Minister Dr. Otto Schedl (since deceased) urged this step as a signal which should if at all possible be made public before the decisive elections in the region. At the time it was a financially bold decision; there was nothing other than a completely inadequate "GDR cost estimate", and we were aware that our budget would be bound for several years by the project. Nevertheless no one has regretted this step.

In the meantime we know that we decided in favor of a project that was probably the most difficult and certainly the most expensive preservation undertaking in the new *Länder* to be attempted in its entirety by a private foundation. Including the costs of partial reconstruction of the interior of the Belvedere, a decision reached later, 12 million DM have been spent by the foundation in nine years in Potsdam. But the results are visible. The foundation was able to anchor its reputation in the future capital of Germany and has won many friends. The experiences that we had, as well as some disappointments, are in many respects a reflection of the course of developments as the country has attempted to "grow back together".

The Belvedere in Potsdam was followed by projects in the other new *Länder*, whereas in western Germany we have continued to adhere to our self-imposed geographical restrictions. We made substantial contributions to the restoration of the so-called "French Building" of the Heldburg Fortress in Thuringia and to the rehabilitation of the tower of the Naumburg Cathedral in Saxony-Anhalt. In Mecklenburg we took over the structural repair of eight village churches that were in danger of collapse, financing as well the complete renovation of one of them, in Hohen Mistorf. In Saxony several projects have been undertaken, thanks to close cooperation with Professor Heinrich Magirius; the most important of these include the lay brothers house and the Wettin crypt in the Altzella Monastery in Nossen, the fresco cycle in the small church in Döbra in the Erzgebirge, the restoration of the Prince's Rooms in Hoflößnitz in Radebeul, and most recently the very significant cloister of the Marienstern Convent in Sorbenland with its re-exposed wall paintings.

All of this was and is possible only because of the foundation's method of operation, which is unlike what one might expect for such sponsorship activities. The Messerschmitt Stiftung always functions as the building owner, regardless of who the legal owner really is, by entering into a partnership with the legal owner for purposes of the project. The foundation issues the contracts, indirectly exercises control during the entire construction period, and pays the bills. The restorers and artists thus know their patron. This procedure has proved very successful over the years. We have also thus been able to ensure the high standards that we have for restoration measures; I believe that I can say with some pride that precisely this distinguishes the Messerschmit Stiftung. I am happy to admit that this direct commitment also gives great pleasure. We are always very involved in the work, we can intervene in an emergency, we spot cost increases in time, and we are continuously building up our own fund of experience. The foundation identifies itself with a project – and often, in reverse, participants in a project identify themselves with the foundation.

Of course this procedure has its consequences: it is much more intensive in terms of supervision and work. In this situation a further characteristic of the Messerschmitt Stiftung is of special relevance, namely the close partnership in all projects between the foundation and the local preservation offices. The latter already play an important role in the selection of projects; indeed suggestions often come from the preservation offices, since they are most familiar with the problem cases. The continuous on-site supervision of work also is taken on by the local preservation office, which sends interim reports to the foundation. The preservation office is always represented at the regular major meetings on a project. Without the friendly involvement of the directors of the state conservation offices the exacting form in which we realize our projects would be unthinkable. But with some of the largest projects not even this assistance is enough, and we must in addition engage an architect with expertise in the field of preservation (for example for the Belvedere in Potsdam, the Meseberg Palace near Berlin, and the *Pfleghof* in eastern Tyrol). With this network we have been able to keep the administrative apparatus of the foundation itself as small as possible. As chairman of the board of directors (a secondary occupation for me), I am supported by a deputy for legal issues. The administrative work is in the hands of a very experienced half-time employee.

I have already mentioned that the foundation itself has increasingly become a vehicle for know-how in the field of preservation. Consequently we also publish books which not only report on the technical execution of a project but also present the built monument as a whole, placing it in its cultural context. In this manner we hope to bring a monument and its preservation story closer to the interested reader, thus creating a multiplier factor; or, to put it in more popular terms, we are advertising preservation. This objective is served by the occasional support of publications on practical preservation work, such as the many years of assistance provided for the standard publications of the Bavarian State Conservation Office (*Arbeitshefte* or Working Journals). The international dissemination of this series has contributed significantly to the considerable reputation of that office and has promoted the international exchange of expertise for the general benefit.

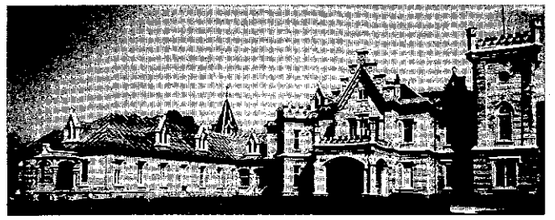
Our work has recently brought us into contact with new technologies in preservation, for instance with the possibility of cleaning valuable stone sculptures with laser instruments without causing damage to their substance. We are convinced that such developments are merely at their starting point. Often the acquisition of such instruments is not possible for the average restoration workshop. Together with the Deutsche Ausgleichsbank, the foundation has therefore taken shares in the Bauhütte Naumburg; our capital contribution made it possible for the majority partner from Bamberg to acquire two laser instruments and to employ them, with great success, throughout Germany. Such projects likewise represent a means for the foundation to realize its objective of preserving cultural goods, as does a joint initiative by the Messerschmitt Stiftung, the Bavarian National Museum and the Bavarian State Conservation Office to set up and support a Chair for Restoration and Historic Preservation at the Technical University of Munich as part of the school of architecture.

The foundation's financial possibilities have also led us to confront other types of problems in the last years. Often a city or community owns a badly deteriorated but very significant historic building. There are discussions as to whether demolition is unavoidable or whether renovation is possible although there is only a very vague concept for a cultural use. The financial shortages of the public authorities more and more often lead to the first alternative – or sometimes continued inaction solves the problem on its own. We have often invested in buildings in such situations and thus contributed substantially to a change of opinion. To give an example, in the community of Navis in North Tyrol our promise to restore the complete rococo facade of a building brought about a reconsideration. Today the building, for which a demolition permit had already been issued, is the

showpiece of the town center and houses, remarkably enough, the entire local administration. In another case such a partial promise was not enough. Therefore the foundation acquired the prince-bishop's *Pfleghaus* in Anras in eastern Tyrol, completely restored it, and contracted for long-term use with the *Land* Tyrol. Today the stately building houses the local administration, the local tourist association and a very interesting museum on Tyroleon jurisdiction. Something similar, but on an even greater scale, is currently in progress in the old town of Hall in Tyrol, where we are installing, together with the Augustiner Brewery from Munich, a beer hall in magnificent vaulted spaces (*Gasthof Engel*). This object is particularly impressive because it demonstrates that a decidedly commercial use is possible in a sensitive manner in a building that was already given up.

These examples will gain in significance in an era that is marked by purely economic considerations, since they make it possible for the preservationists not only to insist upon having difficult conditions met but also to point to concrete examples of success. This aspect of model restoration work plays an important role for the foundation in a Munich project involving comprehensive revitalization of the Orlando Block on Platzl, although here the factor of a capital investment with appropriate returns should not be played down.

Finally, allow me to go into a further characteristic – a "political" one – of the Messerschmitt Stiftung. Our statutes expressly state that we are dedicated to the preservation of German art and cultural monuments at home **and** abroad. Such support is history-related, reaching out to those parts of German culture that are outside our national state borders. It has nothing to do with "Pan-Germanism", as an Italian journalist once provocatively asked me, but rather with the preservation of those cultural goods of German origin that have been neglected precisely because of nationalism in the last decades. This was for example a problem in South Tyrol from the end of World War I until into the 1970s, one that is hopefully resolved by the hard-fought but model autonomy; it is a problem that still exists in Poland, the Czech Republic, Hungary and Transylvania. The Messerschmitt Stiftung has mastered a mammoth project in Transylvania, the complete restoration and structural repair of the famous *Bergkirche* in Schäßburg, not only financially (since costs are hard to calculate with a three-digit inflation rate and a construction period stretching over four years) but also logistically. The outstanding support of experts from the Bavarian State Conservation Office and the supervision by the Rhenish Conservation Office (Professor Machat) led to magnificent results, which we will make public in the Messerschmitt Year 1998. The psychological effect on the remaining German population in Schäßburg was also extraordinary: "If you fix our church up so beautifully that is a sign for the future and a hope which at least causes us to rethink our plans for emigration." In their anxiety about their own existence



Hungary, Nádasdy Manor House, restored as a conference centre by the Institute of State Care of Monuments in cooperation with the Nádasty Foundation (description at page 54)

these people are influenced by factors whose scope we had not been able to anticipate but were then able to experience. As a result the foundation decided to take charge of one of the oldest and most imposing buildings in the town, to be used as a cultural center after restoration. This former *Gasthaus zum Hirschen*, which could just as well be in Germany, will be open to the entire population of Transylvania.

A further example involves the village of Fertörákos (formerly Kroisbach) on the Hungarian side of the Neusiedler Lake, where a former Bavarian resettlement farmstead is located. In a joint project with the Bavarian State Conservation Office (for planning and advisory services) and Hungarian colleagues (for construction supervision) the Messerschmitt Stiftung has completely renovated this building, which now houses a local museum. A television program about this project, shown throughout Hungary, pointed out the importance of this cooperation, which hopefully has served as an example that might be followed. Aside from the fact that the building was highly appropriate for this project, there was a further reason for such a project to be in Fertörákos and to provide support for that town's Bürgermeister: It was in this community in 1989 that the barbed wire on the border was severed, allowing thousands of citizens of the German Democratic Republic to go to the West without the intervention of the Hungarian authorities.

Allow me in conclusion to bring a third example, a project that will not get started until the fall of 1998. There is an agreement between the city of Prague and the Messerschmitt Stiftung for the joint restoration over the next years, probably with the use of laser technology, of the figures on the Charles Bridge, some of which are by the famous Tyrolean sculptor Matthias Braun. Given the wounds of the past this project is in my opinion particularly valuable.

As a result of decades of division, we still speak carelessly today of Eastern Europe. We would like to bring Central Europe with its German cultural elements into people's consciousness again, an important task in the widest sense for a cultural foundation such as the Messerschmitt Stiftung.



András Petravich

Protection of Monuments in Hungary
The Legal Structures of Private Sponsorship and Participation

The stormy history of Hungary has not made it possible for large numbers of buildings and ensembles of different historical periods to survive. Our built cultural heritage is therefore rather poor. Today we have 10,300 historic monuments protected by the State. Nearly 3,000 of these monuments are churches and monasteries, 2,700 are dwelling houses, 1,500 are public buldings, castles, palaces and country houses, 1,700 are monuments of the vernacular architecture, and 400 are ruins. We also protect granaries, bridges, statues, a radio tower, and a few representatives of other building types. The age of our monuments ranges from the Roman times to the mid-twentieth century, with Baroque and Classicism as dominating periods. The recording of our late nineteenth and twentieth century architectural heritage we have mostly before us, as well as the recording of our industrial heritage.

25 historic city and village quarters are protected as conservation areas, two of which - the Castle of Buda and the Old Village of Hollókő - are parts of the UNESCO World Cultural Heritage[1]. 200 1st category monuments and groups of monuments are surrounded by protected environments marked out by special decision, some 1,000 more by environments protected by the force of the law. The categories of single monuments, conservation areas and protected environments give together legal protection to less than one per cent of the building stock of the country.

Hungary has signed the most important international conventions concerning the protection of monuments: the Hague Convention of 1954, the UNESCO World Heritage Convention of 1972, and the Granada Convention of 1985 of the Council of Europe. Hungarian experts have been playing active roles in ICOMOS since its formation in 1965, and carrying on various types of other bilateral and multilateral cooperations.

The international recognition of monument protection work in Hungary cannot be attributed to the number or the general state of our monuments, but to the high professional standard of a few outstanding restoration projects, carried out especially between the 1960s and 1980s. Since we have our medieval heritage mostly in ruins, it is very important to discover, conserve, interpret and display each fragment in a proper way. This has led our experts to the strict and consistent application of the Venice Charter of 1964, which in practice has been widely acknowledged but also often criticized.

The institutional protection of monuments in Hungary dates back to the mid-nineteenth century, when the social demand for it was formulated the first time. As a result of these efforts, a national organization, the Provisional Committee of Monuments, was set up in 1872. Nine years later the first Historic Preservation Act was passed [1881: XXXIX. tc.] and the National Committee of Monuments (MOB) was established. The Law was in force and the Committee worked until 1949; then they were replaced by a law-decree and transitory organizations.

In the mid-fifties monument protection was transferred from the Minister for Culture, to which it had belonged, to the Minister for Construction. Since then it has belonged to the Minister responsible for construction, for the time being the Minister for Environment Protection and Regional Development. This arrangement emphasises the connection between monument protection and town planning, in contrast with the connection between monument protection and the other fields of culture. The Minister for Culture and Education is responsible for the cultural policy in regard to the protection of monuments.

In 1964 the principal rules of monument protection were included in the Building Act [1964: III. tv.] and its executive decree [30/1964. (XII. 2.) Korm.r.]. A departmental order of the Minister for Construction contains the rules concerning the protection of monuments in detail [1/1967. (I. 31.) ÉM r.]. These three legal rules are still in force, with several amendments, the most important of which are those of the years 1991 and 1992. There are some 80 more laws and orders with rules concerning monuments. For the movable cultural heritage there are separate legal rules [1963: 9. tvr. etc.].

In 1957 a new institute, the National Inspectorate of Historic Monuments (OMF) was established, as a government agency for complex duties: departmental control and building approval administration, research, recording and collections, architectural planning, restoration of buildings and objects of art. The present National Board for the Protection of Historic Monuments (OMvH), set up in 1992, is a legal successor of the Inspectorate, with a wider sphere of authority. So the Institute is celebrating this year its 40th birthday. The Board has now 200 employees, including the outpost staffs in the 19 counties. Its two institutes, the State Center for Restoration of Monuments (ÁMRK) and the Institute for the State Care of Monuments (MÁG), have together 150 employees.

During the forty years of socialism the monument protection policy of the State started out from the dominance of the state ownership and the absolute priority of the public interest, though church and private ownership were also significant all the time and the maintenance of monuments has always been the duty of the owners, at their own cost. The State gave increasing, but never sufficient, financial support for restoration. The general state of the monument stock was and is still getting worse and worse, in spite of many successful restoration and town rehabilitation projects.

The amendments to the legal rules and the reorganization of the former Inspectorate in 1991-1992 aimed at meeting the requirements of the social and economic changes beginning in 1989, but these endeavours could succeed only in part. In the years of transition there came also new problems

to solve, brought along by the privatization, the "wild capitalist" behaviour of the new entrepreneurs, the financial shortage of the local self-governments as new owners of lots of monuments, and the decreasing general standard of life.

Today 10-15 per cent of the monuments are owned by the State, 25-30 per cent by the local self-governments, 30-35 per cent by the churches, and 25-30 per cent by private people and companies. In 1997 the state budget allocates 2,000 million forints (11.3 million USD) through the National Board for the Protection of Monuments for monument protection purposes.

From this amount the Board can spend 700 million forints on financing or supporting restoration projects. There are several further state and central funding sources available, but all these sources together fill less than 10 per cent of the national need for the maintenance of monuments. A few local governments support preservation projects, too. However, they are important first of all as owners of monuments, and bearers of the responsibility for town planning and town development.

Under the circumstances I have tried to outline it is of outstanding importance that non-governmental organizations and private sponsors join in the restoration and maintenance of monuments. The joining in has legally been made possible by a series of new laws and amendments of former ones, passed gradually from 1987 on.

The Civil Code [1959: IV. tv.] contains the definition and the rules of *foundations* since 1987; the present version of the respective text was established in 1993 [74/A-G §§). The Corporation Tax Law [1996: LXXXI. tv.] makes the activities of foundations and public foundations exempt from the tax under certain conditions. The protection of monuments is among the fields of activity favored by the law. In spite of this, there are still very few foundations in Hungary assisting the maintenance of monuments. The most famous of them is the Grassalkovich Palace Public Foundation, established by state institutions, but also receiving local self-government and private money. With the help of this foundation the central part of the largest Hungarian country house, built by the Grassalkovich Family in Gödöllő in the eighteenth century and used as royal summer residence in the late nineteenth and early twentieth centuries, has been restored. It was opened to the general public as a museum in August 1996, but the completion of the project including the whole complex of the palace still needs a couple of years.

The foundations for the restoration and new public use of the Nádasdy Manor House (illustration at page 52) in Nádasdladány and the Károlyi Manor House in Fehérvárcsurgó were established by the families which had held the possession of the manors before World War II, the Nádasdy Foundation in 1991, the József Károlyi Foundation in 1994. Other foundations have been established for the restoration of churches, among others the Synagogue of Szeged and the Calvinist Church of Szikszó. There are already museums working in the form of foundations, too, e.g. the Hungarian Chemical Museum in Várpalota, housed in a castle of medieval origin.

The Personal Income Tax Law [1995: CXVII. tv., latest amendment: 1996: LXXXIII. tv.] allows that 30 per cent of the donations paid to foundations, public foundations or for other public benefit purposes, among others for monument protection, are deducted from the tax. Individual entrepreneurs can deduct such donations from their gross incomes, within a limit of 20 per cent of the income. However, these measures will only be efficient if a strong middle class is present in the society, the members of which take it for their duty and can also afford to sponsor monument protection and other cultural or social activities. The low standard of life, the high unemployment rate, the day-to-day struggle for life do not subserve sponsorship.

Last year a new law was passed with the aim of increasing the people's consciousness as citizens and tax-payers, and with the aim of encouragement of foundations and related activities [1996: CXXVI. tv.]. The Law makes it possible that people decide themselves on the public use of one per cent of the personal income tax they pay. The protection of monuments is among the public benefit purposes that can be chosen, and foundations can also be named as remittees. The Law came into force with the tax return of this March, the first results will be evaluated by the end of the year.

Associations are legally based upon the Civil Code [1959: IV. tv. 61-64. §§, present text: 1993: XCII. tv. 3. §] and the Law on the Right of Combination and Assembly [1989: II. tv.]. Only a few of them devote themselves especially to the protection of monuments, e.g. the Association of the Friends of the Royal Palace [of Gödöllő] with its more than 100 members.

Much more significant are the town and village protecting associations, which already have a long tradition in Hungary and form a country-wide network with a national federation (Hungaria Nostra). They promote monuments and above all local protection in the given settlements by means of voluntary work, dissemination of knowledge, and sometimes by pressure making, too. (The local protection of elements of the immovable cultural heritage is a voluntary activity, undertaken by more and more local self-governments - formerly local councils - since the 1970s. The local protection serves the preservation of such buildings or groups of buildings which do not meet the requirements for being listed as monuments but are important for the given community.)

Though it is not connected with any association, I would like to mention here an event organized by the professional preservationists every year, the Ball to the Benefit of Ill-fated Monuments. The income of the ball is spent each year on the restoration of a minor-sized monument. The third ball of this kind was held on 11 April 1997 and the beneficiary will be a small chapel at Biatorbágy.

Companies can play various roles in the protection of monuments. They are not yet significant as endowers, though a few examples for the opposite can also be mentioned. The period of "wild capitalism" that we are passing through is not favourable for such activities. For sponsorship subject to liabilities the other fields of culture (exhibitions, publication of books, films, TV programs, etc.) seem to be much more effective. As owners and users of monuments, the banks and the insurance companies have to be considered first of all. They like to restore historic palaces and town-houses for their offices: a historic central building or branch office forms part of the image of the company. During the 1980s a lot of country houses and mansions were restored for hotels by companies and individual entrepreneurs, due to a government program, but this course has stopped with the stopping of the special state assistance.

The Civil Code also defines a special kind of company: the public benefit company [57. §, established by 1993: XCII. tv. 3. §]. The public benefit companies are non-profit organizations, and some of their activities - e.g. the protection of monuments - are exempt from the corporation tax. The Royal Palace of Gödöllő Public Benefit Company, being in charge of the Gödöllő Project mentioned twice already, is working in this form, and most recently the Helikon Palace Museum Public Benefit Company in Keszthely, occupying and maintaining one of our most outstanding country houses.

The public benefit company is one of the possible future organizational forms of the aforementioned Institute for the State Care of Monuments which has been established on the model of the *national trusts* working successfully in several countries and of other foreign state or civil institutions with similar duties. The Institute is now maintaining five historic country houses, with the help of a budget coming from the State. Its main ambitions are to enlarge its activity and to draw private capital and the general public into the undertakings.

The legislation and the organization of the protection of monuments in Hungary faces changes again. After eight years of preparation Parliament is just discussing the draft of the new Historic Preservation Act.[2] The bill includes quite a lot of new and progressive elements, among others, the inalienability of certain outstanding monuments owned by the State, the special care of historic gardens, cemeteries, underground remains of built structures or fragments of monuments taken to museums, the principles of financing, and the preservation penalty. Nevertheless, I am not quite satisfied with this bill, because it continues to build upon the rights of the State and the duties of the owners, and does not really strive for cooperation and reciprocity. The local self-governments are given less authority than would be necessary, the civil sphere, the non-governmental organizations are not encouraged at all. In other words, the bill seems to protect the monuments more against the people than with them. I am convinced, and the examples of several highly developed countries show, that the monument protection of the future must be built upon cooperation and the unity of interests.

Footnotes

1 There is a third Hungarian item on the World Cultural Heritage List, too, the building complex of the Benedictine Abbey of Pannonhalma.
2 The act was passed on June 10, 1977 and will come into force from January 1, 1998 as 1997: LVI tv.



GIDEON KOREN

Legal Forms of Sponsorship in Israel

The State of Israel is barely 50 years old. However, the land of Israel has a heritage dating back centuries. The history of the country stretches over a period of some five thousand years. During this time the land of Israel was governed by many different nations, with each one leaving its imprint on the legal system. Due to this extraordinary history, the legal situation in Israel, in any field, is difficult to understand without describing, at least in brief, the "background" of the origins of the legal system. This is especially true when discussing real property laws.

Between the years 1516 to 1917, the land of Israel was part of the Ottoman Empire. The Ottomans legislated the main real property law in 1858. Its main effect was to divide real property into five categories, each one subject to different rules. Such a system was suitable for the primitive agriculture society that was governed by the feudal Ottoman structure of that time.

This law was amended and totally changed in Turkey years ago. It is a historical curiosity that today the only recognizable remains of this law are within the Israeli legal system. The main reason for this is the legal system that existed in Palestine under the British Mandate, between the years 1917-1948. The mandatory legislator left the Ottoman laws "as they were" until and unless changed by new statutes. In some fields new ordinances were legislated, introducing into the legal system "norms" based on the common law tradition. In 1922, a new ordinance established that any "gap" (lacuna) in the local law would be "filled" by referral to the English legal system. Due to the fact that the Ottoman legislation was not very developed or comprehensive, a substantial amount of legislation was "injected" into the legal system as a result of this ordinance.

In 1948 the State of Israel was declared and the war of independence broke out immediately. The new government had to deal with fending off the attacks on the fledgling country and had little time for legislating. The government did pass one main ordinance. It stated that all the mandatory statutes would stay in effect as long as they did not contradict future Israeli statutes. Therefore, the 1922 mandatory ordinance remained influential on the Israeli legal system for more than 30 years, until the Israeli parliament decided to abolish it in 1980. Even then, the new statute declared that the "gaps" filled in accordance with the 1922 ordinance, i.e. by referral to English Law, would remain so filled.

At the same time, the Israeli parliament was very active in legislating new statutes in all fields. Some of the new statutes enacted were modeled after continental laws. Others followed the common law traditions, while others still were based upon American concepts. In some cases, it is fair to say that the legislator referred to no source other than his own creativity (or imagination).

Thus, finding an answer to a simple question, or describing the legal situation regarding a specific issue can be rather complicated. Sometimes this may seem to be very "unofficial" to those accustomed to a more "mature" and comprehensive legal system.

Background

Many will agree that the best example for the complexity of the Israeli legal system is real property law. Here one can find a microcosmos of almost every traditional legal system. The "Land Law" is a modern Israeli law, yet some questions are still governed by Ottoman rules. Contract law, trust law and the law of gifts are based upon continental concepts. The law of association and company law are based upon common law traditions, while administrative law is based on the American concept.

Consequently, even a simple concept like "preservation" does not have a single specific or clear expression in Israeli legislation. Upon perusal of the Israeli legislation, one can find that in addition to"preservation" the following expressions are mentioned or applied too: "conservation", "stabilization", "maintenance", "consolidation", "restoration", "rehabilitation", "re-adaptation", "heritage conservation", "prevention of deterioration", "reconstruction", "replication", "reconditioning", "reassembly" and "reproduction". Within the scope of this paper, it will be impossible to describe the legal connection or the specific statute related to each expression. However, it should be clear that dealing with preservation and trying to promote it within the context of all the different legal wording is the basis of a lot of confusion and uncertainty. The problem is aggravated due to the youth of the Israeli legal system and its understandable relative underdevelopment.

Therefore, taking a stranger to the Israeli legal "garden" for a stroll along its paths is not easy. I will try to do so by first demonstrating that private participation in the preservation of some sites is not much encouraged, because of specific statutes. Second, I will explain why some of the legal forms used in other countries to promote private participation in preservation are not applicable to buildings and sites in Israel. Third, I will mention the legislative framework for dealing with preservation – The Law of Planning and Building. Finally I will discuss tax incentives for private participation in the preservation of buildings and sites in Israel.

Antiquities

The building culture in the land of Israel of ancient times is anchored in the "Law of Antiquities", which recounts and guarantees the continued existence of buildings and sites established up to the year 1700.

This law placed an official government organization – the Antiques Authority – in charge of all antiquities. This authority is financed in the state budget. In general, wherever an antiquity is found or excavated in Israel, it is automatically "owned" by this authority, and placed under its control and obligation, thus opening no gap for private participation in dominating or even influencing the destiny of the site.

Trust

Israeli law defines a trust as the duty imposed on one party to hold or otherwise deal with assets under its control for the benefit of another party or for some other purpose.

The *law of trust*, as its name suggests, introduced and regulated various forms of trusts resembling the Anglo-American model. A trust has no necessary form, and no particular procedure is necessary to form a trust that falls within the law. Trust purports to cover any situation in which someone has the power to deal with property, not for his own benefit, but for the benefit of someone else. It is not possible to dwell in more detail on the scope of this law, but in general an Israeli trust has the following features:

a) The trustee is endowed with control over the assets but there are no particular conditions as to the manner of control.
b) The trustee must exercise his control over the assets for the attainment of the purpose of the trust. Thus, a trust will be valid and enforceable where there is a definite beneficiary. It will also be valid where there is no definite beneficiary, as long as there is some clear purpose to the trust.
c) Any legally binding relationship, whatever its legal source, which imposes those duties on the trustee, may serve as a basis for the creation of a trust.

As may have been noted, there has been no mention of the term settlor. A settlor is a necessary party to a voluntary trust. He is the creator of the trust. However, the Israeli concept of trustee also covers relationships where there is no settlor. Thus,under the definition of trust fall all statutory fiduciaries, many of them appointed by the court, such as guardian, administrator of the estate of the deceased, liquidator of a company, etc.

The above mentioned conditions are not necessarily suitable for the preservation of buildings and historic sites. Many sites require significant limitations to be imposed over the so-called "control" the trustee is endowed with, to the extent that the trustee may not affect the way the trust assets will be dealt with; in fact, the "purpose" of trust may be in contradiction to the purpose of preservation and the beneficiary may even be obligated to object to such preservation.

It is also important to note that whether a trust arises within a certain legal relationship is not subject to the will of the parties: the parties are not at liberty to decide whether the law will or will not prevail. It is the contents of the relationship that should reveal whether, in that relationship, there arises a trust. Therefore, parties may assume to promote the preservation of a site by creating a trust, but eventually will fail to do so.

When the trust is to be carried out within the life of the settlor (*inter vivos*), control over the assets which are to become the trust assets should be given to the trustee. Therefore, owners of sites are quite reluctant to give away every possible influence on the site during their lifetime. On the other hand, if the trust is to be carried out only after the death of the settlor (*mortis causa*), it is considered to be a will; the deed must be in the form of a will, anyone may object to its execution, based on different arguments, and again, there is no certainty of success.

Another problem in using trust for the purpose of preservation relates to the beneficiary. Most of the duties of the trustee are more connected to private interests than to a situation, such as in preservation of sites, where the beneficiary is, usually, the public as a whole. Therefore, the conclusion is that Israeli law serves as an effective instrument mainly for fiduciary arrangements and is not so effective as a legal form for preservation.

Public endowments

A public endowment is a legal form "close" to a trust, of which one objective is the furtherance of a public purpose. The term "public" is to be contrasted with "personal". The meaning of the word public is that the beneficiary is not a particular person or a certain institution. The word does not need to refer to the public as a whole. It can also refer to a specific group of persons with a particular characteristic, for example, a group of handicapped persons.

Under the Trust Law, a trust, one of the objectives of which is the furtherance of a public purpose, should be registered. In the leading precedent connected to public endowment, the court held that a public endowment is comprised of four elements: the expression of the creator's intent to form a trust; the specification of the objectives of the trust, including the beneficiaries or the purposes of the trust; the identification of the trust properties; and the definiton of the trust terms, *inter alia*, under which conditions properties or benefits should be transferred, the duration of the trust and the conditions for its termination.

Therefore, a public endowment may be utilized as a legal form for a variety of interests, including preservation. Nevertheless, the problems mentioned above apply to many public endowments as well, making this legal form not always applicable for encouraging private participation in preservation.

Association and foundation

An association or a foundation, as such, is not a legal form in Israel. To become a legal form, the association must "dress" itself to be a recognized legal entity, such as a company, private or public, a partnership, a cooperative society, or an *"Amuta"*, Israel's main legal form for a non-profit organization being none of the above mentioned legal forms. Until they chose one of these legal forms, the association or foundation has no legal entity but the private one of the people creating it and participating in its activities. Therefore, we shall have a brief look into the different forms which do exist.

Companies, cooperative societies and partnerships

The company is Israel's most common form of business organization. The founders of a company must create a memorandum of association, which will include the purpose for which the company was founded. The characteristics of an "Israeli" company, which differ from companies elsewhere, have no application connected to public participation in preservation.

Cooperative societies have long existed in Israel. Their aim is to further the particular interests of their members. They cover a wide range of economic activity: transport (the major public bus firms), marketing, agriculture (moshavim and kibbutzim) and loan societies.

A partnership is defined as a body of persons operating a business for purposes of deriving a profit. A corporate body may be a partner, general or limited. Partnerships are established on the basis of contracts between partners. These contracts may be oral, although this is rare. Partnerships may be general or limited.

We included companies, cooperative societies and partnerships in one chapter, since their common goal is to maximize their profits or the profits of the private people incorporated. This goal usually contradicts the preservation of sites, which demands expenses and funds and does not contribute to profit. Therefore, in some cases, the director of a company may even find himself liable towards the shareholders, for spending money for a cause not related to maximizing the profit. Even when in recent years directors, owners or partners felt safe enough to spend money for preservation of buildings and sites, they did so for a profit (-such as increasing the value of buildings owned by them) or in cases where the amount spent on the preservation was tax deductible.

Planning and Building Law

Due to the fact that the "traditional" legal forms are not sufficient for the preservation of buildings and sites, a search started for a suitable "host" for dealing with the legal needs of preservation. The partial solution was found eventually in the Planning and Building Law. This law's main thrust was to establish a network of national, regional, local and detailed planning schemes and to ensure that all building and development took place within the framework of an approved scheme. It is interesting to note, with respect to the stability of the Israeli legal system, that this law has already been amended not less than 43 times.

Even though this law established a relatively complex planning bureaucracy from the government itself and "down" to ministers, councils and commissions: national, district and local, it was felt that within its scope, many solutions to problems connected to preservation of buildings and sites may be found.

In 1991 the Israeli parliament passed an amendment to the Planning and Building Law. The amendment deals with the preservation of sites. Under this amendment, governmental authorities or interested parties, such as owners of land or organizations recognized for this purpose, may propose that a site should be preserved. The definition of "site" is "a building, or group of buildings or a part of them, including their immediate surroundings, which in the opinion of a planning institute are of historical, national, architectural or archaeological importance." The amendment directs every local authority to establish a committee for the preservation of sites. All such committees are to prepare a list of sites worthy of being preserved within the local authority's jurisdiction and advise various government bodies with respect to the preservation of such sites. In addition, the committees have the authority to prevent immediate damage to or destruction of existing sites, and to expropriate sites worthy of preservation. Once a proposal for the preservation of a

site is submitted, such a fact is published, and restrictions are placed upon the granting of building permits in connection with the site for a period of one year. The period of the restrictions may be extended for an additional year. A proposal for the preservation of a site must be deposited, and notice of such sent out to all owners or possessors of the site. If the owners or possessors do not act upon receipt of such notice, they will be stopped from voicing objections at later dates. Once a proposal for the preservation of a site is submitted, the owners or possessors of the property must act in accordance with the proposal should they wish to change or use the site, inside or outside.

Funding problems connected to proposals for the preservation of sites are dealt with very carefully in this amendment. There are four categories of funding problems connected to the preservation of sites, according to this law:

1. *Monetary damages awarded by law*
By law, there is a right to compensation for devaluation of property as a result of the approval of a scheme. Property is not considered devalued should the proposal contain certain conditions, such as restrictions on changes to regions and the use of land within them, and restrictions on changes to uses of buildings. No compensation is paid if the infringement is not unreasonable in the circumstances and it would be unjust to award compensation.

The courts in Israel have concluded that there is a difference between compensation due for devaluation of property and compensation due for expropriation of property. Since the ultimate decision as to the entitlement to compensation rests with the courts, and since such a procedure may take many years, a local authority may not estimate correctly and budget for the cost of awarding compensation. Consequently, the local authority may decide that the cost of preservation is unjustified and therefore may, at any time, withdraw the proposal or cancel the scheme.

2. *Betterment tax*
The levy of betterment tax serves local councils as a source of funding for preservation activities and as a source for compensating owners of properties of which proposals for preservation have been withdrawn. It does not have an influence on the private participation in the preservation of sites.

3. *Maintenance and renovation expenses*
The committees for the preservation of sites have the authority to interfere with the property rights of landowners and possessors. They must be wary that conditions warranting the intervention of the committee for preservation exist.The first condition is that an engineer of the local council give his or her opinion with respect to the state of the property stating that there is a real danger to the preservation of the site. Then, the committee for preservation will decide if there is in effect a danger to the preservation of that site.

Should the committee decide that such a danger exists, it may require the owners to undertake maintenance work within a prescribed period of time. Should the owners fail to do so, and there is a danger that the site may be destroyed, the committee may undertake such work as is necessary to prevent the destruction of the site. The committee can then, at its discretion, bill the cost of such work to the owners.

4. *Expropriations*
The most serious infringement upon property rights is expropriation. Expropriation is mandated only in cases where the owners or possessors of property have failed to undertake maintenance work necessary for preservation or the prevention of the destruction of the site. Another pre-condition for expropriation is that there exists a real danger that the site will be damaged in such a way as to endanger the goal of preservation. Expropriation may be made to all or part of a site. Since expropriation is such a drastic action taken against owners or possessors of property, it may be done only with the permission of the regional council.

Israeli law provides for the procedure for expropriating land. Once land has been expropriated the local authority may sell it or lease it, on condition that preservation of the site is guaranteed by the buyer or tenant. For a period of 60 days, the previous owners or tenants of the site have the exclusive right to purchase or lease the site, as the case may be. Of course such right is conditional to the same guarantee of preservation noted above. It can be assumed that if the previous owners or possessors did not undertake the actions necessary for the preservation of the site upon being requested to do so originally, a strong guarantee will be requested of them should they wish to exercise their exclusive right to repurchase or re-lease the property.

This new legislation is only six years old, but it already has had its influence on the preservation of buildings and sites in Israel. The main effect of this amendment lies exclusively in the various local authorities. If they wish to provide preservation, this legislation supplies these authorities with additional legal forms to do so. The subject of preservation still depends on the good will and the financial willingness of each local authority. The ones wishing to devote resources to preservation could have done so before the amendment, and the ones reluctant to include preservation on their public agenda are still under no obligation whatsoever to promote preservation. The fact remains that in relation to the subject of this paper, this amendment did not create any significant incentives for private participation in preservation.

Tax incentives

Naturally, the various tax ordinances in Israel do not relate directly to preservation. The basic principle in tax law is, in general, that tax is imposed on all of a taxpayer's income accruing in, derived from, or received in Israel. On the other hand, all disbursements and expenses wholly and exclusively incurred in the production of the income may be deducted from it. This principle applies to private people, companies, and other forms of conducting business alike. In general, "spending" money on preservation cannot be deducted from income, since there is no direct connection between the expense and the production of income, but there are a few exceptions:

First, if the preserved building is owned by the same legal entity putting forward the money for its preservation, the expense will, in general, be tax deductible.

Second, a legal business entity, such as a company, may gain some publicity or "image improvement" in the eyes of the public, as a result of investing efforts in preservation. In general, any amount spent on advertising by the company can be tax deductible. Thus, a company may claim that its involvement in preservation improved the public attitude towards the company and should, therefore, be recognized as advertising. Since the company will still have to prove the existence of a direct connection between the expense and its income, it may find itself, at the end of the day, with an expense not recognized by the tax authorities. Therefore, a company, or any other legal form of business, will probably prefer to invest in a different area of public benefit, such as sport or cultural activities sponsorship,where its expense is more likely to be tax deductible.

Third, according to the tax ordinance, contributing money to a non-profit organization is tax deductible. A few conditions limit this option:

1. The organization must be a separate legal entity. As we already mentioned, in relation to some buildings and sites which need preservation such a legal entity does not necessarily exist.
2. The legal entity, mainly the endowment or the *"Amuta"*, must be formed by private individuals, interested in promoting the preservation and creating the legal entity others can donate money to. There is no incentive for establishing such a legal entity, and no way to enforce the existence of one.
3. If the entity is established, it has to be recognized by the tax authorities as a non-profit organization. There are a few conditions the entity has to fulfill to get such recognition, some of which limit the scope of activities such an entity may exercise.
4. The amount one can contribute to a non-profit organization is limited, both by the total amount and by the percentage of the contributor's income, which may be tax deductible. These conditions vary from one legal form of the contributor to another.
5. The non-profit organization may not be involved in any "business-like" activity. If it conducts any activity which is done by business entities as well (such as selling products, tickets, etc.), it may lose its recognition. One of the outcomes of this rule is that, in general, the non-profit organization has no "V.A.T. income" from which V.A.T. expenses may be deducted or set off. Thus, the cost of the preservation itself, borne by a non-profit organization, is generally much higher.

Nevertheless, using a non-profit organization, mainly in the form of *"Amuta"*, is the most common way of enjoying private participation in the preservation of buildings and sites in Israel. Due to the fact that there are a few disadvantages to this form as well, new ways are being sought all the time.

This year another amendment to the Planning and Building Law is being prepared. It includes new ways to encourage preservation, with some emphasis on ways to encourage private participation in the preservation of buildings and sites.

Among the suggestions being discussed are the granting of an exemption from municipal taxes, reducing betterment taxes, recognition of expenses connected with preservation for deduction from land appreciation tax levied on the sale of a property and earmarking of building license fees collected for creating a special budget for preservation.



TOSHIYUKI KONO

The Public Benefit Corporation and Taxation in Japanese Law

I. The Public Benefit Corporation in Japanese Law

1. The principle of the Japanese Civil Code

Chapter 2 in the General Rules of the Japanese Civil Code (§§ 33-84) as the fundamental corporation law in Japan distinguishes two types of corporations. One is the "for-profit corporation" to which the Japanese Commercial Code is applicable (§ 35). The other is the "public benefit corporation" which is dedicated to public interests such as religion, charity,and science (§ 34). Most of the provisions in chapter 2 of the Japanese Civil Code are concerned with the latter type of corporation.

When one category is "for-profit", its counterpart should be "non-profit". However the Japanese Civil Code takes the position that only the public benefit organization among all types of non-profit organizations can be incorporated. In other words, Japanese Law does not know the non-profit corporation as a legal form. All other non-profit organizations therefore remain as unincorporated associations: These organizations cannot legally be the contract party, nor the owner of real estate. Although some provisions in the Japanese Civil Code could apply *mutatis mutandis* to these organizations, there is no appropriate legal framework for them.

The Japanese Civil Code distinguishes the public benefit corporation further into two categories depending upon the nature of the organization: "incorporated public benefit association" and "incorporated public benefit foundation". The core of the first one should be individuals or organizations that form a group of people for the same purpose, whereas certain assets for specific purposes is the essence of the latter.

Besides the public benefit corporations based on the Japanese Civil Code, there are several special laws such as the Religious Corporation Law, the Private School Law, and Social Welfare Law[1] which are the legal basis for specific types of public benefit corporations. In practice they are the majority. Public benefit corporations based on the Japanese Civil Code make up only ca. 10 % of 230,000[2] public benefit corporations in Japan.

2. How to incorporate the public benefit corporation

When one wants to incorporate a public benefit corporation, one must apply for the permission of the administrative organ in charge of the field to which the purpose of the corporation is related. For example, a public benefit corporation for the purpose of education must be permitted by the Ministry of Education[3], while a public benefit organization for safe traffic must be permitted by the Ministry of Transportation. If the purpose of a public benefit corporation covers these two fields, then it must be permitted by both. Giving

permission means that the administrative organ exceptionally allows incorporation. It shows that the administrative organ has very wide discretion and that it has strong influence on the incorporation procedure. The "public benefit" must be, for example, clarified in each case through discussion with the administrative organ. In practice, the incorporation procedure starts with an informal meeting with the administrative organ and the applicant must follow the instructions of the organ. This procedure usually takes one year. To get permission to incorporate, it is often recommended that the organization must have started public benefit activities two or three years prior to the informal meeting[4]. It is also required that the organizations have sufficient capital at the time of the application. For example, to incorporate an incorporated public benefit foundation, 500 million Yen (ca. US$ 4 million) is usually necessary.

3. Advantages and disadvantages

When a non-profit organization is incorporated as a public benefit corporation based on the Japanese Civil Code, it will enjoy the following advantages:

a) High social reliability – It is shown in the fact that the presidents of many public benefit corporations are well-known artists or business people. The social reliability may increase the chances to receive donations from the private sector or subsidies from the State or local governments.

b) Juridic person – The public benefit corporation can register properties with its own name and become a contract party. The only exception in this context is the Code of Civil Procedure. Even an unincorporated association can sue and can be sued (§ 29 Code of Civil Procedure).

c) Tax privileges – This will be described in the following chapter of this paper.

On the other hand, the administrative organ controls not only the incorporation procedure, but also its public benefit activities after being incorporated. The public benefit corporation must annually produce for the administrative organ a plan of its activities and budget for the coming year, and a report of its activities and finances for the previous year. In addition, it will be inspected by the officers of the administrative organ every two or three years[5].

II. The Public Benefit Corporation and Corporate Tax

Public benefit corporations enjoy several tax privileges such as limitation of taxable income, lower tax rate, exemption from property tax, consumption tax, and resident tax. This paper focuses on tax privileges in the Japanese Corporate Tax Law.

1. Not taxable income

For certain types of organizations the Japanese Corporate Tax Law imposes corporate tax only on "for-profit business income", which is practically equivalent to "unrelated business income[6]" in the US law (§§ 4, 7). These organizations must be listed in the Appendix List No. 2 of the Japanese Corporate Tax Law. Even if an organization carries on public benefit activities, it cannot enjoy this tax privilege unless it is listed. If it is listed once, however,it enjoys the tax privilege, even if it is doubtful that the organization's activities are really for the public benefit[7]. The incorporated public benefit association and the incorporated public benefit foundation based on the Japanese Civil Code are included in the list. The income from public benefit activities is therefore not taxable.

The same rule applies also to foreign public benefit corporations which have been incorporated according to foreign laws (§ 10): When a foreign corporation is equivalent to one of the listed organizations in the Appendix List No. 2, and when the Minister of Finance appoints it as being eligible for the tax privilege, it enjoys the same privilege.

Under the current rules of the Japanese Civil Code, many non-profit organizations remain as unincorporated associations. The Japanese Corporate Tax Law, however, considers these organizations as "incorporated", as long as they determine their representative or administrator (§ 2, 8). In this case, their for-profit business incomes are taxable.

2. For-profit business income

Until the corporate tax was imposed on the for-profit business income of religious corporations in 1920, any kind of income of public benefit corporations was not taxable. After WW II, the situation of public benefit corporations was investigated for the reform of the entire taxation system. A report of this investigation says "many public benefit corporations make profit through for-profit business and compete with for-profit corporations and individuals ... The income from for-profit business is spent for developing the business or having fun... The for-profit business income shall be taxable."[8] According to the legislator's explanatory note, due to the drastic inflation after the War many public benefit corporations had to start or enlarge their for-profit business. Although this type of business is inevitable for them, if any income of public benefit corporations were not to be taxable, it would be too unfair for for-profit corporations. To avoid such a situation and to adjust the for-profit business of public benefit corporations and the normal business activities of for-profit corporations, the corporate tax should be imposed on the income of public benefit corporations. Due to practical reasons, however, the tax office does not check activities of each public corporation. Instead all public benefit corporations must pay corporate tax for the income from their for-profit business.[9] Since this business has a different nature from the regular business of normal for-profit corporations, a lower tax rate is applicable. This lower tax rate is 27 % since 1990, while the tax rate for for-profit corporations is 37.5 % (§ 66).

According to § 2 no. 13 of the Japanese Corporate Tax Law, "for-profit business" is defined as the business which is "listed in an ordinance" and "regularly carried on" at its "place of business". § 5 of the Execution Ordinance for Corporate Tax Law lists up to 33 kinds of business[10]. Every for-profit business must be checked as to whether it falls under one of the 33 types[11]. "Place of business" could be an already existing facility. Also a touring theater company has a place of business.

"Income" from a for-profit business includes not only active income from business activities, but also passive income like interests from savings accounts or dividends. Only passive income from a for-profit business is taxable.

3. Several problems under the current system

a) Public benefit corporations are non-profit organizations and therefore the lower tax rate is applicable. In practice, misusing this privilege, public benefit corporations sometimes make large profits and distribute them to their members. For example, the president of a private college received ca. US$ 1.5 million when he resigned his post due to his scandals.[12] Neither the corporation law nor the tax law has any provisions to check such cases.

b) The lower tax rate is applicable to all public benefit corporations. The size or the content of activities is not taken into consideration. In practice therefore a small publishing company has to pay tax based on a higher tax rate than the publishing department of a large size religious corporation.

c) The financial and fiscal situation of public benefit corporations is not well disclosed, especially because passive income is not transparent. In one case a foundation whose main purpose is granting research scholarships offered less than US$ 100,000 in scholarships as the total. But this foundation had more than US$ 100 million in its fund[13]. This example suggests that an appropriate disclosure procedure is necessary.

III. Donations to Public Benefit Corporations and Tax

In this chapter I will briefly explain the tax imposed on the donor who makes donations to public benefit corporations. We have to distinguish the following two cases.

1. Corporations as donors

In this case we need to check the Japanese Corporate Tax Law. This Law classifies two types of donations – regular donations and specific donations – and allows tax deduction.

a) The limit of the tax deduction in the case of a regular donation is 0.5 x (the amount of the donor's capital x 0.002 + its annual income x 0.025).
For an enterprise whose capital is US$ 3 million and income is US$ 1 million, donations up to US$ 15,500 are tax deductible.

b) The limit of the tax deduction in the case of a specific donation:
- Donation to the State: the whole amount of the donation;
- Donation to public charities: this specific donation can be made besides a regular donation, i.e. in the above-mentioned example, US$ 15,500 can be tax deductible. Public charities are corporations which make special contributions to the promotion of public benefits (§ 37, 3 no. 3). Originally it was intended to support research in the field of natural science through giving more generous tax deduction to donors. If a corporation wants to enjoy this privilege, it must be listed in § 76 of the Execution Ordinance for Corporate Tax Law. Now this list covers not only research institutes for natural science but also various fields such as support of international students, protection of cultural heritage, and legal aid. This system encourages philanthropy in Japan[14].

In this context, I would like to mention a special rule for public benefit corporations. When a public benefit corporation has a for-profit business and makes an expenditure for its own public benefit section from its for-profit business section, this expenditure is considered as a donation and is tax deductible up to 50 % or 20 % of its annual income (§ 37, 4).

2. Individuals as donors

In this case there are two possibilities of tax deduction.

a) The first possibility is based on the Succession Tax Law. When somebody obtains assets through a succession or a testamentary gift, and he donates the assets to public charities within 6 months, the whole amount of the donation is tax deductible.

b) The second possibility is based on the Income Tax Law. Regular donation by individuals is not tax deductible at all. Only the specific donation to the State or public charities is tax deductible up to the limit, i. e. the annual income of donor x 0.25 – 10,000 Yen. When an individual donates real estate, or sells it for less than half of its market value, this transaction is considered as a sale with the market price. These rules do not encourage donations by individuals.

IV. Recent Movements in Corporation Law

The 1995 earthquake in Kobe caused tremendous material and mental damage to the residents of the Kobe – Osaka area. However there was one pleasing phenomenon: A large number of volunteers gathered in Kobe from all over the country and helped damaged residents for weeks. Since then, many volunteer groups raised their voices requesting the creation of an appropriate legal system for them. As already mentioned, under the current system for non-profit organizations only one legal form is available, i.e. public benefit corporations based on the Japanese Civil Code or special laws. Due to the strict control of administration, and due to the amount of required capital, many non-profit organizations cannot or do not want to become public benefit corporations. The volunteer groups, however, want to enjoy tax privileges and have social reliability by being incorporated. With this background, the coalition of the three governing parties[16] made a Draft of the so-called Non-Profit Organization Law[17]. During the Diet session which is currently running, this Draft will be subject to debate. And hopefully it will pass the Diet. The earthquake pushed not only the land in Kobe, but also the Diet in Tokyo. The following is a summary of the contents of this Draft with some comments.

The purpose of this Draft is to support citizen activities through incorporating citizen activity organizations and to contribute to public interest (§ 1). The citizen activities shall be voluntary and non-profit activities to promote public in-

terests. Anybody shall be able to participate in these activities (§ 2, 3). To incorporate a citizen activity organization, certain documents for application shall be produced for the administrative office in charge. And the incorporation shall be authorized by the office. In principle it shall be authorized within three months after the application. After being authorized, it shall be registered (§ 5). The incorporation procedure is completed with this registration. After being incorporated, the corporation for citizen activities shall disclose the information on its activities and financial situation and report it to the administrative office in charge (§ 9). If the report is not made within three years, the authorization shall be annulled. The administration office can control the corporation to some extent (§ 10). The income of the corporation is not taxable except for the income from its for-profit business (§ 13).

When this Draft passes the Diet, we will have a new legal form for non-profit organization, in which the procedure is easier, the administration office controls only in certain circumstances, and the requirements for the incorporation are much more generous. The Draft requires, however, "public interest" as the purpose of the activities; it would be difficult to explain why the Draft could offer the tax privilege without any public interest related requirement, as long as the Japanese Corporate Tax Law gives the same tax privilege only to public benefit corporations. On the other hand it should not be interpreted as narrowly as "public benefit" in the Japanese Civil Code. Otherwise the Draft would not bring anything new. The requirement "public interest" must be rather loosely interpreted. This is the reason why I translated this requirement not as "public benefit", but as "public interest", although the Draft uses the same Japanese word *"koeki"* as that in the Japanese Civil Code and the Japanese Corporate Tax Law.

Summary

In Japanese law the most popular legal form for non-profit organizations is the public benefit corporation under the Japanese Civil Code and several special laws. When an organization is incorporated as a public benefit corporation, it always enjoys tax privileges. This formal and inflexible system sometimes causes unfair results. To create a new type of corporation for non-profit citizen activities, the so-called NPO-Draft was made and may pass the Diet during the current session.

Footnotes

1 Medical corporations based on the Medical Corporation Law are also public benefit corporations. In the Corporation Tax Law, however, they are treated as a type of for-profit corporation.

2 Public benefit corporation based on the Japanese Civil Code: 25,605 (1994); School Corporation: 7,583 (1996); Social Welfare Corporation: 15,210(1996); Religious Corporation: 184,021 (1995).

3 When the activity of an organization is limited to one prefecture, the governor of the prefecture gives the permission.

4 Takako Amamiya, The Incorporation and the Management of the Public Benefit Corporation (1994), pp. 52-54.

5 Supra. p. 246.

6 The Japanese Corporate Tax Law distinguishes the for-profit business activities of public benefit corporations from their activities for public benefit. The for-profit business activities are restrictedly listed in an ordinance. The Japanese Corporate Tax Law does not examine in each individual case if a business is "unrelated" to the original purpose of the corporation.

7 This is the difference between "unrelated business income" criteria in US law and the Japanese system.

8 Cited in Koji Ishimura, The Comparative Study of the Public Benefit Corporation Taxation Structure in the US and Japan (1992), p. 205.

9 Supra note, pp. 208-209.

10 (1) Sale of goods, (2) sale of real estate, (3) finance, (4) lease of goods,(5) lease of real estate, (6) manufacturing, (7) communication, (8) transportation, (9) storage, (10) contract for work and service, (11) printing, (12) publishing, (13) photograph, (14) lease of space, (15) hotel, (16) restaurant, (17)arrangement, (18) agency, (19) broker, (20) factor, (21) mining, (22) collecting stone and sand, (23) bathhouse, (24) barber, (25) beauty salon, (26) entertainment management, (27) playground, (28) amusement park, (29) medical care, (30) teaching or examination, (31) parking, (32) guarantee of debts, (33) offering intellectual property. In addition to these, some business accompanying one of the 33 types of business is considered as a for-profit business. For example, the organization of lectures by a publishing company is considered for-profit business, as long as the lectures are related to the publications of the company.

11 There are some exceptions. For example, the medical care of the Japan Red Cross is not considered as for-profit business.

12 A case cited in supra note (7), p. 108.

13 Cited in supra note (7), p. 254.

14 The Japanese Corporate Tax Law knows also specific charitable trusts (§ 37, 5 cf. charitable trust in general § 66 of Trust Law). § 77-2 of the Execution Ordinance for Corporate Tax Law lists only 11 types of specific charitable trusts, while 74 types of public charities are listed in § 77 of the Execution Ordinance for Corporate Tax Law. It shows that charitable trust is not popular in Japan. One of the reasons is the lack of interest of legislators: There was no provision on charitable trust in the draft of Trust Law, when the draft was made in 1919. Then some provisions were inserted in the last moment without enough discussion at the Diet. In addition, neither the administrative organ nor the trust bank was interested in promoting this system. Also the tax privileges of charitable trust are much smaller than those of public benefit corporations. See Minoru Tanaka, Public Benefit Corporations and Charitable Trust, p. 18, p. 22.

15 50 % applies to school corporations and social welfare corporations, while 20 % is applicable to all other corporations.

16 Liberal Democratic Party, Socialist Party (at that time, now Social Democratic Party), and Pioneer Party.

17 Its provisional title is the Draft of Citizen Activity Promotion Law.



Andis Cinis

Legal Structures of Private Sponsorship and Participation in Conservation and Maintenance of Monuments in Latvia

There are some allowances in the Latvian tax laws which can be used for protection of our architectural heritage. This report will discuss what allowances are applicable to cultural and architectural monuments, how to apply them and how it works in practice. Finally, some suggestions given by conservators to the Latvian authorities will be explained.

Before starting on the main topic, it would be useful to mention some aspects of the current legal and tax situation in Latvia. Latvia is a Baltic country struggling hard to transform its economy from the controlled socialist state monopoly to a free market. Some first achievements have already been made.

There are three key aspects of this transition period. First, in the early stage of economic development a number of new immensely rich companies appeared. Many of them were conducting illegal or unethical business and went bankrupt, causing financial crisis. Second, the state budget had to establish pension funds to ease social strife in society. That consumes a large proportion of the State budget. Third, socialist rule has distanced people from power. Therefore the 'state' is widely considered as something which is nobody's responsibility. That is why people shy away from declaring their true income and paying taxes, a habit which Latvia will have to overcome.

All these circumstances have made the transition period slower. Tax authorities are desperate to collect money for the state budget. In this situation it is necessary for conservators to seek to secure positive tax policies for the protection of monuments.

Allowances in Latvian tax laws

There are just three tax concessions related to the protection of monuments in Latvian law presently. The listed properties can be fully exempt of two taxes, the Land Tax[1] and the Property Tax[2]. The third allowance concerns donation to, or sponsorship of, a public organization related to architectural monuments.

Tax allowances on sponsorship or donation are allowed by Latvian law on the income tax[3] of companies. Companies may choose what to support financially, but allowances are only given for the support of certain organizations. A list of these organizations is approved by the Ministry of Finance, and it is updated regularly as new applications are received and approved. Any cultural, educational, scientific, religious, sports, charitable, health and environmental public organization, as well as organizations financed by the state budget can apply for this special status. The law provides for an allowance on the company's income tax that equals 85% of the sum of donation.

Among public organizations a special status is given to three organizations of national importance, namely the Culture Fund, the National Olympic Committee and the Latvian Children's Fund. The allowance for sponsors of any one of these three organizations is 90% of the donation.

The law has ensured the state budget against diminishing cash flow from taxes in case of unpredictably active donation or sponsoring. The allowance can be gained for any sum that does not exceed 20% of the company's income.

Application of tax allowances

1. Property Tax and Land Tax

Latvia reestablished its independence in 1990 and that is when most of the first laws were issued. Several changes have been made in the tax laws since then.

In 1990 most properties were denationalised, and most of them were in a poor condition. Consequently, the property tax was set relatively low for there was no real income from property. During the next four years the State Inspection of Monuments sent a list of historical buildings to the tax authorities to release the reestablished owners from property tax. Presently the situation has changed since some of the properties have been renovated and become profitable. Now owners are asking the monument authorities for help in getting tax allowances or exemption. Presently the property tax is still rather low and the allowance is not essential, but the tendency for the tax rate is to grow, and this can become an effective tool for protectionists to supervise improvements made by the owners of listed properties.

Quite similar is the matter with the land tax. The tax rate still is small enough to be a relatively small payment. Nevertheless owners are interested in getting tax exemptions. The wording in the Land Tax Act makes this difficult. While the property tax law states clearly that any listed property is exempt from property tax, the land tax law states that the exemption can be granted for land which cannot be commercially used and on which objects of cultural and educational value are located. It is difficult to draw the line as to whether the building can be considered an educational or cultural object or not. This formula has appeared in the law as recently as 1993 to replace the simpler version of exemption being granted on all land properties 'on which a listed building is located'.

As asserted by the State Inspection of Cultural Monuments, consideration of applications for land tax exemption is up to each branch of the Inspection of Finances. They can choose whether to grant the exemption or to refuse it.

2. Donations and sponsorship

There are several aspects that are important concerning donations in general and for cultural monuments in particular in Latvia. First, although the list of organizations allowed to receive donations contains more than three hundred entries, just a small number of them are related to cultural heritage. Among the latter just a few organizations can be expected to

take care of a particular monument. Second, the status of these organizations is clearly public and most of them are aimed at general matters. This means that the money is not directed specifically at monuments. Third, Latvian society still has to overcome social problems and therefore it is unlikely that donations will be made for a particular building, unless it is very famous or otherwise regarded as important.

3. To whom donations can be given

Among more than three hundred names on the list of the Ministry of Finance, one can find just about two dozen related to cultural matters. Most of the organizations are dedicated to sports and charities in support of retired people of some specific profession. The organizations dedicated to preserving an object are, for the most part, congregations of some specific parish. We can but wish that the funds will be used on renovaton of their church. Part of the money will surely be used for support of their elderly members.

So it is clear that only a small proportion of funds donated by local companies in general can be targeted for some specific monument. Nonetheless practice shows that publicity helps to attract the necessary donations.

One such example is the Latvian National Opera House which was recently reopened after a reconstruction project that lasted for six years. The Opera House is a listed monument. Many companies have donated funds for reconstruction. There were sponsors also for the staging of Latvian classical opera as a premiere for opening after reconstruction. This event was so anticipated that the public was actively interested. Interest in the Opera House is still high. The Latvian Beer Brewery sponsored five to seven thousand Lats (multiply by three to get the sum in German Marks) to outstanding Latvian opera artists and theater, and that in itself ensured publicity.

4. Recipients of donations are limited to public organizations

There is another aspect of law which needs to be mentioned. The Opera House is a state property and of national importance and in fact it is not a part of the regular list of organizations allowed to receive donations.

All the public organizations and funds listed in the law are organized to support some wider or smaller public group of people, or aimed at education in some specific field, as for instance the Environmental Club. According to Latvian law, public organizations cannot engage in any commercial activities. The listed buildings in contrast mostly belong to either a natural person or an organization, and it would seem obvious that property is for profit. From this probably comes the principle that Latvian law does not provide for any allowances if a donation is made directly to some listed building since they all belong to somebody who can use them for his own profit. Unique exceptions to this rule can only be churches and some public buildings.

5. The Culture Fund

The Culture Fund of Latvia is an organization of national importance. It was established during the first period of our independence in 1920s. In 1986 it was renewed as a national organization to support various programs aimed at the development of Latvian culture and art. The work of the Culture Fund is organized in programs and people are encouraged to actively participate.

Presently the Culture Fund is one of the organizations able to attract donations and sponsors to their current programs. These consist of various projects for environmental protection and may also include restoration of some specific monument. Sometimes it is possible to use the Culture Fund as a shield to gain donations, although a problem arises here too. This organization also needs funding for other current programs and funds received can be split for several projects within the Fund. This means that the project that attracted the donation in the first place will only retain a small part of it. Besides this, the monument involved should be of some special importance to receive preferential treatment via the Culture Fund.

Is there money for sponsorship in Latvia?

It was shown earlier that Latvian law allows donations, although it is questionable whether there are any available funds for donations. Sometimes one can hear the opinion that there are no free funds in Latvia at present; however this is not correct.

Sponsorship is for revenue – sport competes with culture

In fact sponsorship is carried out considering some kind of revenue. Usually it is intangible, in the form of wide publicity, although there can be a place for financial revenue as well. There are about half a dozen basketball teams in Latvia which are supported by large companies. No doubt large amounts of funds are spent on these teams, for training, travel, etc. There has to be some revenue if huge sums of money are spent.

In fact many auditors have estimated that part of donated funds return to the donors. Although this is being hushed up because it is illegal, it is also well known that sport leaves some financial margin for the donor to retain. Besides the financial benefits which a donor may earn, large intangible benefits exist in sport. The name of a company is being advertised, and it appears everywhere. Have you ever seen this related to monuments?

Donations for monuments

It is difficult for monument protection to compete with the attractions of sport. Sport has dynamics, while monuments are quiet aesthetics. Only a few cases of considerable donations for monuments can be named in Latvia presently. Most of the donors are Baltic Germans who help to retain the heritage of their predecessors. Local companies usually give money just for very exceptional matters. Two cases are given to illustrate this.

Rundale Palace

Rundale Palace is one of the most outstanding architectural monuments in Latvia from the mid-eighteenth century. It is owned by the state and annually has been visited by some two hundred thousand tourists. The state budget covers the most necessary needs of this huge property, which unfortunately is hardly enough for the maintenance of the monument, not to speak of the development of park land and the upkeep of the regular garden. Rundale is a well-known center of restoration, research and collection of historic artifacts. During socialist rule, many fixtures and belongings of Latvia's historic country houses were saved from complete vanishment by the Rundale museum.

Although the number of visitors is outstanding for Latvia, the income derived is small. The price of one or two US dollars for a ticket is hardly enough. The administration of the museum considers that higher entrance fees can diminish the number of local visitors and this would not facilitate development of local tourism. Obviously there is not hope of getting donations from local visitors.

During the last year there have been three cases of donations, twice one thousand German Marks by German tourists and once three thousand German Marks by a German company.

Black Head Society building (Schwarzenkopf Haus)

Another case to show real conditions is related to one of the most legendary structures of Old Riga, which presently is under reconstruction. The Black Head Society building was erected in the early fourteenth century and renovated subsequently many times. During later renovations earlier art pieces were never removed. Finally this structure acquired highly elaborated decoration on the main facade and interior and was considered one of the most outstanding pieces of architecture in the whole Baltic region. At the very beginning of the Second World War the Black Head House was hit by a bomb and burned. After the war everything that could represent German existence in Latvia was removed in accordance with Soviet ideology and the wreck of the building still containing nearly all the facade decoration was demolished.

During the 1980s the rebuilding of this lost monument was already being actively discussed, and in 1995 reconstruction started. Members of the Black Head Society from Germany donated some initial funds. The bulk of funds for construction were given by the municipal enterprise 'The Houses of Riga'. Presently the structure is already roofed over.

There were donation campaigns sponsored by the coffee company 'Meinle'. Anyone who donated could build a brick in the wall of this building. Altogether some 5000 Lats were collected. The biggest sponsor of the reconstruction currently is the Parex bank, one of the largest banks in Latvia. It has donated some 600,000 Lats (approx. 1.6 million DM) for recreation of the lost decoration on the main façade.

Need for more directed policies in tax concessions

Obviously, there is money to donate in Latvia. The most important task is to build a policy which can attract more funds for cultural needs, particularly for the cultural heritage.

Monuments cannot advertise to attract sponsors like sport teams, travelling around the world. Therefore, the only way is to modify the existing tax allowances for companies so that larger tax breaks can be granted for donating funds for conservation works on Latvia's architectural heritage. There are several arguments to back up this suggestion.

First, tourism is considered one of the most important directions for Latvia's economy, with the hope of attracting people because of the relatively unspoiled natural environment. Architectural monuments are an integral part of the infrastructure. We have the environment but we need investments, as well. Proposed tax allowances can become an important factor to facilitate investments in this sector of the state economy.

Second, the number of monuments of state importance which have real development schemes is small. Consequently this tax break cannot create real losses of income in the state budget. The average condition of monuments in Latvia is poor and investments are urgently needed. If this situation continues there will be nothing left to repair or preserve and part of the attractiveness of Latvia will be irreversibly lost.

Special conservation investments

As I stated before, there are no tax allowances for donations to a listed property. There are also no tax allowances for investments by the owner of a listed property in Latvia at present. It appears that conservation authorities are losing a potentially valuable tool to cooperate with the owner. There is no difference in taxes for an owner or a craftsman whether work is done on an old or new building. Such allowances would be valuable right at this moment since many architectural monuments are being renovated and we are losing their true identity right now as we speak.

Protectionists' recommendations are refused

The State Inspection of Cultural Monument Protection has been involved in a process of developing normative acts where different clauses related to monument protection have been incorporated. The most difficult have been tax laws. Tax reductions or a full exemption from VAT for works on monuments have been proposed as have larger concessions from company income tax concerning sponsorship. A tax exemption or allowance from income that was earned from listed property was also proposed in Latvia. Unfortunately all these ideas were rejected.

The *Saeima* (Parliament) commissions and officials from the Ministry of Finances state that these suggestions are premature. First, it is necessary to overcome the ugly habit of not paying taxes in Latvia. Second, at the period when the first non deficit budget has been accepted the financial discipline has to be strict.

To conclude this report, let us remember England, where the first monument law was waiting for more than thirty decades from the moment it was proposed, and the first financial aid was accepted fifteen years after the protection law came into force. It seems that matters in Latvia happen much faster and hopefully financing for monuments by sponsorship will be developed in Latvia faster than in England a hundred years ago.

Footnotes

1 Republic of Latvia Law on Property Tax. 18.12.1990, ad. 03.09.1991. Article 4, p 9.
2 Republic of Latvia Law on Land Tax. 20.12.1990., ad.17.03.92. Article 4, pp 2, 3.
3 Republic of Latvia Law on Income Tax of Companies. Part IV, Article 20.



ROBERTO NUÑEZ ARRATIA

Legal Instruments for the Protection and Conservation of Monuments in Mexico

Mexico has an extraordinarily rich, vast and diverse cultural heritage. There are more than 200,000 archeological monuments and zones in the country. Despite the destruction that many have suffered there are still hundreds of historic monuments that have been conserved in various towns, zones and historic cities. Our public heritage also includes artistic monuments of which there are many magnificent examples.

Mexican Federal Law defines archeological monuments as those produced by cultures previous to the arrival of the Spaniards. Historic monuments are those related to the history of the nation from the 16th to 19th century. Artistic monuments are those produced during this century and having relevant esthetic value.

As we can see, the Mexican Federal Law is based on a chronological definition of the monuments belonging to our cultural heritage which is different from the criteria followed in other countries.

UNESCO has placed 506 sites on the World Heritage List; 16 of these are located in the Mexican Republic.

Archeological sites: Teotihuacan, Chicen Itza, Palenque, Uxmal-Ruta Puuc (Kabah, Sayil and Labna), Tajin, cave paintings of the Sierra de San Francisco, Baja California.

Historic zones: historic center of Mexico City-Xochimilco, historic center of Puebla-Cholula, historic center of Guanajuato, historic center of Morelia, historic center of Zacatecas, historic center of Oaxaca-Monte Alban, historic center of Queretaro.

Routes: monasteries along the Popocatepetl Volcano.

Natural sites: El Vizcaino-Whale Sanctuary-Baja California and the Sian Kaan-Biosphere Reserve of Can Cun.

Forms of protecting the cultural heritage have varied over the centuries. The people who inhabited the Mexican territory before the arrival of the Spanish conquistadors placed great importance on their traditions, knowledge and religious beliefs, preserving them through narrations, songs, poems, paintings and by inscriptions carved in different materials such as stone, leather and bark paper of the fig tree called amate. During the Spanish conquest and colonization a great part of the pre-Hispanic cultural heritage was destroyed. Laws issued by the Spanish Indian Council ordered the demolition of idols, tombs and temples; all valuable objects found in these places were considered to be treasures belonging to the crown of Spain.

The first legal dispositions regarding these matters can be found during the second half of the 18th century and refer to archive projects in Chapultepec Castle (1775), the creation of the Academy of History (1781) and the transferring of two archeological pieces from the Main Plaza to the University (1790). In the first half of the 19th century a great number of decrees were published founding academies, museums, archives and antiquity boards. At the same time the first laws appeared prohibiting the exportation of ancient works of art and the excavation of monuments. In the second half of the 19th century certain laws appeared such as ones allowing the expropriation of property, concerning national treasures (both movable and immovable goods), establishing attributes and guidelines for the inspector of monuments and finally one declaring archeological monuments to be national property and regulating their protection.

Norms for the protection of the cultural heritage have continued to evolve. Since 1914 various laws have been issued for the conservation of historical monuments, artistic and beautiful natural settings, archeological monuments, typical towns and zones of monuments, until the arrival of the present Regulation Law published in May 1972. Since the 1970s both federal and state laws and regulations have been published concerning Human Settlements (1993), Urban Development (1976, 1996), and City Planning. We are constantly finding links between the protection of monuments and the planning of cities and towns.

The application of the actual Law of Monuments and Zones is under the jurisdiction of the President of the Republic along with the Ministry of Public Education in guiding the National Institutes of Anthropology and History, as well as Fine Arts. These two organizations with their own judicial procedures and characteristics are subordinate to but operationally independent of the aforementioned Ministry and follow their own organizational laws. This also applies to the Ministry of Social Development.

Safeguarding the architectural heritage is the responsibility of the federal powers. State and municipal authorities can only intervene by previously obtained permission and under the direction of the National Institutes of Anthropology and History or Fine Arts. The Federal Law defines a zone of monuments as a group of structures (isolated or united) of whatever architecture with a sense of unity or integration that gives a universal value from a historic, artistic or scientific point of view. The historical centers declared as zones of monuments are governed by different legal instruments. The special laws for certain cities have been the most effective and achieved best results whenever the boards or councils entrusted to guard over the applications have advisory and executive faculties.

The problems of the various historical centers of Mexico were exposed in a recent meeting in the city of Zacatecas entitled "Cities with Past, Historic Centers of the Future," in which 59 cities were represented. The problems can be summarized in the following points:

1. Isolation from the rest of the urban area.
2. Inadequate and inflexible norms, excessive bureaucratic paperwork within the three levels of government.
3. Resources unequally assigned to municipal levels by the federal government.
4. Lack of a specific line regarding rehabilitation of architectural heritage in the financial scheme.
5. Ignorance and lack of sensibility or interest in the value of the cultural heritage on the part of the community and the authorities, a lack of political decision by the latter, a general incomprehension concerning the importance of historical centers.
6. Lack of freedom of action on the part of committees depending on the government.
7. No effective stimulation on the part of fiscal policies.
8. Lack of coordination between the application of the Federal Law of Monuments and the state and local laws of urban development, leading to contradictions in the process of application.
9. Deterioration of the urban image caused by street vendors, political and labor rallies.
10. Abandonment little by little of the buildings on the part of their occupants who then move to the outskirts of the cities, leaving those vacated spaces under-utilized and unproductive.

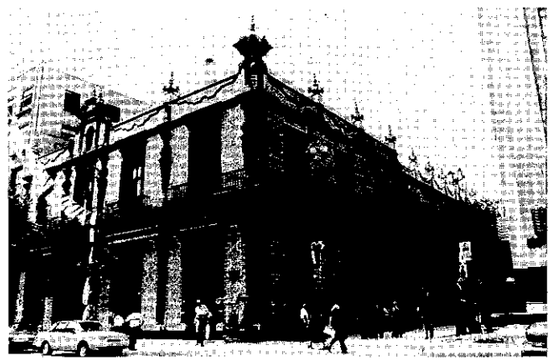
The general problems of historical centers were discussed and analyzed by the participants from which came several proposals and alternatives:

1. Program for the protection and integral conservation of the historical centers intertwining the technical aspects of restoration with that of urban planning.
2. The federal government and the states should support and encourage the independent development by the municipalities and help them become financially self-sufficient.
3. Assist the state and municipal administrations to establish sponsors and independent trusts.
4. Establish preventive measures in order to avoid dislodging or evicting people still living in the historical centers and with the support of fiscal incentives and conscientious campaigns to foster programs for the homeless.

We will now analyze the particular situation of Mexico City's historical center: Mexico City was founded by the Aztecs in 1325 and later rebuilt in 1521 by the Spaniards. Plans were made by the architect and surveyor Alonso Garcia Bravo following the Renaissance use of an urban network, based partly on their experience and inspired by the Roman military planning scheme of the camp of Santa Fe in Granada of 1491. This scheme involved a structure of squares similar to a checker or chess board. The rest of the plan centered around some remaining elements of the Aztec city: mainly four major roads used as axes, the two palaces of Moctezuma, and the canals which could not be eliminated but served as the outer limits of the new city.

Mexico City's historic center has gone through successive stages of destruction and reconstruction, which were already operating during the Nahuatl Culture with the periodic renovation of the temple-pyramids. The destruction of Tenochtitlan came with the Spanish conquest and in its ruins came the rebulding of Mexico City. Floods devastated it in the 17th century and in the 18th century there was a high point of construction which was once again destroyed in the middle of the 19th century. Big convents, like San Francisco covering more than 32,000 square meters, were demolished as consequence of laws on the nationalization of church goods and properties (1859).

The 16th century witnessed the devastation of the indigenous city; the 17th saw the destruction of the conquered city and the 19th century observed the ruin of the baroque city



Mexico City, the Azulejo House

oft he 17th and 18th centuries. During the government of President Porfirio Diaz (1876-1911) new styles emerged producing notable expressions of neoclassic, romantic and eclectic architecture. At the beginning of the 20th century the whole of Mexico City (with approximately 400,000 inhabitants) occupied what is now known as the historic center; the old city continued evolving.

In the decade of the 1950s the population accelerated to almost 4,000,000 inhabitants that saturated the city causing it to overflow and to undergo with great force the pressures of modern urban development, resulting in deterioration and a loss in quality of life. The University abandoned its old buildings and this set off and opened a process of deconcentration to other zones. The original city stopped being the center of political, economic, social, and cultural activity, which in turn started a process of physical deterioration that rebounded later into insecurity, leading to the detriment of the urban image and the decrease of tourism.

In subsequent years the center fell into degradation and families continued to leave because they could no longer reside in a zone without suitable living services. The higher floors of buildings remained abandoned or became warehouses. Maintenance of properties was non-existent resulting from frozen rent ordinances (1942-1992). Public spaces were taken over by peddlers. The monuments suffered the same fate of abandonment and deterioration. Only isolated actions were carried out to rescue some important buildings. The historical center of Mexico City was declared a monument zone by Presidential Decree on April 11, 1980 and in December of 1987 it was placed on the World Heritage List by UNESCO. In spite of institutional protection the zone suffered its worst phase of deterioration. This was aggravated and intensified by a major earthquake in 1985 that destroyed living quarters, hotels and office buildings in the historic center and in neighboring districts of great economic vitality.

Nevertheless, the historic center of the city continues to preserve its magnificence and importance, for the historic and artistic value of its buildings, its 70 temples, streets, plans, plazas, and all of its cultural heritage, both tangible and intangible. The historic center of the capital city encompasses an area of 9.1 square kilometers where there exist more than 2,000 relevant buildings of which approximately 1,500 have been declared historic monuments by the National Institute of Anthropology and History.

The center zone is divided by two perimeters: "A" with a surface of 3.2 square kilometers, which is the area occupied by the pre-Hispanic city and its colonial growth until the War of Independence. It is here that we have a major concentration of monuments. In December of 1990 the Patronage of the Historic Center was established as an autonomous organization that along with the support of the government forms the Historical Center Trust Fund of Mexico City. It is a mechanism operating the program which promotes, negotiates and coordinates between the private sector and the authorities the execution of actions, works and services that will lead to the rescue, protection and conservation of the historic center.

During the six years that the trust fund has been operating, it has been able to detain the process of deterioration and improve the urban image of some of the important streets. The program "Lend us a Hand" has participated in 1146 projects.

Restoration works in the historic center

	1991	1992	1993	1994	1995	1996	Accumulate to Dec. 1996
Finished works	19	166	271	266	243	221	1,146
Works in progress	36	158	185	154	179	163	163
Total							1,309

	Works	Investment in USD
Finished works-perimeter "A"	917	$ 12,708,750
Finished works-perimeter "B"	229	$ 7,167,500
Total	**1,146**	**$ 19,876,250**
Works in progress perimeter "A"	127	$ 6,416,250
Works in progress perimeter "B"	36	$ 2,492,500
Total	**163**	**$ 7,908,750**
Total works	1309	
Buildings declared historic and artistic monuments	699	
Private investment	1244	$ 19,967,500
Public investment	65	$ 7,817,500

Use of restored buildings in percentage of square meters

Housing	10.16 %
Office	37.90 %
Services	12.40 %
Hotels	3.38 %
Restaurants and bars	3.48 %
Commercial	20.82 %
Cultural	6.92 %
Others	4.94 %

The Trust Fund gives to property owners technical help for the development of projects and works, use of property, advice and steps for obtaining licenses and permits. Fiscal incentives that have been decreed are:
- tax deductions for contributions given for the conservation of the historic center,
- subsidies equivalent to 100 %,
- land tax,
- property acquisition tax,
- right to expedite construction licenses,
- right to inscribe in the public registry of property.

Although it is true that an important number of monuments have been restored and that the historic center has recovered spaces for new museums, cultural centers, offices, stores, restaurants and bars which have generated activity in the center again, it is also true that many of the buildings have in the lower floors commercial stores, and the upper floors continue to be vacant, under-utilized and unproductive and continue to deteriorate. Futhermore, few people live in the center and most must travel back and forth daily from the outskirts of the city in order to work.

The Historic Center Trust Fund has initiated a program called "Live in the Center" with the purpose of improving living conditions there and encouraging people to return. To achieve this, the Trust is trying to convince property owners to participate in the plan to rehabilitate the upper floors of their buildings and convert them into housing.

In order to operate this program, a Real Estate Investment Fund has been established with the following objectives:
- to create a climate of business in the historic center,
- to rehabilitate and give the highest market value to upper floors with good quality apartments,
- to develop projects of revitalization in certain blocks and parallel streets in previously marked areas.

Participants in this Investment Fund are investors, sponsors and companies having an economic interest in the historical center, the City Government and the future apartment users.

Market studies show the following data:

Apartment type proposed for the zone	Surface	Price per m^2 in USD	total price
Sale	**65 m^2**	**$ 440.00**	**$ 28,600.00**
Monthly rental	**65 m^2**	**$ 40.00**	**$ 286.00**

The scheme of the Investment Fund includes the following elements:
- The sponsors and investors supply the seed capital to initiate the operations.
- The designated committee by the Trust Fund selects and evaluates each project, administers the sources and executes the approved projects in the preferred rehabilitation areas.
- This initiates the capture of rent that sets off a cyclic process of reinvestment in other projects which increase the volume of captured rents.

The financial sources of the Fund are seed capital and budgets for approved projects. Fees are at the rate of 3.5 % of the commercial value for 10 years (designated use of the fee), 2.5 % for fund turn-over and administration and 1.0 % for the government maintenance and improvement of the zone.

So far there have been 31 agreements with owners in the zone ready to participate in the program. 38 projects are being prepared, consisting of 640 apartments in seven areas of preferred rehabilitation. We are working on this program, although our country has passed through a serious economic crisis which has begun to rise. This year will be unique and particularly difficult since we will elect a Governor for the City of Mexico for the first time. Nevertheless we hope to obtain positive results and succeed with a complete restoration that has life and can conserve for future generations the historic center of the City of Mexico, the most important in America.



Diederik van Asbeck

Legal Possibilities of Organizing Sponsorship in the Field of Heritage and its Realizations in the Netherlands

For private sponsorship – i.e. participation for profit by trade and industry – tax and other legal conditions in the Netherlands are in principle similar in the fields of sport, social work, culture and conservation of monuments. However, the profit for trade and industry is the leading factor. And therefore you need symbols of history and national identity as, for instance, the Amsterdam Concert Hall and the Portuguese Synagogue or the Olympic Stadium in that city. But the substance of the architectural heritage in Holland doesn't appeal to that need. I mean the thousands and thousands of listed citizen houses along the canals and streets in the towns and cities from the days of the Dutch Republic and the East-Indian Company. Keeping the memory of austere republican self-confidence and individual spirit of enterprise, these houses and their upkeep are not recognized as a glamorous paying investment by the nowadays entrepreneur. Besides that, most of the houses are in private hands. So I wonder if private sponsorship will ever be a substantial factor in the finance of the Dutch heritage.

Amsterdam, Concertgebow



Anyhow, for the restoration of monuments that are protected by the State, a different policy is applied. It provides that the principal level for a government grant is only thirty percent of the determined restoration costs. And starting in the month of June the percentage will be only twenty.

The purpose is to give a greater impulse to more private investment. That is, investment by the owner who is liable to income tax and corporation tax.

These taxpayers enjoy relief for maintenance costs of the monument. The taxpayer residing in his own house which is not a monument protected on State level does not receive this privilege.

To support the owner in his private investment, a National Restoration Fund has been founded at the initiative of the State. The Fund provides for loans on the basis of the mortgage of up to thirty percent of the determined restoration costs. This percentage is the same as an extra grant, on top of the basic level of twenty percent subsidy for owners, who are not liable to income or corporation tax. The thirty percent subsidy that the taxpayer is missing is the most important source of income for the National Restoration Fund.

Besides the loans based on mortgages the Fund provides the advance of promised grants, as well as complete financing. The loans are issued at a reduced rate of interest. Interest, redemption and discharge are used for creating a revolving fund for problematic restorations.

This way of financing means an ultimate application of tax concessions and practically more private financial participation in the maintenance of monuments.

A following step might be the development of a system aimed at inventorisation and description of and environmental planning for areas with their historic elements and identity, *as well as* their economic possibilities. In that concept government grants will be only used for monuments without an economic base. The rest of the architectural heritage is part of – and as such supported by – the market. A kind of general sponsorship for the next future?



Wojciech Kowalski

Legal Structures of Public Participation and the Protection of Cultural Heritage in Poland

Poland is a country of average size located in Central Europe.The Baltic Sea lies to the north, and to the south there is a common mountain border with the Czech Republic and Slovakia. Germany is situated to the west and to the east are Ukraine, Belarus, Lithuania and Russia. As a consequence of its geographical-political position, Poland has been involved in almost all the historical events experienced in the European domain. The country has been repeatedly subjected to cultural influences, largely from the west, but has also experienced the distinctive cultural influences of eastern neighbours. This complicated process has left us a unique multicultural heritage, which (as regards immovable objects) has been preserved in the form of 50,000 listed buildings, approximately 115,000 surveyed buildings and about 600,000 other structures possessing cultural significance.[1] It is worth stressing that the number 50,000 given for listed buildings includes practically all monuments constructed before the mid-nineteenth century. For a country with an area of 312,000 square km and nearly 40 million inhabitants this is not many, and that is why the protection of the remains is treated as a special national obligation.

Similarly, although for a different reason, cultural heritage has been protected by our ancestors. During the nineteenth and early twentieth centuries there was a strong patriotic feeling enhanced by hope of the restitution of the independent state. Enlightened people undertook the first attempts at organised protection of the historic patrimony. As they did not have their own state and law that activity was determined by the three foreign legal systems in force at that time in different parts of the Polish lands. Several foundations and associations were organised and registered under German (in the west of the country), Austrian (in the south) and Russian (in the east) laws.[2]

In legal terms the situation did not change much after the First World War when Poland regained its full independence. For many years German and Austrian laws were maintained in force as still very practical and good enough to serve their purposes.[3]

After the Second World War the protection of cultural heritage was completely taken over by the totalitarian state. In 1952 all foundations were liquidated and their property was nationalized.[4] As a matter of fact there was a law which allowed the creation of associations but due to the strict ideological control of any social activity this arrangement was only theoretical and free associations were not founded in practice.

It was only in the second half of the 1980s that changes restored the real meaning behind an association and recalled to life the principle of the foundation. The situation seems to be permanent and it can be said that the major legal structures of public participation in the protection of cultural heritage in Poland are now foundations and associations.

The first of the changes mentioned above referred to foundations. They were restored by the law dated 6 April 1984, amended on 23 February 1991.[5] Those rules have been the basis for the creation of 112[6] foundations with the protection of cultural heritage as a main aim. The range of activity of the foundations is widely differentiated. There are foundations created for protecting the heritage of particular regions, places, streets and even single monuments. As an example it is worth mentioning the names of some of them:

- "Libiąż" Foundation. Wroclaw (Libiąż is an old cloister in Lower Silesia).
- Foundation for the Protection of Monuments and Assistance for Artists. Częstochowa.
- Foundation for the Protection and Development of the Old Town.Warsaw.
- Foundation for the Protection of the Cultural Heritage. Toruń.
- Foundation for the Protection of Monuments of Podlasie (which is a small region in the east of Poland).
- Foundation for the Renovation of the Town of Śrem. Śrem.
- Foundation "Ostoja", Ługów, in the district Jastków Lubelski.
- Foundation for Piotrkowska Street. Łodź.
- Foundation of the Friends of the Planetarium and Nicolaus Copernicus Museum in Toruń.
- Foundation "Pro Auxilio" for the Popularization and Saving of Monuments.
- Foundation " Fort Grębalów", Cracow.
- Foundation for Supporting the Development of Orthodox Culture.
- Foundation for the Protection of the Evangelic Cemetery. Poznań.
- Foundation "Karczówka". Kielce (Karczówka is a hill with a cloister on it near Kielce).

The ongoing revival of the institution of associations is due to a new law from 1989 on associations.[7] According to the preamble this act "makes it possible for the citizens, irrespective of their beliefs, to take active participation in public life and to express their various opinions".

Thanks to this act the fundamental human rights adopted in international legal instruments which have already been binding in Poland for several years have been put into practice.[8]

It is impossible to give data illustrating to what extent the people of Poland are making use of this new opportunity because of the lack of any statistics in that sphere. All that is widely known is the activity of associations with a long tradition and of professional corporations. A good example of the former is the Association of the Protection of Monuments which was originally established in 1906 in Warsaw. An example of the latter is the Association of Conservators of Monuments, which has been active only for a few recent years.

Before considering the characteristics of foundations in more detail we must say that in spite of the special law on foundations there is no legal definition of these structures in Polish law. According to the rules of the law, its typical attributes are: its property, purpose, institutional permanent existence, its status as a legal entity, public usefulness, its non-profit-making and non-corporate character.[9] On this basis the doctrinal definition of a foundation is constructed and according to it "a foundation is an organizational unit possessing status as a legal entity and property which is used for non-remunerative purposes and must be in the public interest".[10]

We cannot however forget that Polish law allows giving of some property with a specified purpose and there is no special need to create a legal person. These situations are expressed in the civil code in the rules about donations and drawing up wills. According to articles 893 and 894 of the civil code the donor can oblige the recipient to act in a certain manner. After the donor's death the execution of this instruction can be supervised by his heirs. When the instruction was made for public good, its execution can also be supervised by the appropriate state agency.[11]

We have a similar situation in case of wills when such an instruction can be included.[12] Although the civil code does not use the word "foundation" in these cases we must note some similarities from the point of view of analyzed doctrine. It is beyond doubt that the property and a purpose are the most fundamental factors which allow us to distinguish this concept from other legal institutions.

Other criteria serve only additional functions. Sometimes they have even a purely technical nature. Foundations cannot in principle be established and exist without property and without a clearly defined purpose. Both these elements are also absolutely necessary when the donor or testator intends to make an instruction.

So if we agree that the above-mentioned elements are the main components of the concept of foundations, then we can say that in the Polish legal system there are foundations possessing legal status (foundations *sensu stricto*) and foundations which are not legal entities (foundations *sensu largo*). Furthermore, there are other types of foundations:

- foundations of public and private law;
- foundations of public and private utility;
- foundations undertaking economical activity and ones that do not.

Public law foundations can be established by act of parliament or by state bodies authorized to represent the State Treasury. As a good example of the first option the law of 1995 on the establishment of the national foundation called Ossolineum can be given.[13] The essential element of this law was the provision on property and the state support for its activity. Secondly, the foundation can also be established by ministers or regional authorities, in both cases within the scope of their competence. In this place I should mention that such practice (when for example a minister accomplishes his duties by the establishment of a foundation), although formally possible, is however hardly acceptable by doctrine and public opinion.[14] Private law foundations are created only by private acts of physical or legal persons.

Foundations of public use act for the benefit of society as a whole. They cannot indicate in their charters any individual or even collective beneficiaries. In fact, only such purpose (public good) can be given as a purpose of foundations which have the status of a legal entity.They can also be written down in the instruction which obliges the donee or heir for the activity. But only the heir can act in the private foundation.

According to Polish law foundations can undertake economic activity only to generate additional money for their statutory activity.

Taking everything into account we can say that the typical and representative kind of foundation is that described in the 1984 law. Characteristic attributes are:

- realisation of "socially or economically useful" purposes which are "similar to the interests of the state", especially such as: health protection, the development of economics and science, education, culture and art, social aid, protection of the environment and monuments (art. 1);
- physical persons, independently of citizenship and domicile can be founders as well as legal entities, irrespective of their legal address but the foundation should have its seat on the territory of Poland (art. 2);
- a foundation has the legal personality from the moment of registration in the special register of foundations in the District Court for the city of Warsaw (art. 7,9);
- possibility of undertaking economic activities "only to make possible the realisation of the aims of the foundation", providing that the foundation possesses an initial capital 1000 zl and its economic activity is declared in its statute;
- foundations are under control of the competent ministry or the regional state administration but all the decisions resulting from it can be undertaken only by the court on the suggestion of these bodies (art. 12-14);
- foundations are free from court fees in the procedure of registration, from income tax[15] and from customs duty[16] providing that income and imported goods are to be used for a fulfilment of statutory purposes.

There are slightly different regulations for church foundations. They are bound by the law concerning the Catholic church[17] and the Orthodox church[18] in Poland.

Finally we must mention that in Poland agencies of foreign foundations may be established if they realise the same purposes as Polish foundations (art. 19). They must obtain permission from the Ministry and can undertake economic activities.[19]

If we want to characterise the associations, we must say that they have a corporate character, which is their main difference from foundations. The property is then not the most important aspect of the association, but the people proclaiming it, who can put this way into practice one of the most fundamental human rights - the freedom to form associations. In the view of the new law on associations this right can now be "limited only by laws in case of needs resulting from the necessity to assure public security and order and the protection of health or morality, or rights and freedom of other people" (art. 1. 2). The next provision of this law defines association as a free, self-governing and permanent association with a non-profit purpose (art.2. 1).

The basic attributes of associations are:

- voluntarity, which means the freedom to create such institutions, join or leave them,[20]
- self-governing;

- durability, which means that the most important issue is the purpose of the association, not the present number of members;
- non-profitability with the reservation that they can get money from their own businesses or properties, and receive donations or grants,on condition that they are exclusively used for their main statutory activity and not for personal needs of their members;
- only physical persons (Polish or foreigners), not legal entities, can be members of associations,[21]
- it is not possible to create certain organisations (e.g. political parties, churches etc.) as associations;
- the regional authority indirectly controls associations;
- associations have some tax privileges, as do foundations.

These characteristics describe mainly associations possessing the status of a legal personality. This is given by the court during the process of registration in the regional court. The application for registration should be submitted by a minimum of 15 persons and must enclose the statute of the association (art. 8 and 9). It is also possible to create associations which are not legal entities, but the legal position of them is very poor. They cannot, among other things, create their organisational units, undertake economic activity and receive donations, grants or subsidies. Their only property consists of the membership fees (art. 42).

It is worth adding that international associations, acting as Polish ones, also can be created in Poland. On the other hand, Polish associations can associate with international organisations, if this is not contrary to international agreements concluded by Poland (art. 5).

Our analysis of legal structures of peoples' participation in the protection of cultural heritage shows that, according to Polish law, associations have more opportunities than foundations. As a main rule, membership is not limited as it is in foundations. Moreover, associations can possess property, which can consist, among other things, of cultural property - bought or obtained in another way. In other words, an association can obtain monuments, keep them in a proper state and open them to the public.There is almost no difference between associations and foundations in respect to taxes. Both of them can undertake economic activities and receive subventions and donations. The donor can deduct such gifts from his income before taxation (up to 10% of the income).

Footnotes

1 All figures received from the Monuments Documentation Centre in Warsaw.

2 Foundations were regulated by §§ 80 - 88 of German Civil Code (BGB) and by § 221 and § 646 of Austrian Civil Code (ABGB). Associations were governed by §§ 21 - 79 of BGB, Austrian law on associations of 1867 and Russian law on associations of 1906.

3 Only Russian laws were immediately substituted by new Polish regulations: decree on foundations of 1919 and decree on associations of the same year. The first unilateral law on associations for the whole country was introduced in 1932. Law on foundations was unified only in 1947.

4 Decree dated 24 April 1952. Journal of Laws of the Republic of Poland 1952, no. 25, entry 172.

5 Law dated 6 April 1984 on foundations. Journal of Laws of the Republic of Poland 1991, no. 46, entry 203.

6 This figure is valid for 23 January 1997, when it was received from the office of the Principal Inspector for Monuments in Warsaw.

7 Law dated 7 April 1989 on associations. Journal of Laws of the Republic of Poland 1989, no. 20, entry 104, amended: Journal of Laws of the Republic of Poland 1990, no. 14, entry 86.

8 The preamble of this law refers to them directly, in particular to the Universal Declaration of Human Rights of 1948 and the International Covenant on Civil and Political Rights of 1966. The latter act was formally ratified by Poland in 1977. See: Journal of Laws of the People's Republic of Poland 1977, no. 38 entries 167 and 168.

9 See in particular: A. Wasilewski: Prawna problematyka fundacji. Zagadnienia podstawowe. Państwo i Prawo 1984, nr 9, p. 27, H. Cioch: Pojęcie i rodzaje fundacji. Wybrane zagadnienia na tle prawnoporównawczym. Państwo i Prawo 1987, nr 2, p. 69, B. Sagan, J. Strzępka: Prawo o fundacjach - komentarz. Katowice 1992, p. 13-15, A. Kidyba: Fundacje i stowarzyszenia. Zagadnienia podstawowe. Warsaw 1995, p. 10.

10 See: D. Bugajna-Sporczyk, I. Janson: Zakładamy fundację. Praktyczny komentarz do ustawy o fundacjach, akty wykonawcze i orzecznictwo, wzory pism procesowych, wzorcowy statut. Warsaw 1996, p. 14.

11 Art. 893: "A donor may impose upon the donee an obligation to act or inact in a specified manner, without making anyone a beneficiary (instruction)". Art. 894: (§ 1: "A donor, who has performed an obligation resulting from a contract of donation, may demand fulfilment of such commission unless its exclusive aim is to benefit the donee"; (§ 2: "After the donor's death the donor's heirs may demand fulfilment of the commission, and if the commission is in respect of public interest - a competent state agency may also so demand".

12 Art. 982: " In the will a testator may impose upon the heir or the legatee an obligation to act or inact in a specified manner, without making anyone a beneficiary (testamentary instruction)". Art. 985: "Any of the heirs or the executor of the will may demand performance of the instruction, unless the sole object of the instruction is to benefit the person charged with it. If the aim of the instruction is of public interest - a competent state agency may also demand performance of the instruction".

13 Law dated 5 January 1995 on the foundation - National Ossolinski Institute. Journal of Laws of the Republic of Poland 1995, no. 23, entry 121. According to this law the foundation received a historic library "Ossolineum" in Wroclaw with a building and all its belongings (art. 7. 1). Art 11. 2 obliges the State to cover the library's ordinary expenses including purchase of Polish manuscripts, maps, numismatics and works of art.

14 See, for example, D. Bugajna-Sporczyk, I. Janson, op. cit. p. 20.

15 See art. 17. 1. 4 of the law dated 15 February 1992 on income tax of legal persons. Journal of Laws of the Republic of Poland 1992, no. 106, entry 482. It should be however noted that the economic activity of foundations is as such treated like regular activity of other legal persons.

16 See art. 14. 15 of the law dated 28 December 1989 on customs. Journal of Laws of the Republic of Poland 1989. no. 75, entry 445.

17 Law dated 17 May 1989 on the relation of the State to the Catholic church in the Republic of Poland. Journal of Laws of the Republic of Poland 1989, no. 29, entry 154.

18 Law dated 4 July 1991 on the relation of the State to the Autocephalic Orthodox Church in the Republic of Poland. Journal of Laws of the Republic of Poland 1991, no. 66, entry 287.

19 Council of Ministers regulation dated 6 February 1976 on the conditions, procedure and competent State agency to issue permissions for foreign physical and legal persons to open their representative offices on the territory of the Republic of Poland for carrying out economic activities. Journal of Laws of the Republic of Poland 1976, no. 11, entry 63 and 1984, no. 26, entry 133.

20 This aspect is specially underlined by H. Izdebski, op. cit. p. 96.

21 There is an exception to this rule which allows communes to create associations to "support the idea of territorial self-governing and defend their own interests". See art. 84 of the law dated 8 March 1990 on territorial self-governing. Journal of Laws of the Republic of Poland 1990, no. 16, entry 95.



María Rosa Suárez-Inclán Ducassi and Luis Anguita Villanueva

Spanish Legal Structures of Private Sponsorship and Participation in the Protection and Maintenance of Monuments

We understand that this Seminar is devoted to "private" participation in the protection of cultural heritage. Therefore, we will not mention public administration's policies, budgetary resources and direct investments.

Concerning private contribution, it may be made by natural or legal persons, either directly or through the State, other public entities, foundations or associations, and is currently governed by legal texts regulating foundations.

Before beginning to analyze legal provisions regulating private sponsorship and participation, we should make a brief reference to the Law of Associations, of 1964,which has been partially modified recently: associations are legal persons with legal capacity to act through natural persons appointed to their governing body. Legal capacity is acquired from the moment their statutes are approved by administrative authorities and registered at the relevant Registry. We should also mention that there are different legal provisions related to several kinds of LTD companies, etc.

All these entities contribute to and participate in the protection of cultural heritage, but since the aim of this work is to present the Spanish legal framework of private financial contribution for the conservation and restoration of monuments and historical heritage, we shall concentrate on these aspects. The above-mentioned private contribution is foreseen in three current legal provisions:

1. Law of the Spanish Historical Heritage 16/1985 of June 25th (Official State Gazette of June 29th, 1985) and, more specifically, in Section VIII regarding "Steps for Development".
2. Royal Decree 111/1986 of January 10th and partial development of the said Law, modified in part by Royal Decree 64/1994 of January 21st (Official State Gazette of March 2nd).
3. Law 30/1994 of November 24th of Foundations and Tax Incentives to Private Contributions in Activities of General Interest (Official State Gazette of November 25th).

The last two provisions develop and update the "Steps for Development" foreseen in the above Law of the Spanish Historical Heritage. On the other hand, income tax and corporation tax, if later in time, may have an effect on the tax benefits fixed by the above provisions by determining some percentages in tax deductions foreseen by the former (e.g. Income Tax Law 18/1991 of June 6th which in Art. 78.4 (c) and (d) reduced deductions on investments made in the acquisition, conservation, etc. of assets declared to be of cultural interest by five percentage points). Likewise, the General Budgetary Law of the State for each year may:

- Establish a list of prevailing patronage activities or programmes, for which there may be a five percentage increase in deduction percentages and in the percentage amount of the maximum levels of deduction.
- Regarding corporation tax, this may alter the levy rate on the tax base (fixed at 10 % by the Law of Foundations and Tax Incentives), as well as altering the amount foreseen in order to reduce the liquid quota if a foundation or association of public utility were to exclusively carry out free services (Art. 55 and Fourth Final Provision of the said Law).

Legislative measures

The following are the most important legislative measures related to private contributions in the protection and conservation of historical heritage in real estate:

1. Preferential access to official credit for funding public works, conservation, upkeep and rehabilitation, as well as archaeological reports and excavations carried out in areas declared to be of cultural interest. In order to do this, the public administration may establish, by means of agreements with public and private entities, the conditions of using credit benefits.
2. As regards public works built and developed by private persons by virtue of State dispensation without financial contribution from the State, one 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 100 million pesetas, which affect 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 these projects and programmes one must request cooperation from the administration.
3. Debt payment in different taxes: succession and gift tax, capital gains tax, income tax and corporation tax may be paid by handing over assets belonging to the Spanish historical heritage which are registered at the General Registry for Assets of Cultural Interest or included in the general inventory. In such a case, the said assets shall be appraised, for this purpose, by the Board for 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 estate tax:
   - Monuments and gardens declared to be assets belonging to the Spanish historical heritage.
   - 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 conveyancing when owners or holders of real property rights have undertaken conservation, improvement or rehabilitation work on real estate declared to be of cultural interest.
This exemption shall be applied in the terms established by respective municipal regulations.

5. Tax deductions for natural persons concern the amount of income tax: 20 % of investments carried out in the acquisition of assets registered at the General Registry for Assets of Cultural Interest, if the asset remains available to the purchaser for at least three years and notice of the conveyance is given to the said Registry. In any case this deduction shall not exceed 30 % of the tax base.
6. Tax deductions for legal persons concern the deduction in the liquid quota of the corporation tax:
   – 15 % of amounts assigned to the acquisition of assets registered at the General Registry of Assets of Cultural Interest, with the requirements established for natural persons.
   – 15 % of amounts used for conserving, repairing, restoring, promoting and exhibiting assets registered at the above Registry with the same requirements as for natural persons.
7. Tax incentives for private contributions in activities of general interest.
   The Spanish legal system regulates private financial contributions for the conservation and restoration of monuments through the State, other public entities, establishments, institutions, foundations or associations, including temporary de facto associations for the administration of funds classified as or declared to be charitable or of public utility by the relevant administrative authorities. Contributions of this kind may be made directly by natural or legal persons which in most cases do not bear the importance of foundations, both in quantitative and qualitative terms,and are currently governed by the same legal text regulating foundation as a legal figure.
   Furthermore, large financial companies, to name an example, do not assign assets directly for these purposes but instead, in the case of an activity which is beneficial, both in social and tax terms, with a more or less continuous nature, set up cultural foundations to adequately invest the said capital, e.g. BBV, Banesto and Argentaria Foundations, as well as Savings Bank Foundations. As may be seen, in nearly every case, behind a large bank there exists a foundation with the same name.

Without giving any more comparative preambles, in order to apply the current situation to Spanish law one must first explore the Basic National Law regulating foundations, pointing out beforehand that the Spanish Constitution of 1978 in Art. 34 acknowledges the right to set up a foundation under law for the general interest (Art. 34.1), subsequently stating two rules regarding applicable legislation:
– Foundations which pursue ends or employ methods constituting a crime shall be illegal.
– Foundations may only be dissolved or their activity suspended by a court decision (Art. 34.2, by reference to Art. 22.2 and 4).

Law 30/1994 of November 24th, of Foundations and Tax Incentives for Private Contributions in Activities of General Interest (Official Gazette of the Spanish State, Nr. 282 of November 25th, 1994)

Our current Law of Foundations and Tax Incentives for Private Contributions in Activities of General Interest (hereafter LF) is divided into two sections. Each one covers part of the title, foundations on the one hand and tax incentives on the other. Consequently, a proposal was made to name the said Law at the parliamentary stage the Law of Foundations and Patronage, but this was replaced by the current title for technical reasons. We shall follow the order set in Law 30/1994:

Foundations

Meaning and purposes
Foundations are defined as non-profit organizations, the capital of which is assigned by its founders on long-term basis to fulfilling purposes of general interest (Art. 1.1). They therefore have the following characteristics:
– They are legal persons, with legal capacity to act through natural persons appointed in their governing body. Legal capacity is acquired from the moment the public deed of constitution is registered at the relevant Foundation Registry.
– They are non-profit.
– Their capital is assigned to long-lasting purposes by their founders, regardless of whether, due to other external reasons, long duration is impossible.
– Their purpose is to apply their capital in the general interest, interpreted by the Law as pertaining to social and public works, education, culture, science, sport, health, cooperation for development, environmental protection, promotion of the economy or research, encouragement of volunteer work, or others of a similar nature.

The foundation must benefit generic groups of people and its services cannot be aimed at the founder's spouse or relatives up to the fourth degree of kinship, inclusive. An exception is made in the case of foundations of which the exclusive or principal aim is the conservation and restoration of assets belonging to the Spanish historical heritage and which fulfil the obligations set out in the Law of the Spanish Historical Heritage of 1985.

Incorporation
Regarding the incorporation of foundations, the following two main issues should be taken into account:
Capacity: Natural and legal persons, whether public or private, have the capacity to incorporate foundations, as long as they fulfill the following requirement. Natural persons must have a general capacity to act and a special capacity to freely dispose of the assets and rights forming the gift, either "inter vivos" or "mortis causa". Private legal persons of an associative nature must have the express agreement of their board or shareholders meeting. Those of an institutional nature must have the agreement of their governing body. Persons of a legal and public nature always have the capacity, unless this is prohibited by their governing regulations (Art. 6.6 of the Spanish Constitution).

Form: A foundation may be incorporated by an act, either "inter vivos" oder "mortis causa". The incorporation of a foundation by an "inter vivos" act shall be carried out by the execution of a public deed, containing at least the following:
– Name, surname, age and marital status of the founders, if they are natural persons, and denomination or corporate name if they are legal persons. In either case both nationality and address should be stated.
– The will to incorporate a foundation.
– The gift, its appraisal, form and actual contribution.
– The statutes of the foundation, which must contain: the denomination of the entity with the word "foundation", without confusing another already in existence, the purposes of the foundation, the area of control of the foundation and the territorial scope in which it shall mainly operate, the basic rules for applying the resources to the fulfillment of the foundation's needs and to determine the beneficiaries, the governing and representative body, its composition, rules for the appointment and replacement of its members, reasons for termination, its capacity and method for discussing and entering agreements and any other legal provisions or conditions which the founders see fit.
– The identification of the persons making up the governing body, as well as their acceptance if carried out at the moment of incorporation.

If the incorporation is carried out by a "mortis causa" act it shall be executed by will, fulfilling the above requirements, i.e. the content must be the same – the difference lies in the fact that one is executed by public deed and the other by will.

Applicable legislation
Foundations are governed by the founder's decisions, by their statutes and by Law 30/1994, as well as by additional regulations. Once registered and incorporated following all the above requirements, a foundation attains legal personality. However, decisions with legal effect are made through the governing and representative body, known as the board of trustees, which is an essential requirement for the foundation's existence.

The board of trustees must fulfil the foundation's purposes and manage the assets and rights forming its capital, completely assuring their effectiveness and utility. It must be incorporated by at least three members, the trustees, who shall choose a president from amongst themselves, unless otherwise provided. A secretary may also exist, if such a post is appointed. Trustees may be:
– Natural persons with full legal capacity not disqualified from occupying public office.
– Legal persons, which will appoint a natural person to represent them.

Whether of one kind or another, they must have expressly accepted the post, carried out gratuitously with the diligence of a loyal representative. They will be liable to the foundation for damages due to acts contrary to law or the statutes, or negligent acts. The board of trustees itself (under a previous reasoned agreement not involving the affected trustee) and the protectorate are empowered to file the said action for liability before the ordinary courts.

Foundation Capital
Like every organization, a foundation has capital assigned for a purpose, consisting of every kind of right and asset of economic worth. Management and conveyancing shall be left to the board of trustees, subject to the law and its statutes. The foundation is the holder of the said capital, which shall feature in its inventory and in the Foundation Registry and other registries, if necessary.

Activity
Foundations are governed by the following principles: They are obligated to assign their capital and income to the foundation's purposes, give sufficient information on their purposes and activities and act according to principles of impartiality and non-discrimination when determining their beneficiaries.

As regards their activities, foundations may not have any shareholding whatsoever in companies where they may be personally liable for company debts. Furthermore, they are under strict accounting control (Art. 23, Law of Finance), being obligated to carry out audits when their capital is over 400 million pesetas, if the net amount of their annual income is over 400 million pesetas or if they have more than 50 employees. At least 70 % of their revenue and income shall be assigned to the foundation's purposes, the remainder being used to increase the foundation's gift (except contributions made as gift capital).

Termination
A foundation shall terminate when its period of duration has expired, when the foundation's objective has been completely fulfilled or fulfillment was impossible, as a result of a merger or due to any other cause foreseen by the statutes or by law at the moment of incorporation.

Protectorate
This is a public institution, aimed at ensuring a correct use of the right to establish foundations and guaranteeing the legality of their incorporation and functioning. The right shall be exercised by the General Government Administration as regards foundations under State control, and by the Administration of the Autonomous Communities as regards foundations under autonomous control. Its basic functions are to counsel foundations on matters regarding their legal and economic system, to ensure the effective fulfillment of the foundation's needs following the founder's decisions, taking into account the attainment of the general interest, to verify that the foundation's financial resources have been applied to its purposes, to advertise the foundation's existence and activities, to temporarily carry out the functions of the foundation's governing body if, for any reason, all its members are unavailable, plus any other functions as established by law.

Higher Foundations Board
This consultative body is created by Law 30/1994 and is made up of representatives of the General Government Administration, of the Autonomous Communities Administration and of foundations. Amongst their functions the following may be stated:

– To counsel on, give information about and make a decision on, whenever requested, any legal or regulatory provision directly concerning foundations.

- To plan and propose the necessary steps for promoting and encouraging the establishment of foundations.
- Any others established by current provisions.

Tax incentives for private contributions in activities of general interest

The tax system for foundations registered at the Foundations Registry and associations declared to be of public utility has two important aspects:
Corporation Tax: The above entities shall be exempted regarding the results obtained in activities which represent their company purpose or specific aim, as well as capital increases derived both from acquisitions including those from non-gratuitous transfer, as long as either are obtained or carried out when fulfilling their purpose or specific aim. They are also exempt from tax on issues such as membership fees, grants, subsidies and cooperation agreements.

Furthermore, Art. 50 points out how the tax base is adjusted according to certain items stated therein, since they may carry out other economical activities not related with their specific aim.

Local Taxes: These entities are exempted from real estate tax regarding the estate they hold. They are also exempt from tax on commercial and professional activities regarding the activities representing their company purpose or specific aim.

Concerning the tax system for contributions made to non-profit entities, we have to distinguish between natural and legal persons. If the contribution is made by *natural persons*, a deduction in the amount of income tax corresponds to the following:
- 20 % in pure and simple gifts of assets belonging to the Spanish historical heritage (registered at the General Registry of Assets of Cultural Interest, or included in the General Inventory) or gifts of works of art with quality guaranteed in favour of entities with the aim, amongst other ends, of developing and promoting artistic heritage and which apply the said works to public exhibitions. The amount of 20 % shall be applied to the value of the assets bestowed according to official appraisal carried out by the Board for Classification, Appraisal and Export.
- 20 % in pure and simple gifts of assets which must be part of the bestowing entity's material assets and which contribute to fulfilling activities according to their purposes. An increase or decrease in capital which may arise in the event of gifts of assets belonging to the Spanish historical heritage and works of art and shall not be taxable.
- 20 % in amounts bestowed for fulfilling activities or for conserving, repairing and restoring assets belonging to the Spanish historical heritage which are registered at the Registry of Assets of Cultural Interest or are included in the General Inventory. Membership dues are included under this heading as long as they do not involve services offered to members.

In all cases, the above deductions shall not exceed 30 % of the tax base.
If contributions to non-profit entities are made by *legal persons*, deductions in the tax base of Companies Tax are the following:
- Up to 30 % of the taxes, or 3 per 1,000 of the annual volume of sales in the case of gifts of assets belonging to the Spanish historical heritage and works of art, with the same conditions and requirements as for natural persons.
- Up to 10 % of the tax base, or 1 per 1,000 of the annual volume of sales in gifts to material assets of the bestowing entity, the fulfillment of activities according to its purposes, or for conserving, repairing and restoring assets belonging to the Spanish historical heritage with the same requirements as for natural persons.

The treatment given to increases or decreases in capital ensuing from a gift of assets belonging to the Spanish historical heritage, works of art and assets of material capital for the bestowing entity is similar to that stated above regarding natural persons. In some cases, the deduction may be increased by 5 % (both regarding deduction percentages and the deductible limit on the tax base) if the gift is made for any of the prevailing patronage activities or programmes pointed out by the General Budgetary Law of the State for that year.

Tax system for other business cooperation activities

Acquisitions of works of art to be bestowed on the State and other public entities, as well as foundations and associations of public utility, may give rise to deductions, both on corporation and income tax (the latter in the case of entrepreneurs and professionals subject to direct tax evaluation) as long as a series of requirements are fulfilled, such as: an undertaking to convey the asset in five years; once the offer is accepted it becomes irrevocable; the offer must be made the following month after purchasing the asset; until it is conveyed it may be publicly exhibited and investigated; the Administration shall decide on the value of appraisal which shall prevail over the value of acquisition if the latter is higher; the deduction shall be carried out yearly by equal amounts during the period between the undertaking of the offer and the actual conveyance, with a maximum limit per operation. In the case of entrepreneurs and professionals, the said limit shall refer to the share of the tax base regarding net income derived from the relevant business or professional activity.

Federations and associations of entities

Federations and associations of entities are covered by the Law of Foundations and Tax Incentives. These may enjoy the tax system foreseen therein as long as both the respective federations and associations, as well as the entities therein, fulfil the legal requirements.

Foreign foundations

These may benefit from the legal system established by the Law of Foundations exclusively regarding the local branch's activity in Spain.

Foundations of religious entities

The provisions of the Law of Foundations apply notwithstanding whatever may be established by agreements with the Catholic Church, cooperation agreements and conventions entered into by the State with churches, confessions and religious communities, as well as regulations to be applied to foundations created or developed by the same. In addition to the Law on Foundations analyzed here, there are other provisions in Spain which complement and develop it in other spheres.

State Sphere

- Royal Decree 765/1995, of 5th May, which regulates certain matters relating to the system of tax incentives for private participation in activities of general interest in accordance with the Final Provision 5th LF.
- Royal Decree 316/1996, of 23rd February, which regulates the State Sphere Foundation Regulations.

Autonomous Region Sphere

Although all the autonomous regions have this faculty transferred to them, there are only three laws:
- Law regarding private Catalan foundations of 3rd March 1982 (modified by Law of 8th November 1985)
- Foral Law 7/1983, of 22nd June, regarding the sytem of foundations relating to Galician interests (revised by Law 11/1991 of 8th November).
- Law 1/1990, of 29th January, on Canary Island foundations.

Ecclesiastical Foundations



- Royal Decree 589/1984, of 8th February, regarding religious foundations of the Catholic Church.

THOMAS ADLERCREUTZ

National Approaches in Sweden

An overwhelming proportion of Swedish cultural monuments – i.e. monuments taken in a broad meaning, comprising buildings, ancient remains and sites protected in some sense by law – are legally in private hands. (One group of monuments should be excepted from this broad statement: ecclesiastical monuments, which are if not always – in a strict legal sense – owned, so at least managed and controlled by the Church of Sweden, an established church with a certain constitutional standing.)

Indeed, it is a prerequisite that protection of cultural monuments must work under private management. Whatever tendencies there might have been in the past for the state or municipalities to acquire monuments have long since been abandoned. The general principles for protection of privately held monuments are laid down in the 1988 Act on Cultural Monuments etc. (SFS 1988:950). This act discerns between archaeological monuments and sites, listed historical buildings, ecclesiastical heritage, and movables (export/restitution).

Archaeological monuments and sites are protected directly by law. No administrative order is issued to single out even what is an archaeological monument. Property holders have to find that out for themselves by recourse to a list in the act of protected categories of archaeological remains, a register kept by the authorities, and official maps where most monuments have been entered. They could and should, of course, consult the responsible authorities as to the extent and importance of protected remains. All physical interference with protected remains needs official permission, and if permission is given, it is generally on condition that the applicant pay for archaeological investigations and documentation.

Historic buildings (the concept includes structures other than buildings, and parks and gardens) are protected by individual listing. Administrative orders will specify permitted and non-permitted measures to such buildings with regard to demolition, alteration and upkeep. Non-consenting property holders may claim compensation, but there is a threshold of economic damage that must be passed before owners become eligible for indemnification. Protection may be effected either by state or by local governments; in the latter case under the 1987 Planning and Building Act (SFS 1987:10).

No more of the protective rules for cultural monuments in Sweden will be described here. Nor will the fact that there is a grant system to cover owners' extra costs for care and protection of monuments be subject to much attention here. Owners' efforts in maintaining monuments on their land can be seen as a part of their given interest in good management and a certain income of properties. I take the meaning of this seminar to be not a general discussion on how protection of privately held cultural property should and could be enacted and administered in our respective countries. The focus

should rather be on how private individuals and organisations voluntarily contribute to the maintenance of monuments. 'Voluntary' should be understood not just as efforts sparked by genuine idealism, but also as those that are prompted by interests of a commercial kind. In this respect, I am thinking, of course, of sponsorship.

There is very little legislation in Sweden on voluntary work. The predominant organisational form used is that of *non-profit associations* and – often when a lump sum is available – foundations. Companies, be they incorporated, limited, public or private, are used more seldom. The same is true also for partnership.

Non-profit associations

Non-profit associations play a very important role for the protection – and sometimes also for the management – of monuments. There is a popular movement organised in this form, which may be uniquely Scandinavian: the *'Hembygdsrörelsen'*. Native District Movement might serve as a crude English translation of this concept.

This movement is organised in small associations of people from the same parish, or perhaps a group of parishes, but usually a district much smaller than the local government district. The Native District associations are predominantly rural, but may exist also in towns and villages. Their activities are often confined to arranging the odd lecture on local buildings, old customs or other items of local history. In that capacity they serve the important function of deepening knowledge and understanding of cultural history. Their role, however, is not always quiescent. Whenever there is a threat to the existing environment, these associations usually provide the vigilantes. Often allied with local political forces, their opposition may be very effective. Seldom rich in financial resources, the associations do not usually take on the task of actually running monuments, at least not the ones of greater scale. A common occurrence, however, is the local *'Hembygdsgård'*: a cottage, a former schoolhouse or a homestead, which has been donated or else saved from dereliction, and is now being kept by voluntary efforts. These small establishments may house collections of various kinds: rural gear and equipment, tools and machinery from a defunct craft or industry and other "leftovers" from the world of yesterday. In southern and central Sweden, where the runic stones are plentiful, you might often find that the local association has 'adopted' one or several such stones to care for them, clear vegetation around them, and – under antiquarian supervision – clean moss and debris from the stone surface.

For vigilante purposes, especially, non-profit associations are often quickly established, and they may also vanish almost as rapidly. The ad hoc character of these associations is in no way hampered by statutory regulation. There is no legislation in Sweden with regard to non-profit associations, nor is there an official register of them. In civil law, however, they are accepted as legal persons, responsible for their own assets and debts, and excluding boards and members from the same responsibility, provided they meet the following conditions. An association must have a *written constitution* adopted by the *members*. It must be represented by a *board*, appointed under provisions of the constitution.

Foundations

The other predominant form of organising private and voluntary contributions to the upkeep of cultural monuments is the foundation. Until recently, the concept of a foundation was not defined by statutory regulation. Since 1929 there had been legislation providing for a degree of public monitoring of foundations, but founders could waive the applicability of this act, and the fundamental concepts were not developed in it.

A number of very different juridical constructions have evolved. Foundations have been used for holding fortunes invested in industry. State and local governments have often run common projects – especially in the cultural sphere – under the guise of foundations, but quite dependent financially and often personally on their public body masters. Of old, foundations have also served as holders of donations and bequests, often dedicated to the promotion of higher education and research. Today many foundations have also come to perform important duties in the management of cultural monuments. An example is Skansen, the well-known out-of-door museum in Stockholm.

Since there has been very little monitoring of foundations, there is no certain knowledge as to how many exist. A count in 1976 revealed a number of 50000, managing SEK 25 milliard (USD 7 billion). Tax authorities six years ago had some 16000 foundations registered.

As of 1994 Sweden has a Foundations' Act (SFS 1994:1220). This act lays down three fundamental requirements for a foundation, which, if met, makes it a legal person. It must consist of *separated assets,* which have been *endowed permanently* for a *defined purpose*, formulated in writing (deed, will). Assets must suffice to serve the purpose for its duration (at least five years). Assets cannot be on paper only; hence a mere promissory note issued by the founder is not acceptable.

There are foundations which are partly excepted from the fundamental requirements. For one thing foundations accepted in older law may continue as legal persons, provided certain minimum standards are met. Secondly, the new act allows *fund-raising foundations*, for which the asset requirement is relaxed in the sense that the foundation is valid even before such time as sufficient assets have been accumulated to serve the defined purpose. This latter form of foundation is, of course, of great importance for various rescue operations.

There are two different forms of entrustment of foundations. The trustees could be either natural persons or legal persons. In the former case the trustees are the *board* of the foundation, with powers specified in the Act. In the latter case the legal person entrusted is empowered according to rules governing the respective kind of legal person, for instance rules of the Limited Companies' Act (SFS 1975:1385), regulations for state or municipal bodies etc.

Foundations have to keep audited accounts. The Bookkeeping Act (SFS 1976:125) is applicable to foundations of a certain magnitude. Foundations of that size also have to register with the authorities and provide them with an annual financial report. Fund-raising foundations are under the stricter rules regardless of size. The authorities are empowered to intervene in foundations which do not meet standards.

Because of the asset requirements of the Foundations' Act, the kind of foundations which traditionally have been operating as co-ordinators for various state and local government undertakings and which have been financially dependent on their principals, are not accepted any more. Official state policy is to transform them into companies or non-profit associations. Similar conclusions have been drawn also by local governments. Regional museums, in general organised as foundations, are now – in certain cases – being transformed into limited companies.

Sponsorship

There is not even a good Swedish word for this occurrence which, starting in the world of sports, now provides a major source of income for cultural life in Sweden. The development of sponsorship for cultural purposes has to a degree gone hand in hand with state and local government efforts to cut spending. There is no legislation in place to deal with various (mainly tax related) questions arising in sponsorship relations, although several initiatives have been taken over the years to introduce an element of regulation. Sponsorship questions have been taken care of by the Association for Culture and Industry, a non-profit organisation set up in 1988. This association is open to enterprises, trade organisations and cultural institutions with experience of and an interest in sponsorship within the fields of culture, environmental and nature protection, education and research. There are some 150 members. The association is also a member of CEREC (Comité Européen pour le Rapprochement de l'Économie et de la Culture). Among other services the Association has produced a model contract for sponsorship relations. It regularly issues a news bulletin and other publications.

Inquiries reveal that the total number of cultural sponsorship projects has increased from 113 in 1987 to 283 in 1995. A particularly rapid increase can be noted with regard to projects for cultural monuments: from 15 to 71. No financial figures are available as sponsors do not always contribute actual money but also goods and services.

One of the most important cultural monuments at the receiving end of sponsorship is the 3 kms long 13th century city wall of Visby (on the World Heritage List), managed by the Central Board of National Antiquities. In 1988 concrete producer Cementa Ltd. was made head sponsor of a five year programme of restoration, consisting mainly in replacing harmful modern concrete fillings with mortar produced according to traditional methods. Other sponsors joined in the campaign. One of the ingredients of the campaign was a fund-raising drive among the general public. A yearly event in Visby is the medieval week, with festivities and various cultural events, attracting a considerable number of visitors. The head sponsor was remunerated by having special access to events and a special place in the advertising of the maintenance programme. Souvenirs and publications were also produced to enhance the general public's awareness of both monument and sponsors.

Incentives

The general grant system is open primarily to owners, but also to voluntary organisations, particularly such organisations which are themselves also owners and managers of monuments.

Sweden is noted for a high proportion of the GNP going into public expenditure (a fraction of which goes to grants for cultural monuments). Consequently, taxes are comparatively stern. Very little incentive is provided by tax rules with regard to owners in general, even though they may have extra expenses for the upkeep of monuments. Non-profit organisations, however, have a more favoured position.

Income tax

Income tax for *natural persons* (including estates of deceased persons) is divided into municipal tax, ranging from 28 – 33 percent, plus state tax, which is levied at 25 percent above a certain level of income from employment or business. Income from interests, dividends and capital gains are taxed only by the state and at a flat rate of 30 percent.

Capital gains are taxed also in as far as they emanate from the sale of movables. Cultural value is not considered. However, sale of movables for personal use, e. g. art, furniture and jewellery, under a certain threshold is exempt.

Costs for repair and maintenance of private houses – be they of cultural value or not – is in general not deductible from taxable income. There is an exception, however, for large houses (area in excess of 400 sqm), built before 1930. Owners may opt for taxation under rules applicable to commercial properties, which allow deduction of all commercially related expenses, including repair and maintenance. A taxable value for the right of use of the dwelling will then be appraised and added to taxable income.

Legal persons (except estates of deceased persons) pay a state tax of 28 percent.

Non-profit associations are exempt from income tax, provided they serve certain broadly defined charitable purposes. Only earnings from real property or business not related to the purpose are taxable. As there is no registration of nonprofit associations or their charitable activities, tax questions will be dealt with according to the circumstances of each case.

Foundations – an organisational form sometimes used for conducting business – are under stricter rules with regard to taxation. There are tax-reliefs in two tiers. Certain foundations – like the Nobel foundation and a number of others – are specified by statute to be excluded from taxation of all income except income of real property. Foundations which have been established to serve certain purposes pay income tax also on other business income. This applies i. e. to foundations with a purpose of serving scientific education and research. Foundations in both tiers of tax-relief are exempt from tax on interests, dividends and capital gains, provided that the foundation in question regularly uses at least 80 percent of said income for the tax-exempt purpose designated in the foundation memorandum. The remaining 20 percent may then be used e.g. for maintaining cultural property. There are some foundations which are able to combine the scientific requirement with such maintenance work.

Sponsorship gives rise to tax considerations for both parties involved. There are, however, no provisions in the tax statutes that apply specifically to sponsorship (initiatives to that effect have been rebutted). The basic issue for the sponsor is to be able to claim deductibility for his costs. He must show a commercial viability in expenses incurred, i.e. that costs are beneficial to his business, even though they may not be as directly gauged as costs for advertising normally are. Advertising is often for a special product or brand, whereas in sponsorship the intention typically is to enhance the image and the goodwill of the sponsor's business or the name of the sponsoring company. Another requirement for

deductibility would be that costs appear reasonable in relation to benefits, real or expected, to the sponsor. If a sponsored party is less successful in producing the results sought by the sponsor, this should not automatically disqualify from deduction of costs. The sponsor's intention of furthering commercial interests should be reasonable seen in a business perspective.

If, however, tax authorities refuse deduction, the motives could be that costs appear to be either an outright gift, or an excessive form of business entertainment. Whether it is a gift or not should be determined with regard to the agreement between the parties. If the sponsored party has agreed to obligations of his own, then it seems hard to judge the sponsor's obligations as a gift or a donation. A sponsorship agreement is a mutual concept, whereas donation is unilateral. The sponsored party in return often offers services such as rights for the sponsor's staff or clients to visit or use premises free of charge, to have special favours or discounts, to take part in festive arrangements etc. The more of this, and less of other services, the more likely that tax authorities will clamp down on deductibility. However, as long as services of this kind can be seen as in line with the sponsor's general marketing, they should be in order from a tax perspective.

Wealth tax

Wealth tax for natural persons is levied at a flat rate of 1.5 percent of wealth exceeding a value of SEK 900000 (≈ USD 120,000). Apart from commercial real property, assets used in business are not included in taxable wealth. Commercial real property will soon be excluded too.

Wealth consisting of culturally significant property or objects is not excluded *per se*. Personal movables, such as furniture, gold- and silverware, paintings and pictures and jewellery, however, do not constitute taxable wealth (but attempts to that effect have been made, and have grounded mainly because compliance would not be possible to monitor). Most *legal persons* do not pay wealth tax.

Real property tax

Real property tax is levied on owners and holders of long-term rights to real property at different rates subject to type of property. The present rate for dwellings is at 1.7 percent of the value determined in land taxation appraisals. Industrial and commercial properties are taxed at 1 percent, whereas so far proposals to have farm and forestry land taxed have not been implemented.

In land taxation appraisals certain kinds of buildings are tax-exempt, e.g. buildings for cultural or educational purposes, such as museums, theatres, schoolbuildings and buildings for public administration. Many of these may have a cultural value, but there is no general exemption for buildings possessing such value. If extra costs for the maintenance of such buildings can be considered to affect the market value of the property, this may decrease the appraised value, which in turn lowers the amount of property tax (and wealth, inheritance and gift tax).

Inheritance and gift tax

Transfer of property rights through inheritance or gift induces taxation regardless of whether the recipient is a natural or a legal person. The rules are complicated and taxes are levied at various levels and with different basic allowances, depending on the degree of relationship between the deceased or donor on the one hand and on the other the heir or recipient. Certain beneficiaries, however, are exempt. With regard to inheritance this is the case e.g. for the State and associations and foundations with certain charitable purposes (one of which is scientific education and research). Maintenance of cultural monuments is not among the favoured purposes. With regard to gift tax, however, the exemption is much broader. In addition to recipients who are already exempt from inheritance tax, municipalities and associations and foundations with a main purpose of furthering religious, charitable, social, political, artistic, athletic or comparable cultural or *pro bono* ends have also been exempted. A foundation or an association managing a cultural monument may thus receive donations free of gift tax. It should be noted that this exemption applies only to recipients which are legal persons.

It is possible for the Government to remit inheritance or gift tax in certain instances, e.g. if according to conditions in a will or a deed a collection of historic, scientific or artistic value must be kept together. The same applies also to real property with provisions that it is to be passed on in its entirety to future successors and the levying of tax is deemed to jeopardize interests of a cultural historical nature. This possibility has been used very sparingly. There are, however, still in Sweden a few entailed estates, possessing in their buildings and movables very important cultural values, to which these provisions may be applied.

It could be noted also that the State Inheritance Fund, which is the automatic beneficiary in cases where a deceased leaves neither heirs nor a will, may pass on property of essential significance from a cultural or nature conservation viewpoint to a legal person, which is particularly qualified to care for and maintain that property. The acquisition in these cases is not tax-exempt, but the recipient may, of course, be exempt, or tax remitted by the Government.

Value added tax (VAT)

Value added tax is levied in Sweden under EC rules, thus not very differently from other member states of the European Union. There are three rates: 25, 12 and 6 percent. The lowest rate is used to further certain cultural purposes, but there is no comparison in Sweden to a low or zero rate for services to monuments, used in some other countries.

Archaeological investigations conducted by the Central Board of National Antiquities subject to conditions in a permission to remove archaeological remains are exempt from VAT. The reason is that the service in question should be seen not as an ordinary service but as an exercise of public authority under the Act on Cultural Monuments etc. As entities holding permissions of this kind – often building contractors and similar businesses – have possibilities to deduct input VAT, this provision has arguable effects in lowering costs.

VAT issues are, of course, complex with regard to effects of input and output tax. Museums may or may not deduct input tax on acquisitions depending on what kind of VAT taxable goods and services they themselves produce. Income from gift shops, restaurants etc. are subject to VAT, and therefore pertaining VAT-costs should be credited. Exhibitions and the production of objects for exhibitions are still VAT-exempt, if performed or supported by public bodies; hence no credit of VAT either. State museums, however, have an arrangement to nullify VAT effects. Recently, VAT was introduced on entrance fees to concerts and performances of circus, theatre, ballet and opera, which entails deductibility for pertaining VAT-costs. Deduction will be reduced in proportion to subsides received from public bodies.

Non-profit associations are exempt from VAT with regard to goods and services related to activities exempt from income tax (see above). Athletic associations have introduced a practice in order to redress the lack of deductibility for input VAT. By establishing a daughter company, recipient of income from sponsors, and producing advertising services, it has become possible to claim deduction for VAT-costs pertaining to the advertising. (In a verdict of the Supreme Administrative Court it was, however, established that the company's costs for purchase of sports dresses would be deductible only to the extent advertisements were in actual fact applied to the garments in question!)

Summary

The following should be noted with regard to the present conditions in Sweden for promoting private initiatives in protecting and caring for cultural monuments.

1. Most monuments are privately held. Conditions for encouraging private owners to care for their monuments are therefore very important. There is no tendency to have public bodies acquire monuments. Privatization of property with publicly held monuments has on the other hand now come to a halt.
2. Civil law contains few rules for non-profit associations. A new act on foundations provides basic rules which do not impede the the continued use of foundations for holding or managing cultural property.
3. Sponsorship is here to stay. Its importance is growing. No special rules apply.
4. There is a grant system, which however in Sweden as in most other countries is not sufficiently large.
5. Tax incentives are few, and – with the odd exception – not open to private individuals. With regard to income tax there is, however, favourable treatment of non-profit associations for their charitable activities. In a lesser degree, favourable rules also apply to certain foundations. Inheritance tax is levied approximately on the same subjects as pay income tax. Really favourable rules apply only to donations with regard to subjects that would otherwise have to pay gift tax. Donors may not deduct gifts from taxable income.



NEVZAT İLHAN

Legal Forms – National Approaches in Turkey

Facts and figures as of 1996:
a – Protected areas designated as sites: 3,857; b – Registered buildings and other structures: 46,849.

The legal infrastructure today

1. – The Constitution of 1981, article 63; 2. – The Construction Law of 1985, no: 3194; 3. – The Conservation Law of 1983, no: 2863, and its Amendment of 1987, no: 3386.

The state institutions in charge

1. The Ministry of Culture:
- Directorate of Monuments and Museums acting via the network of museums since 1881, and regional offices for survey, implementation, supervision and restoration of state-owned buildings.
- Directorate for the Conservation of Cultural and Natural Heritage acting via the network of autonomous Regional Preservation Councils (17 for Turkey) for the conservation approval of privately owned buildings.

2. The Ministry of State in charge of foundations deals with the monuments belonging to Pious Foundation (VAQF) of Muslim, Christian and Jewish origins, acting via the network of regional offices for survey, implementation and supervision, maintenance of VAQF buildings in Turkey.
3. Different state institutions:Autonomous or dependent users of the state-owned cultural property are responsible for their care, maintenance and restoration (universities, state offices, hospitals, municipalities, high schools, etc.)
4. Local governments, metropolitan and local municipalities are responsible in their area of public service for the monuments and sites owned by the State Treasury and National Properties Office.

The main private organizations of sponsorship

Foundations and associations (NGOs) are established according to the Law of Foundations and the Law of Associations and are granted public benefit status by the decree of the Council of Ministers, based upon the proposal of the Ministry of Interior. They are exempt from income tax and institutional tax and the grants they receive are tax deductible. Public benefit institutes, incorporations and the German GmbH models are not yet legal in Turkey. To be allowed to make "international relations" and to be granted "public benefit status" is very difficult not to say almost impossible for the associations. These difficulties are leading the people to the establishment of foundations if they can afford it. Bas-

ed upon the "Corpus of NGOs, Turkey 1996" prepared for the first time for HABITAT II, there are ca. 1800 major NGOs out of which only 60 are dealing with the sponsorship and participation in the protection and maintenance of monuments in the proper sense.

There is a very severe "Law of Associations", no. 2834, accepted just after the military intervention of 1981 – which is publicly called "Law of Reaction towards the Cold War" which must change as soon as possible and give wider freedom to associations in the 21st century.

Until the 1980s foundations in Turkey followed the traditional lines of "Family Foundations" which have a very long history, almost 600 years of Ottoman Empire.

Today tendencies are for "Holding Foundations", mostly dealing with education, health, cultural organisations and festivals. The minimum cash capital required for creating a new foundation is approximately equivalent to 100,000 USD.

The main leading foundations and associations sponsoring and participating in the protection and maintenance of monuments are:

1. Touring and Automobile Club of Turkey (TTOK)

Established in 1923, this public benefit association has been very active up to recent years under the leadership of Dr. h.c. Jur. Çelik Gülersoy, current Director General, who will be celebrating his 50th year of service in 1997. The triptic dues were the main source of finance for sponsoring and management of the restored and rehabilitated buildings belonging to or rented for a long period by TTOK.

2. Foundation for the Protection of Monumental, Natural and Touristic Values of Turkey

Established in 1976 jointly by the Ministry of Culture and the Ministry of Tourism with the aim of "minimizing the bureaucratic procedure, difficulties and implementation" mainly for the city of Istanbul. Being supported for the financement of its operational projects like the sea-front houses at the Bosphorus, the restoration of the city walls, and the continous Sound and Light program in summer at Sultanahmet Square, the foundation was very active until recent years. The economic crisis and the lack of support of the founding ministries has resulted in a stage of stagnation today.

3. Association for the Protection of Historical Houses of Turkey

Established in 1976 by scholars, this association made tremendous efforts for the awareness of protection of historical houses of Turkey via photographic exhibitions, conferences and seminars in cooperation with the universities. The association has been granted "public benefit status". The main field of activity is to create public awareness at every level; the association is not dealing with the proper restoration and/or maintenance of monuments.

4. Foundation for the Protection of Environment and Cultural Assets (ÇEKÜL)

The foundation was established in 1990 by architects, art historians and environmentalists and is for the time being very active in environmental activities of reforesting and providing technical know-how for the restoration of historic houses – the most important group of monuments not belonging to the state – all around Turkey, via their campaigns of public awareness and realization of pilot projects of restoration and rehabilitation. Although having been granted "public benefit status", the foundation is in need of financial sources as regular income for the implementations.

5. Chamber of Architects of Turkey

This professional association established in the 1960s is mostly acting as a "monuments and land speculation watch institute" in the field of protection and creates public opinion and awareness on these matters, with its 12,000 members all around Turkey. The Chamber of Architects of Turkey does not sponsor field work, but it supervises and provides know-how.

Conclusion

At the eve of the 21st century, Turkey is, like other countries, living through enormously rapid changes and economical and social transformations and is reshaping its administrative, social, economical and cultural structure. Besides the amelioration of the status of the existing system of NGOs, like the foundations and associations, new concepts of establishments like public benefit institutes, incorporations, GmbHs, ombudsman institutions in the cultural and protection sector should have their priority in the country's sustainable development sytem. Turkey will in a wide sense benefit from the experience of the other countries either for comparison or for new ideas of legal, administrative, financial and operational structures and institutions of private sponsorship and participation in the protection and maintenance of monuments.

Table 1 Protected areas designated as sites as of 1996

Protected archaeological areas	3029
Protected natural areas	396
Protected urban areas	118
Protected historical areas	115
Other protected areas	199
TOTAL	3857

Table 2 Registered buildings and other structures as of 1996

Samples of civil architecture	31047
Religious buildings	5265
Cultural buildings	5126
Administrative buildings	755
Military buildings	587
Industrial and commercial buildings	397
Cemeteries	1596
Military cemeteries	182
Memorials and monuments	189
Natural heritages	1003
Ancient ruins	702
TOTAL	46849



David Pullen

The Constitution of the National Trust

When I took up the post of Solicitor to the National Trust in 1989, one of the first requests for advice which I received was to determine the year in which the Trust should celebrate its centenary – not difficult you would think but I was offered 1893 (when the first meeting to consider the establishment of the National Trust was held), 1894 (when a meeting was held to approve the draft constitution) and 1895 (when the National Trust for Places of Historic Interest or Natural Beauty, to give it its full title, was registered under the Companies Act as a company limited by guarantee).

I plumped for 1895, but that is history because the National Trust that we know today owes its existence to the National Trust Act of 1907. That Act created the National Trust as "a body corporate with perpetual succession and a common seal and with power to purchase, hold, deal with and dispose of lands and other property". It was established "for the purposes of *promoting* the permanent preservation for the benefit of the nation of lands and tenements (including buildings) of beauty or historic interest and as regards lands for the preservation (so far as practicable) of their natural aspect features and animal and plant life". Those purposes were extended by the National Trust Act of 1937 to include the *promotion* of

1. the preservation of buildings of national interest or architectural historic or artistic interest and places of natural interest or beauty and the protection and augmentation of the amenities of such buildings and places and their surroundings;
2. the preservation of furniture and pictures and chattels of any description having national or historic or artistic interest;
3. the access to and enjoyment of such buildings, places and chattels by the public.

I emphasised the words "promoting" and "promotion" which clearly permit the Trust to pursue its objectives in various ways, but it has always concentrated on the acquisition and management of land, buildings and their contents and is not a campaigning organisation, except to defend its own property. It can exercise those powers in England, Wales, Scotland and Northern and Southern Ireland, but as far as I know it has never owned any property in Scotland (where there is a separate National Trust) and only one in Southern Ireland which is currently being sold to the National Trust there. It can also accept or acquire covenants over land, and (unusually in English law) can enforce them against the owner or his successor even if it has no legal interest in the adjacent land.

There is enough material in the booklet containing the National Trust Acts for several 15 minute presentations, and I can therefore only touch on some of the more unusual points. For example, the National Trust is not a trust in the sense described this morning by Dr. Kearns so that there is no trust deed, it has no memorandum and articles like a company (although it did of course between 1895 and 1907) and the various National Trust Acts are its constitution. Nor indeed is it a bank as some people apparently believe.

It is also a registered charity, since although it does not satisfy the test of being for the relief of poverty, the advancement of education or the advancement of religion it meets the fourth test of being established "for other purposes beneficial to the community". Two particular things flow from all of this:

1. Although the Trust is a body corporate, as a matter of charity law the members of the ruling Council are charity trustees because they are responsible under the charity's governing instrument (namely the Acts of Parliament) for the general control and management of the administration of the charity and therefore have a degree of personal liability (against which until recently they could not insure) like the trustees of the form of trust described by Dr. Kearns.
2. Although created by Parliament its external responsibility is not to Parliament, and its Annual Report has to be submitted not to Parliament or a Government Minister but to the Charity Commission and the AGM of its members.

At a slightly more detailed level the following aspects of the National Trust's constitution are worthy of mention in this debate:

- Section 11 of the National Trust Act 1971 provides that "the entire business of the National Trust shall be arranged and managed by the Council who may exercise all such powers of the National Trust as are not exercisable only by the National Trust in general meeting". This makes it clear that the members of the Trust are not in the same position as the shareholders of a limited company.
- You would expect the Council to have power to delegate its functions, but in fact the 1971 Act provides that the Executive Committee is to "exercise and enjoy" all the powers conferred on the Council with certain specified exceptions. The Executive Committee can then confer powers on sub-committees, Regional Committees etc.
- Half of the Council of 52 are appointed by organisations such as the Trustees of the British Museum, the Royal Agricultural Society and the Ramblers Association, and the other half are nominated by members of the Trust and elected by them at the AGM.
- The members of the Trust (now numbering 2.4 million) have certain limited rights under the constitution – the power to nominate candidates for election to the Council,

to elect the auditors, to approve the Annual Report and Accounts and also to submit resolutions to the AGM. Although those resolutions can be and are voted on, they have no binding effect, and only a very small proportion of the members vote, mostly by proxy or postal vote.

- Although not technically part of the constitution we have arrangements (which are not legally binding and which we call Memoranda of Wishes) whereby the descendants of families who have given their houses or land to the Trust are permitted certain favours, principally of continued occupation. The behaviour of the Stricklands of Sizergh and the Bristols of Ickworth are better left for discussion over a coffee or lunch break, but I will return in a moment to the wish by the donor in 1944 of thousands of acres on Exmoor in Somerset that hunting should be allowed to continue. Suffice it to say here that the Council has always respected these wishes, although detailed changes have been negotiated or made from time to time.

- The Trust describes itself as a charity in need. Not a very good slogan, but it is a reminder that the Trust receives no direct financial support from the Government. The Accounts for 1995/96 reveal that of the total income of £116 million, £46 million came from members' subscriptions, £26 million from rent and admission fees, £4 million from revenue grants and £40 million from investment income, the contribution from our trading company and appeals. In addition there were capital grants of £12 million, legacies of over £20 million and capital receipts from sales of £2 million. In the same year capital works and projects at properties amounted to £45 million, and we spent over £10 million on acquisitions. We are a big business!

I do not have time to talk about the advantages and disadvantages of being a registered charity, but I will say a few words as to the advantages and disadvantages of the National Trust's form of constitution, namely the various Acts of Parliament. In the case of the Trust the first and most important advantage is the unique power conferred by Parliament in 1907 to declare property inalienable, so that it cannot voluntarily be sold and, if the Trust objects, can only be compulsorily acquired by what is called Special Parliamentary Procedure. Not a complete safeguard but a pretty effective shield so that we cannot sell off the family silver, or more accurately the bricks and mortar, but it does mean they are a permanent liability since the decision is irreversible, and many properties whilst well endowed in architectural terms are not well endowed financially.

The second advantage, which is important in the case of an organisation such as the Trust which is concerned with the permanent preservation of property, is that it is not vulnerable to changes in its powers or methods of operation from some vote of members at the AGM or a sudden change in the composition of the Council, because with very limited exceptions relating to the conduct of the AGM, the Acts can only be changed by another Act of Parliament.

The other side of the coin is that a constitution contained in an Act of Parliament is very inflexible. Powers cannot be extended, basic structures cannot be changed, voting systems cannot be altered, poor drafting cannot be corrected, and members' powers cannot be varied without a further Act. The last is a particular issue. The 1971 Act introduced the procedure for members' resolutions, and it could be argued that the larger the Trust and the larger its membership the more need there is for the members to be able to challenge the policies and decisions of the Council. For 10 years after 1971 there were no resolutions; thereafter there has always been at least one, with as many as nine in 1983 and 1990. In my personal view it is rather absurd that 10 out of 2.4 million members can demand a debate and vote on an issue which may have little relevance to the affairs of the Trust. It is often an opportunity for single interest groups to gain a platform and publicity on subjects such as the reduction in road traffic or transporting animals abroad for slaughter which are at best peripheral to the Trust's statutory purposes, but perhaps it is democracy of which its critics say there is all too little in the management of the Trust.

Can I end with a topical example which brings together some of the unusual aspects of the Trust's constitution which I have mentioned. Hunting with hounds, and particularly deer hunting,has been a matter of controversy at Annual General Meetings for many years and resolutions have been put forward proposing that it should be banned. The Council took the view that the ethical and moral arguments were outside its statutory purposes, but in 1995 it commissioned a scientific study as to whether hunting with hounds caused the deer suffering. The study was published last week and the scientific evidence was devastating. What should the Council do? Should it consult the membership? Should it consult the hunts and hunt supporters? Should it consult the Charity Commission? Should it postpone any ban until the implications could be addressed? And what about the Memorandum of Wishes,since the donor died a few years ago? In fact the Council decided in view of the evidence that deer hunting with hounds over Trust land should not be permitted after the end of the present season. An unpopular decision in Somerset, but many would say a decision long overdue. As the Trust's Solicitor I am hoping that, unlike the Local Authority who sought unsuccessfully to impose a ban a few years ago, there will be no legal challenge to the decision.



Bonnie Burnham

Heritage Conservation in the United States: Law as an Incentive for Private Initiative

The plans to create an ICOMOS committee on legal, administrative and financial issues are very well timed. As this gathering demonstrates, many countries of the world today are reconsidering the basis that national and municipal law provides for the protection of cultural heritage. Many countries' laws were written decades ago in a different historical and political environment. They were not designed to be effective when confronted with new challenges that include rapid urban growth, population explosion, postwar development, environmental pollution and mass tourism. Given all these pressures, and the political priorities that they create, it can be no surprise that governments are increasingly turning to the private sector for help in addressing social concerns and providing services that were traditionally considered the responsibility of government. Among these responsibilities is the protection and conservation of cultural heritage.

In the United States, the federal government's role in preserving significant landmarks and sites has always been very limited. Only a fraction of the buildings in the country that can be considered worthy of conservation fall under the direct jurisdiction of the government on a national level. Even listing a structure as a National Historic Landmark or National Historic Site – the government's highest level of designation – provides neither financial support for its preservation nor any guarantee that the structure will be protected from significant modification or even demolition.

Government funding for architectural conservation is also very limited. Congressional appropriations established as part of each year's budget support only the maintenance and restoration of sites owned by the national government. Limited funds are available from the National Endowment for the Arts, through its design arts program, for projects presented by non-profit organizations. The National Trust for Historic Preservation receives an annual subsidy, and the State Historic Preservation Offices receive support from the federal government to administer national government programs on a state level. But all these agencies have been subjected to deep budget cuts in recent years. All these agencies look to the private sector for funds to match and supplement their governmental support.

As a complement to the government's limited role in the preservation of monuments and sites, it provides a very strong system of incentives that encourages the private sector to take initiative where the public sector lacks the means or the jurisdiction to do so. In the two decades since the American bicentenary in 1976, as a direct result of the historical consciousness that it promoted, a sophisticated network of private local and national preservation organizations has developed in the United States. These organizations have not limited themselves to taking advantage of the traditional tax incentives available to non-profit organizations, which provide a direct tax deduction for contributors who give funds to support their work. They have assumed leadership in the field of architectural conservation by developing ingenious strategies and mechanisms that, in turn, have spawned local and national legislation to support private investment in the historically significant built environment. A review of some of these mechanisms might reveal prototypes that could be replicated elsewhere.

Tax incentives

Direct tax deduction for philanthropic contributions

American law permits taxpayers to deduct donations to charitable organizations directly from their income, up to a ceiling of 50% of their total income. All money given to registered non-profit organizations is tax-exempt. This generous incentive has been responsible for the steady growth of the non-profit sector in America over the last fifty years. However, it must be noted that the government sees this liberal system of deductions as a direct alternative to government support of comparable programs. Effectively, the taxpayer is determining how his tax dollars will be spent by directing them to organizations of his choice. The government has in turn reduced its spending proportionately in areas such as health care, social service, culture and education, where private charities are most active.

Although Americans are permitted to give away as much as 50% of their incomes and deduct these contributions from taxes, few households are in a position to do so, and few Americans donate more than 1% of their income to charity each year. Overwhelmingly this support is directed to religious charities, humanitarian causes and education. Cultural organizations together receive only 6% of the funds contributed to charity each year. Since preservation organizations represent only a small percentage of the cultural organizations in the country, it must be recognized that direct charitable support generates only small revenues for conservation of cultural heritage. The most innovative programs have been financed in other ways.

Other preservation incentive programs in the United States

The overwhelming concern of the U.S. preservation community has been for the decline of neighborhoods in historically important inner cities and the character of small towns whose traditional social fabric has broken down in the face of urban development and suburbanization. Mechanisms to support the restoration of inner city fabric and "main street" streetscapes have taken the form of incentives for individual property owners to invest in their properties rather than letting them decline, such as the following:

Conservation Easements: Local preservation groups or interested individuals purchase a piece of threatened property and resell it with an "easement" – or binding legal provision – attached to its title. This easement requires present and future owners to respect certain conditions that guarantee

preservation. Rather than depressing the value of the property by making it harder to sell, preservation easements have tended to increase property value, since the property's intrinsic quality is recognized. Easements may include maintenance requirements that result in the property being better kept, therefore enhancing its surroundings rather than detracting from them. For example, the Conservation Society of San Antonio has developed the practice of purchasing facade easements from owners of commercial buildings in prominent locations in the city center. The sale of an easement gives the property owners enough funds to maintain the facade properly and improve its appearance within the framework of local zoning ordinances and restrictions that have been passed as a result of pressure from conservation groups. As a result, the value of the property is enhanced. Owners can obtain higher rents, which contribute to the well-being of the community. A chain reaction begins.

Revolving Funds: Local preservation groups buy residential historic properties in key urban locations, renovate them, and resell the properties, investing the profit in further projects. This system has been used by Historic Charleston to reclaim large parts of the city's center that were in decline; the result has been the explosion of tourism in the city, with visitors attracted to see the intrinsic charm of neighborhoods that were recently derelict.

As an alternative approach to revolving funds, local preservation groups or statewide organizations make low-interest loans available to property owners for the purposes of renovating historic buildings. Buildings are saved, eventually improving the character of the area and triggering further investments.

Commercial Property Tax Credits: Because of the wholesale loss of industrial and commercial building stock, the Federal government established special tax credits to make the cost of renovating existing buildings as viable as the cost of destroying such buildings and constructing cheap new, characterless structures. The investor could take a business tax credit for all the funding invested in the renovation of an existing building. This provision led to the investment of billions of dollars in derelict commercial building stock in American inner cities before it was nullified by an overhaul in the corporate tax structure. While the provisions still exist as law, they no longer provide a strong incentive for investment.

Entrepreneurial Programs: Some local preservation organizations have even entered into property transactions as entrepreneurs in order to reorganize the legal situation of an important edifice and to pass it on to new owners or titleholders with a strengthened form of protection. In New York City, the New York Landmarks Conservancy orchestrated the transfer of an important public building – the Federal Archives Building – which was owned by the Federal government but judged redundant. Title to the building was passed from the U.S. government to the City of New York, which simultaneously leased it to the Landmarks Conservancy. The Conservancy developed plans for its mixed-use renovation, and then sold its leasehold to a developer with an easement that required the developer to restore the building to the standards set forth in the plan. Proceeds from this sale – a tax-exempt $5 million profit – were set aside by the Landmarks Conservancy as a permanent endowment to support a city-wide facade renovation program and a special fund providing emergency grants to help stabilize endangered religious properties.

In each of the cases above, preservation groups, whether operating on a local, state or national level, have taken advantage of a range of tax benefits. The provision that individual and corporate donors may directly deduct gifts to charitable institutions has permitted non-profit preservation groups to raise capital, which they have used cannily to back investments that have yielded profits as well as social and economic benefits for the community. Purchase of materials used in construction projects is exempt in many states from sales tax, and buildings owned by non-profit organizations are exempted from property tax. Finally, any profit made in the sale of a historic property by a non-profit organization is exempt of income or capital gains tax. The non-profit organization as investor in historic sites has a distinct advantage over commercial or private investors – an advantage that the government recognizes and upholds.

(Note: Significant religious properties are perhaps the most vulnerable type of building in America, since the government provides no support and no ironclad legal protection for their preservation, and religious bodies often claim that the restoration and maintenance of such buildings constitutes a hardship that impedes the performance of their mission. Proof of owner's hardship, in many communities, constitutes justification for the owner of a historic property to sell or demolish it rather than restoring and maintaining it.)

Public-private partnership

When important public buildings need restoration and do not fit the mold of commercial or private investment, local groups have often forged relationships with government that result in a mutual public and private investment in the program. Public-private partnerships have been the framework of many of the major construction and restoration programs carried out in recent years.

Bond Issues: In face of a major renovation program that requires a large capital investment but can be expected to yield a return over time, many communities have issued bonds whose proceeds are earmarked for specific projects. Investors may purchase the bonds, guaranteed by the state, which mature at a fixed time. The initial investment is set aside for the construction and renovation project on a low-interest loan basis, and investors are paid, on maturity of the bonds, by repayment of the loans. The renovation and new construction at many municipal museums, and the development of the hugely successful South Street Seaport preservation district in New York, were financed in part by bond issues.

Public-Private Campaigns: Finally the public and the private sectors sometimes collaborate to launch a major campaign to raise funds for an important historic site. The campaign for the Statue of Liberty and Ellis Island raised $400 million in public and private funds. Conducted by the Statue of Liberty and Ellis Island Foundation, a private group, on behalf of a governmental commission of the same name, the campaign drew funds from a variety of sources – charitable contributions, licensing of the campaign's official symbol to advertisers, sales of licensed products, and modest contributions (below the level normally reported on tax returns) by families and school children – as well as from a direct government appropriation of funds to one of the country's most prominent governmentally-owned monuments. One of the most successful aspects of the campaign was a "naming wall" where for a gift of $100 families could list the name of ancestors who entered the US through Ellis Island on a wall especially constructed for the purpose. This vehicle alone generated $100 million for the overall project.

Government role

To affect any of the mechanisms described above, government supervision is required to guarantee that incentives, provided in the public interest, are not abused and that high quality work results. This is the role of government regulatory agencies – from the National Park Service, which has published standards for renovation projects qualifying for tax exemption, to state and local commissions that regulate and provide approvals for all projects at listed sites within their purview or within conservation districts. These regulatory bodies routinely convene citizen panels to review cases presented for approval; thus the cooperative relationship between the public and private sectors is reinforced and private citizens are schooled to understand and make critical decisions that affect the built world that surrounds them.

The foundation sector

A final, and very important, member of the public-private consortium is the foundation, whose assets have been set aside for charitable purposes. Foundations are subjected to intense regulation by the government as to the fulfillment of their purposes. They must distribute to charity a certain percentage of all the income earned by their endowment. In return they enjoy all the tax privileges of the non-profit sector – including exemption from income tax, capital gains tax, and many local real estate and sales taxes. Many American foundations have set up highly professional local, national, and even international grant programs to support the non-profit sector in their chosen field of endeavor. Following suit, national and local government agencies support modest grant programs that promote qualitative standards in the non-profit sector, and help the often small non-profit organizations in the field to do their work more effectively.

World Monuments Fund's perspective on international preservation

As a private American non-profit organization conducting hands-on conservation projects in an international arena, the World Monuments Fund (WMF) has pursued a strategy typical of the role of US non-profits – of using relatively modest income contributed from US donors to leverage significant support from local governmental and private funding sources abroad. But because legislative advocacy is not appropriate to an international group, WMF must identify and take advantage of incentives that exist in a local environment; thus its strategy varies from one country to another. Over its history WMF has found situations in many countries that allow it to make effective use of donors' support to leverage other funds. This successful "leveraging" convinces its core US contributors of the cost-effective philanthropic investment they can make by supporting a worldwide preservation agenda. A few examples follow:

The Venice Campaign: Following the catastrophic Italian floods of 1966, Unesco began a campaign to engage international governments and private-sector groups in the restoration of the city of Venice. Many national private groups were formed, and WMF established a Venice Committee with chapters throughout the U.S., each of which adopted a specific monument for restoration. The chapters were individually responsible for fundraising, under the auspices of U.S. law. The international campaign was helped materially by a tax subsidy affected through the Special Law for Venice, which permitted projects orchestrated by Unesco to be exempted from value-added tax (VAT). All the private organizations working in Venice channel their project support through Unesco's tax-exempt bank account and therefore take advantage of a savings of as much as 18% on project costs. Unesco also provides a forum for private committees to meet, discuss common problems and monitor the progress of the campaign at large. The Special Law for Venice has resulted in a private international investment of much more than $20 million. As a result, this powerful incentive remains in force more than 30 years after the flood occurred, in spite of occasional political efforts to eliminate it.

French Partnership Programs: While other countries may challenge the private sector through specific programs, the French government offers a blanket incentive to all owners of classified historic monuments and sites – whether public,



New York, Ellis Island

institutional, or private – by guaranteeing a state subsidy of up to 40% of the cost of any restoration project. With regional and local government agencies also willing to contribute funds to state projects, a non-profit organization can normally hope to leverage as much as 65-75% of overall project costs from the government.

While this system in principle suggests a very strong commitment of the government to historic preservation, in fact government budgets are not without limits. The challenge to the private sector is to establish priority for a specific project, which might otherwise be sidelined because of a practical lack of enough funds to go around. This can be done by supporting the planning and initiation phase of projects which can then receive state approval and support. WMF has initiated several projects – including the restoration of the facade of the church of St. Trophime in Arles, the conservation of the interior of the Dôme of the Invalides, the restoration of the Potager du Roi at Versailles, and stabilization of the Chateau of Commarque in Perigord, all of which have resulted in a major public investment in the project.

The English Lottery: The national lottery recently established in England has generated hundreds of millions of pounds for architectural conservation and for urban rehabilitation in England, and offers another extraordinary incentive for private organizations to develop partnerships with the government. While the lottery makes significant grants for projects, all require matching funds from other sources. And to apply successfully for lottery funds, an organization that owns a significant building must have either access to professional conservation expertise or the funds to hire outside experts. WMF has identified a role for itself in supporting worthy British institutions that lack this expertise in the preparation of project plans for submission of lottery grant proposals and helping their owners develop a strategic plan to raise matching funds once a lottery grant has been approved.

Central and Eastern Europe: A considerable challenge in the conservation field lies in Central and Eastern Europe, where the legal status of many monumental structures is clouded, laws governing the non-profit sector are not yet in place, and enormous deterioration has occurred to the architectural fabric throughout the entire region during the communist period, creating a state of emergency for some of the region's most prestigious sites. With government funds in short supply and the private sector still in the early stages of development, finding funds for projects requires ingenuity and determination. WMF has experienced some success by promoting the recognition of selected sites as works of worldwide significance. Support for planning for the conservation of the castles of Lednice and Valtice in Southern Moravia – former Liechtenstein family properties in the Czech Republic – has led to their inscription on the World Heritage List and the government's prioritization of the area as a prototype for the conservation of cultural landscapes. The Czech government has agreed to match private support for conservation projects in this area; and Czech corporations, as a result of this declaration of priority, are beginning to make funds available for small-scale projects. The site is returning to a healthy state, and has already begun to attract more than 100,000 Czech and international visitors a year.

In St. Petersburg, WMF identified the Alexander Palace – an imperial property built under Catherine the Great and used as a residence by the Russian Czars until the end of the Romanov dynasty – as a priority site for immediate intervention. WMF seed funds have been used to evaluate the magnitude of the conservation challenge and to help clear an impasse between the Museums at Tsarskoe Selo, under whose jurisdiction the palace falls, and the Admiralty of the Baltic, which has occupied the palace since World War II without contributing adequately to its maintenance or allowing public visits. Emergency stabilization of the palace roof is underway with funds from American Express through the WMF World Monuments Watch program, and the Admiralty of the Baltic has agreed to open access to one wing of the palace pending the relocation of their agency to a more appropriate location.

WMF affiliates

As WMF has begun to recruit funds abroad in response to its seed funding from American donors, it has become essential to establish legal operating entities in countries where WMF intends to seek contributions. In the last decade, WMF affiliate organizations have been established in several Western European countries and in Mexico. These affiliates take a form comparable to a US non-profit organization, and are established as a civil association in some countries, foundation or trust in others, and as a registered charity in the United Kingdom – following local laws. Managed by a small board whose function is to choose projects and recruit local support, the affiliates operate with professional and administrative oversight from WMF's New York based staff, served by small offices in the region. This network has greatly multiplied WMF's capacity to build private-sector leadership for the field of architectural conservation. The presence of the affiliates helps WMF to strengthen relationships with governments, more effectively evaluate conservation priorities in a given country, and, most importantly, attract local donors.

The World Monuments Watch and its seed funding programs

As its operations began expanding internationally, WMF recognized the need to prioritize and select projects for intervention that represented internationally significant sites in real need of help. On its 30th anniversary in 1995, in cooperation with American Express, WMF established the World Monuments Watch, an international listing of endangered sites. Sites chosen for the biennial *List of 100 Most Endangered Sites* are nominated by governments and organizations in the field. No formal designation status is required in order to nominate a site to the Endangered List, and applications are accepted from all quarters. The list of 100 sites is chosen biennially by an independent panel of experts.

An incentive for governments and conservation groups to cooperate in the identification of endangered sites through the World Monuments Watch is its funding component of $1 million per year in emergency grant funds made available by American Express, with complementary funding from other donors. In the first year of its operation, the World Monuments Watch awarded $1.85 million in grants, which in turn leveraged at least $1 million in public sector support. Impressed by the broad global agenda represented by the Endangered List, other WMF donors have made commitments to the program, including WMF trustee Robert W. Wilson, who has committed $1 million per year in grant funds provided that these funds are matched by non-US donors; the Samuel H. Kress Foundation, which has directed considerable funding to European sites on the list; the Ronald S. Lauder Foundation, which supports Jewish heritage sites; and the Ralph Ogden Foundation, which has made a commitment of $100,000 per year in planning funds to advance worthwhile projects on WMF's international agenda.

As the program develops, there is much to be learned about opportunities for international public and private cooperation in the conservation of heritage; about the key problems facing the field, as demonstrated through sites on the list; and about mechanisms that can help to solve these problems. Information gathered through this program about the worldwide state of conservation of historic buildings and sites may indeed be useful in helping to shape the heritage protection laws that develop in the years to come, by directing legal protective measures and incentives to areas where the problems are most acute.



Stephen N. Dennis

Many Partners and Many Methods

The U. S. Experience

Thank you for the opportunity to participate in this important conference and to say a few words about historic preservation legislation and related economic strategies in the United States. It is important to emphasize at the outset that historic preservation legislation and economic strategies in the United States have developed slowly, over a period of many years, often through a process of experimentation and sometimes almost accidentally. Historic preservation attorneys in the United States often envy the powers of national historic preservation agencies in other countries, but our system of dispersed governmental powers means that much of our governmental involvement in historic preservation comes in the form of financial incentives rather than direct regulation.

It is important to point out that governmental funding for historic preservation has not been constant, or increasing, in the United States. Because the amounts of federal funding available in the United States have both increased and decreased over time, certain federal programs that once existed no longer exist today except as paper possibilities. Although modest grants for private owners of major historic properties were formerly sometimes available from federal funds, such grants from federal funds do not exist at this time. Other funds may be available from state budgets, but each state decides separately whether such funds will be available and how they must be requested and will be administered. Government grants for private owners of historic monuments are therefore available only in very small amounts when they are available at all. Funding for historic properties owned by non-profit organizations may be available from foundations, corporations, or various levels of government, as well as in the form of donations from members of the general public or income from permanent endowments, admission receipts, and sales of merchandise.

What is highly unusual in the United States is the complex network of thousands of charitable non-profit organizations which play a role in the maintenance and protection of historic structures. Technically, these organizations are corporations, set up under state laws. Once they have been incorporated, though, it is common for their founders to seek federal tax-exempt status. This is absolutely necessary if an organization is to hope to raise funds through private contributions. The private citizen who makes a donation to an organization which does not have tax-exempt status has perhaps been charitable, but will receive no tax concession for making such a contribution. If, however, the private citizen gives the same amount to a tax-exempt charitable organization, the private citizen may choose to "itemize" on a federal tax return and may effectively deduct the donated amount from his overall income. (There are upper limits to how much may be deducted, but they are irrelevant for the present illustration). Most taxpapers with high incomes itemize in order to aggregate significant allowable expenditures such as mortgage interest paid on a primary residence and state and local sales taxes or unusual medical expenses. Charitable contributions are often an important part of a taxpayer's overall tax-paying strategy.

You are perhaps aware of on-going discussions in the United States about whether the donor of a work of art may deduct the entire current value of the work of art or should be limited to his original cost in acquiring the work of art. Currently, the entire current value is typically deducted. This makes it possible for the owner of a valuable piece of furniture to donate it to a suitable historic property in the ownership of a tax-exempt non-profit organization and realize a handsome tax advantage, as well as the knowledge that one has helped a worthwhile charity.

Almost every non-profit historic preservation organization in the United States has a "development" strategy to encourage donations of cash or appreciated personal property. Unless an organization is "publicly-supported", it is subject to additional tax requirements that force it to spend annually a stated percentage of its overall wealth and require other information.

The role of advocacy organizations

It is often difficult to predict in advance what governmental historic preservation strategies will work, and which will not. Because private property owners have unusually strong voices in the United States, government programs cannot automatically succeed unless they are widely understood and accepted by affected owners and others such as pertinent non-profit organizations which expect to have a role in developing public policy affecting historic properties.

Non-profit organizations are generally publicly-supported charitable organizations, which may be quite small or may have large permanent endowments. When these organizations urge the passage of new legislation, they are engaged in a function called "lobbying". Tax laws in the United States restrict the amount of a charitable organization's annual budget that may be used for lobbying purposes, but do not prohibit lobbying by such organizations.

We encourage, and expect, vigorous public debate and discussion in legislative bodies, public forums, newspapers, and magazines. Viewpoints sometimes change slowly, and we have in the United States hundreds of historic preservation groups at the national, state, and local levels that spend some portion of their funds and energy attempting to shape public opinion. These advocacy efforts are loosely coordinated through the National Trust for Historic Preservation and Preservation Action.

The problem of coordinating historic preservatibn advocacy is so serious in the United States that an informal group known as the Historic Preservation Coordinating Council

meets often in Washington so that the primary national organizations can share viewpoints and attempt to avoid disagreeing in public on historic preservation policy objectives. Several federal agencies concerned with historic preservation send non-voting observers to these meetings in order to understand how decisions have been reached.

Overall objectives for governmental involvement

A book published in England in 1905 and titled *The Care of Ancient Monuments* gives a worldwide perspective on historic preservation legislation in place in many countries almost one hundred years ago. At that time,there was virtually no applicable legislation in the United States. As new technologies have permitted the rapid deliberate destruction of uncountable numbers of historic buildings during the 20th century – in addition to unfortunate damage during wars and other conflicts – there has been a growing understanding that such resources constitute crucial and irreplaceable components of national heritage, indeed of national identity.

A decentralized program in the United States

The most important thing to remember about the overall governmental historic preservation program in the United States is that we have no single governmental program, and that no governmental body, at any level of government in the United States, has the power to make binding decisions that will affect all owners of important historic monuments, no matter how important they may be individually. We have in the United States, therefore, a very decentralized approach to historic preservation regulation.

Formerly destructive federal governmental programs

In the United States, two particularly destructive governmental programs were a new system of interstate highways in the 1950s and a large program of "urban renewal" designed to fund the costs of demolishing substandard housing in many inner-city areas. Unfortunately, the interstate highways tended to be designed to go through older neighborhoods in the most important cities, and the urban renewal program obliterated large areas of historic structures on the pretext that they were in irretrievably dilapidated condition. Major buildings that could have been saved if these programs had been well designed in the beginning were needlessly demolished in many cities.

The National Register of Historic Places

The National Historic Preservation Act of 1966, the primary national historic preservation legislation in the United States and a statute that has been repeatedly amended and expanded, created a National Register of Historic Places and an Advisory Council on Historic Preservation. The theory was that federal agencies should submit their projects likely to affect historic properties to the Advisory Council for its comments, so that the most destructive projects might be discussed and ideally would be re-designed. Section 106 of the Act defines a federal "undertaking", and has led to a long generation of vigorous litigation over its complex meaning. Properties eligible for the National Register of Historic Places but not yet formally listed must also be considered by federal agencies under Section 106. The Advisory Council has steadily expanded its authority through imaginative interpretations of its role and complex regulations that now permit a federal agency to sign a negotiated document known as a "Memorandum of Agreement". A federal agency which enters into a Memorandum of Agreement can avoid direct comments from the Council and may therefore avoid delays.

An evolving concept of historic properties

The understanding of what constitutes a historic property has also evolved steadily during this century in the United States. From an early concern with individual structures connected with the lives of colonial or military leaders, the historic preservation movement in the United States has grown to its present focus on neighborhoods, districts, and cultural landscapes. But compared to historic preservation programs in other countries, the typical program in the United States is still focused almost exclusively on visible street facades of structures, and offers little protection for interior architectural features.

Significant historic properties can be recognized in the United States in two ways. They may be recognized for their individual significance as "landmarks" or single National Register properties, or they may be recognized for their meaning as ensembles, as "historic districts" at the local level or in the National Register. But local designation and National Register listing are entirely separate procedures, and listing at one level does not automatically translate into listing at the other level. (Almost certainly a property listed at one level qualifies conceptually for listing at the other level, but there is always a political component to a local decision to designate, and boundary decisions must be thoroughly professional for National Register purposes, leading to an inevitable disparity that is unlikely to be resolved.)

Regional planning challenges

Increasingly historic preservation leaders in the United States advocate the need to focus on regional planning issues rather than merely local problems. We have major monuments such as Thomas Jefferson's home "Monticello" or George Washington's home "Mount Vernon" where the setting must be protected if visitors are to understand the surroundings in which great thinkers conceived concepts crucial to the development of our country.

Yet often these resources are located in more than one governmental unit, and governmental cooperation is necessary if the properties are to be effectively protected. The scenic vistas from both properties have been professionally studied, and a private non-profit organization, the Accokeek Foundation, was created almost thirty years ago to hold easements on undeveloped land across the Potomac River from "Mount Vernon".

The role of non-profit real estate organizations

Tax laws in the United States make an important distinction between profit-making organizations, which are intended to earn money for their owners, and non-profit organizations, which are charitable and may have members but do not have owners. There are now historic preservation organizations in the United States whose main purpose is to protect historic properties through purchase, which may lead to: (1) permanent ownership; (2) restoration and resale; or (3) resale with protective restrictions that will apply to all future owners. In 1975, a statewide historic preservation organization was created in North Carolina with the sole purpose of purchasing and reselling historic properties to qualified buyers with suitable restrictive covenants that would require restoration within stated periods of time to agreed-upon standards. This "revolving fund" approach had been pioneered in several important cities such as Charleston, South Carolina or Savannah, Georgia, but had seldom been attempted on a statewide basis.

Many historic preservation organizations in the United States operate revolving funds of varying sizes. The success of such a revolving fund depends on an organization's ability to master fairly sophisticated marketing skills, in order to find potential purchasers.

Voluntary real estate protections by private owners

In addition to revolving funds, which can create permanently binding restrictions through real estate sales, there are in the United States many historic preservation easements that have been voluntarily created by property owners who donate or sell to a non-profit organization an agreement to maintain the property in the future combined with an agreement to refrain from certain defined actions (such as strip-mining, cutting of timber, or subdivision and new construction). Under the national tax system in the United States, there can be significant tax advantages to a property owner who creates a perpetual preservation easement.

It is important to remember that easements are typically voluntary arrangements, each of which can be specifically tailored to the characteristics of an individual property. Easements can be created in the total absence of other historic preservation controls, or can supplement such controls and guarantee that despite possible damaging governmental decisions in the future certain aspects of a property are permanently protected. In the District of Columbia, the L'Enfant Trust now holds more than 100 historic preservation easements, and its sole purpose is to acquire and protect such permanent easements.

Many categories of ownership for historic properties

In the United States, relatively few historic monuments belong to the federal government and are administered by the National Park Service, an agency within the Department of the Interior. Many historic monuments belong to state governments or are owned and administered by nonprofit organizations. Some of these non-profit organizations have historic preservation as a primary purpose, but many have other primary purposes such as an educational mission or a religious function. But the vast majority of historic properties in the United States are still privately owned and used as private residences or for commercial purposes.

Three levels of government in the United States

It is difficult to make general statements about such a wide variety of ownership options without indicating how complicated the network of historic preservation legislation is in the United States. There are in the United States three general levels of government: federal, state, and local. New York City is a local government in New York State, which is a state within the United States. Land use regulations in the United States are almost always carried out by local governments rather than by state or national agencies. Different regulations and protections are possible at each of these three levels of government. There is no question that in the United States the strongest protections are possible through local municipal governments, which exercise broad land use regulation functions. State governments, except in a minority of states, have relatively limited powers to protect historic properties, but may be able to restrain actions by state agencies that would damage such properties. (This means that state governments do not prevent private owners from doing things which would damage historic properties in the state, but may be able through tax incentives or small grant programs to encourage suitable restoration and on-going maintenance activities.) Although the programs of the National Park Service can give great prestige to historic properties – perhaps through designation as a National Historic Landmark or listing in the National Register of Historic Places – these federal programs do not in any way prohibit actions that a private owner might wish to undertake. A private owner in the United States can, in fact, demolish or alter beyond recognition a property listed in the National Register of Historic Places – unless it is protected by a preservation easement!

Multiple owners for apartment buildings

In large cities such as New York or Washington, apartment buildings are often owned by multiple owners. Whether the form of ownership is what we call a "condominium" or a "cooperative", the owner or occupant of each apartment has a separate ownership interest. A condominium owner owns a specified portion of a building, and a cooperative owner owns a specified number of shares in the corporation which controls a building (the number of shares will depend on the size of the individual apartment). Some owners are permitted to rent their apartments, and others are prohibited from doing so. These buildings are governed by associations or boards with the power to make "special assessments" against owners and to hold reserve funds until the time when a major repair or renovation affecting the entire building becomes necessary. Roofs need to be replaced, brickwork must be periodically repointed, and heating or plumbing systems become archaic. Common spaces such as lobbies and laundry rooms or corridors and elevators must be uniformly maintained to enhance the prestige of the building and protect the investment interests of the individual owners.

Condominium associations and cooperative boards may also play a role in deciding who will be permitted to purchase or lease apartments in individual buildings. Cooperative boards in New York have been known to turn down prominent individuals – such as former President Richard Nixon – on the grounds that they are too "controversial" and would bring undesirable attention to a building. There

may be very stringent financial requirements for owners seeking to purchase a unit in an important building. In Washington, many condominium buildings permit only owners compelled by government jobs to take long assignments overseas to sub-lease their apartments.

The obvious advantage of such associations and boards is that they can make important decisions affecting the appearance and maintenance of a large apartment building. By collecting fees and special assessments from all owners in the building, an association or board can afford to plan and fund a major project to restore key portions of the structure in phases over a period of time. If windows are aging and must be replaced, the association or board can either undertake a single window-replacement project that would be completed according to plans approved by the association or board, or could require that individual owners meet specified standards and select pre-approved window units as they plan window replacement for individual apartments.

A secondary impact of condominium or cooperative ownership for major apartment buildings is that it is almost impossible for such a building to be demolished in the future. Anyone planning demolition would need to contract with a large number of individual owners, any one of whom would be able to halt a planned project. This is probably why several major apartment buildings in the District of Columbia have never been nominated to the National Register of Historic Places or locally designated as landmarks. They are already effectively protected from demolition through multiple ownerships, though nothing restrains bad decisions by an association or board to undertake undesirable alterations that could damage permanently the architectural character of these buildings.

Specific design guidelines

Although the National Park Service has published standards and guidelines that are widely used to approve proposed historic preservation renovation work in the United States, most design guidelines are administered by local historic preservation commissions. Often these design guidelines are developed by local governments and are only applicable to specific local historic districts. Twenty years ago, in 1976, there were already so many of these design guidelines that the National Endowment for the Arts published a "Bibliography of Design Guidelines".

Design guidelines can be quite specific. They may deal with minor details such as window shutters or door and window hardware. Often they will explain architectural styles so that building owners can understand why something that would be appropriate to a building in one style could be very inappropriate for a building in a different architectural style.Design guidelines for a residential neighborhood may be different from design guidelines for a commercial area, where owners are likely to want to make frequent changes to store fronts and windows. (In New York City, the Upper Madison Avenue Historic District gives building owners greater flexibility for the bottom two floors of their buildings than for upper floors, which often retain the character of opulent residential structures.)

Design review in the United States

Perhaps the most distinctive feature of local historic preservation programs in the United States is that decisions are made by administrative committees of local residents. More than 2,000 counties and municipalities have enacted local historic preservation ordinances. Although these ordinances can vary greatly from location to location, certain features have become typical. The size of the commission created by the ordinance will range in number from five persons to nine. There will probably be some membership requirements, such as requiring an architect member and requiring one historian as a member. There may be a requirement that someone active in purchasing and selling real estate also be a member. Increasingly, there is a requirement that the "public" members have some knowledge of or interest in historic preservation.

These local historic preservation commissions meet monthly to consider applications by property owners requesting permission to make changes to their properties. In smaller communities, the commission will have at most a very modest annual budget for expenses, and may be able to call on the professional expertise of someone in the city planning department for staff assistance. In larger cities (such as New York), the commission may have a budget as great as $ 500,000 annually, and a staff of twenty or thirty professionals. But local historic preservation commissions almost never have funds from which they can make grants to individual owners of historic properties.

Historic preservation commissions review four major categories of proposed changes: alteration, demolition, new construction and subdivision. Subdivision is a term which refers to any change in the size or shape of a defined piece of real estate, though it most often refers to a change that would create two (or more) smaller parcels from a single larger parcel.

Certainly subdivision has the potential to lead to denser construction in a neighborhood, and is likely to facilitate the construction of new buildings. New construction in the District of Columbia often involves putting additional residences on a single large parcel that was developed originally with one significant structure and extensive surrounding landscaping. (In a number of situations, wealthy purchasers have bought a handsome property in a prime location simply to demolish the house and build a newer and much larger residence.)

But it is alteration and demolition that cause the greatest challenges for effective local historic preservation commissions in the United States. Alteration can run the spectrum from changing the size or location or style of windows in the front of a structure to adding an additional upper floor or extending a new wing into a garden area. Obviously an extensive set of alterations can completely change (or obliterate) the architectural character of a building. Property owners often argue that they have a legal right to make whatever changes they wish to make if they are private owners. But these owners are already subject in municipal areas to building codes designed to protect public health and safety, and many United States courts have upheld the purposes of local historic preservation commissions as merely another means of accomplishing "public welfare" objectives.

Often an owner has purchased an older property with the hope of demolishing it and building a new structure for a different use on the property. A small wooden residential bungalow from the early 20th century may sit on a property zoned for business purposes in a neighborhood where potential structures would be allowed to be forty feet higher than

the bungalow. In such situations, and they exist by the tens of thousands in our country in areas with weak historic preservation controls or in neighborhoods that have not yet been designated as historic districts, the owner has a strong economic incentive to demolish the existing structure in order to "re-develop" the property. If the owner cannot demolish the structure, he will argue that he has been deprived of significant economic benefits, and will act as if the municipality has actually taken money from his pocket, even though the money represents only anticipated or hoped-for profits. In the District of Columbia, a two-story group of shops with surface parking is located above a subway station which opened in the late 1970s. Because an effective case was made that this shopping complex had great historical significance as one of the first "drive-in" shopping malls to be built in the United States, it was included within a local historic district and applicable height restrictions for these buildings and a nearby commercial area were reduced to discourage further attempts to demolish the significant low structures.

Economic incentives for historic preservation in the United States

The principal source for municipal revenues in the United States is the property tax, which is uniformly applicable to categories of property located within municipal boundaries. The second important source for municipal revenues may be a sales tax derived from sales of certain goods and services. (Food in restaurants is almost always covered, often at a very high rate, but food purchased uncooked may not be covered.) Other revenues will supplement these basic funds.

Local governments in the United States therefore have a strong interest in protecting their property base, because any reduction in the overall value of taxable property within a government's boundaries will lead immediately to a reduction in available government funds. If a community is prospering, the property base tends to rise as values of individual properties go up. For several decades, property owners in the United States have benefitted from strong increases in the values of private property. Correspondingly, municipalities have benefitted from great increases in municipal revenues from the property tax.

In the United States, sales prices for properties become public information, easily available in a local government office through the interpretation of tax stamps attached to a recorded deed. Each piece of property is "assessed" to determine the annual tax rate. Reassessment is often conducted every two years, or even annually. Where permitted by law, a temporary "freeze" in the assessed value of a piece of property can be a significant economic benefit to a property owner. Many communities now permit a property owner to enjoy a five-year (or longer) "freeze" in tax assessment in conjunction with a rehabilitation of the property. Because the rehabilitation of an inner-city structure can often increase greatly the value of the structure, the effective saving to the property owner is quite substantial. Other economic incentive programs may permit a property owner to use a portion of rehabilitation expenses as a direct tax credit, effectively an amount subtracted from the taxes otherwise due in cash.

Congress created in the late 1970s an important program of federal tax incentives that permitted private owners of commercial (but not residential) properties in the United States to spend at least as much as the cost of the structure on the property for a "certified" rehabilitation project and thereby qualify for a federal tax credit. The National Park Service and state historic preservation offices were responsible for seeing that owners complied with specific federal guidelines for such projects, and owners who violated these guidelines would often be disqualified from the available tax credits. This program encouraged the rehabilitation of an extraordinary number of otherwise neglected former industrial structures as well as smaller office buildings and rental residential properties during the 1970s and 1980s. Unfortunately, when Congress became concerned that this was too attractive an economic incentive because the favourable tax consequences were too great, it changed the requirements for the program in 1986. Fewer projects have qualified since.

Currently, historic preservation groups in the United States are attempting to develop support in Congress for a "Homeowner Tax Credit" that would be available to owner/occupants of inner-city residential housing, in order to encourage rehabilitation of often neglected older neighborhoods in our major cities. It can take several years for adequate support for such new legislation to develop, so it is too early to tell whether the proposal will pass, and whether it will pass in its present proposed form.

Summary and conclusion

This is a very brief overview of a complicated set of interlocking programs operating at several levels of government in the United States. You should remember that there are in the United States only very minimal programs that can make direct cash grants to owners of historic properties. (Such programs were much larger twenty years ago.) Although many historic monuments are owned by private non-profit organizations, these organizations have constant money problems as they attempt to raise funds for on-going administrative expenses and to stay ahead of the possible erosion of the value of money. Often such organizations have been forced to implement creative strategies for generating special revenues from historic properties through rentals for receptions or conferences (or potentially as movie sets!).

Governmental historic preservation programs in the United States depend on a regulatory approach and/or the creation of attractive economic incentives which will encourage a property owner to avoid certain conduct in order to qualify for the incentives, or to undertake other conduct in order to qualify. Only local historic preservation commissions have the power to tell a property owner "no", and more than one hundred valuable court decisions in the United States have upheld this power.

US/ICOMOS looks forward to the opportunity to participate in the important work the members of the new Legislation Committee will undertake. The rapid growth of a network of regulatory measures designed to supplement and buttress efforts by private owners suggests that there is a continuing role for historic preservation legislation. Not every country will be able to implement all strategies, but the close comparison of existing laws is bound to be beneficial to those countries which now look to the future as they re-design legislative and regulatory approaches.



Christine Steiner

The J. Paul Getty Trust

The J. Paul Getty Trust is a private operating foundation dedicated to the visual arts and the humanities. Through a museum, five institutes, and a grant program, the Getty seeks to advance the understanding, experience, value, and preservation of the world's artistic and cultural heritage. The Trust's origins date to 1953, when J. Paul Getty established a small museum of Greek and Roman antiquities, 18th-century French furniture and European paintings at his home in Malibu and turned the Museum over to the Trustees, now 15 in number, for the "advancement of artistic and general knowledge". Twenty years later, the Trustees built the Roman-style Villa based on renderings of the Villa dei Papiri in Herculaneum; the Villa continues to operate as The J. Paul Getty Museum. When most of Mr. Getty's personal estate passed to the Trust in 1982, the Trustees sought to make a greater contribution to the visual arts through an expanded range of Getty activities in the fields of conservation, education, and scholarship, and sought modification of the Trust Indenture by court action. The J. Paul Getty Trust now includes five institutes and a grant program, in addition to the museum. The new Getty Center, located a few miles from the Villa, opened in December 1997, uniting all Getty entities on one campus, and the Villa will become a center for display, research, and conservation of antiquities.

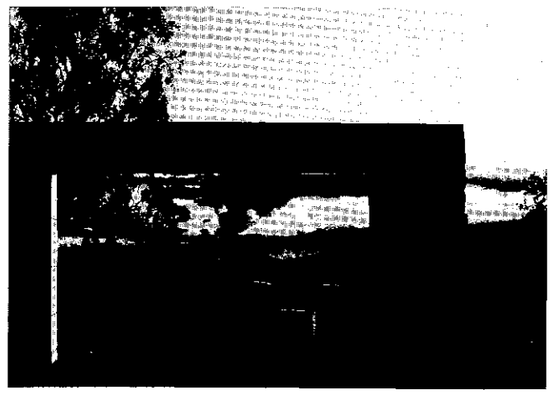
Tax aspects

Under U.S. law, a private foundation is, essentially, a charitable organization that is funded from one source (usually, one individual, family, or corporation), that receives its ongoing funding from investment income rather than a consistent flow of charitable contributions. Generally, foundations make grants for charitable purposes to other persons or organizations, they do not conduct their own programs. In many respects, then, a private foundation is very much like an endowment fund.

The J. Paul Getty Trust does not fit this general rule. It is an "Operating Foundation" under the U.S. Internal Revenue Code (§4942(j)(3) IRC). To qualify as an operating foundation, an organization must expend an annual amount equal to four and one-quarter per cent (4¼%) of the fair market value of its endowment on its own program-related activities. An operating foundation must satisfy both of two different tests, termed the "Income Test" and the "Endowment Test." Although distinct, these two tests have much in common. They both turn upon the making of *qualifying distributions* that are *direct expenditures.*

A "qualifying distribution" is a payment made to further the charitable purposes of an organization. The term encompasses reasonable and necessary administrative expenses, capital expenditures and, in some narrow situations, amounts set aside as reserves to fund specific projects. It usually does not include amounts paid to controlled organizations and private foundations.

A "direct expenditure" is a qualifying distribution that is used to fund a charitable activity carried on by the Getty Trust itself. The term does not include grants to other charitable organizations to assist them in their own particular charitable activities. Grants or scholarships paid to individuals will usually not constitute direct expenditures. However, "[t]he administrative expenses of screening and investigation [of grantees] (as opposed to the grants or scholarships themselves) may be treated as qualifying distributions made directly for the active conduct of the foundation's exempt



The Getty Center, Los Angeles by the architect Richard Meier (this and the following illustrations)

activities." Treas. Reg. § 53.4942(b)-1 (b) (2) (i). The complex rules for the Income Test and the Endowment Test should be consulted for more information.

The Income Test. Satisfaction of the Income Test is determined on the basis of the ratio of direct expenditures to either adjusted net income or minimum investment return.

Generally, "adjusted net income" means gross income less deductions. For this purpose, gross income includes dividends, interest, and short-term capital gains but not long-term capital gains. Deductions include straight-line depreciation taken on property that produces dividends, interest, or rental income. As a general rule, the Income Test is met if the operating foundation annually makes direct expenditures equal to at least 85% of the *lesser* of (a) its adjusted net income or (b) 5% of the value of its endowment. If the actual qualifying distributions are more than the minimum investment return but less than adjusted net income, at least 85% of all qualifying distributions must be direct expenditures. However, the test will always be met if direct expenditures equal or exceed 85% of adjusted net income.

The Endowment Test. The second test, the Endowment Test, is met if the operating foundation annually makes qualifying distributions that are direct expenditures in an amount equal to at least three and one-third per cent (3⅓%) of the value of its endowment. It is likely that satisfaction of the Income Test will automatically result in satisfaction of the Endowment Test.

Four-year measuring period. The operating foundation must satisfy both the Income Test and the Endowment Test for a particular taxable year by reference to the four-year period ending with that taxable year either by:

(1) aggregation of all income, assets and distributions during such taxable year and the three preceding years, or
(2) separately satisfying the two tests during each of three out of four of those four years.

The same method must be used for both the Income Test and the Endowment Test.

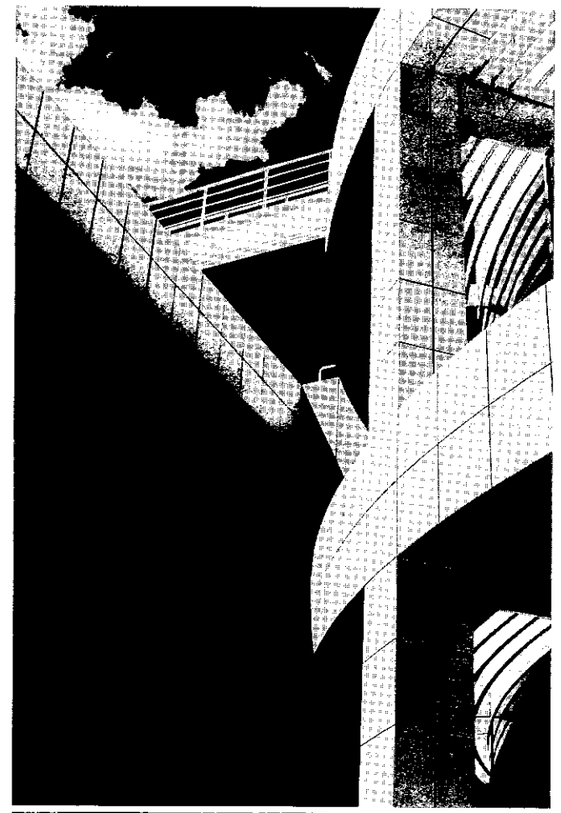
Getty programs

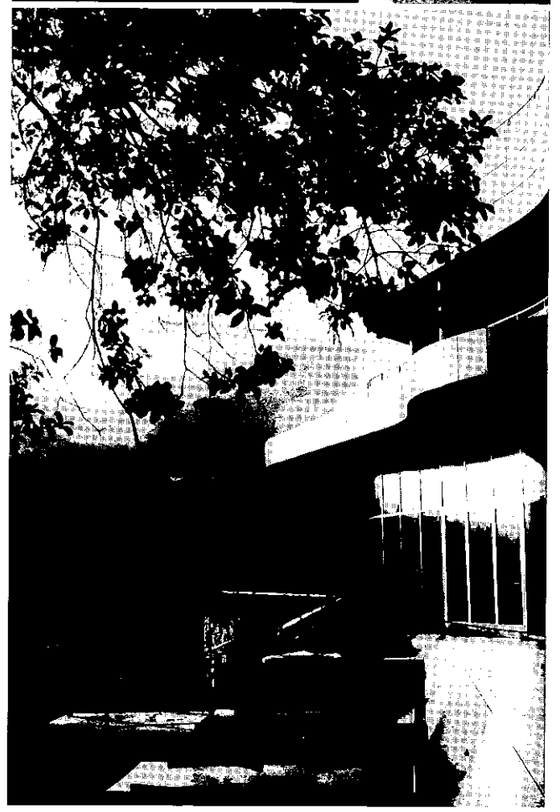
The J. Paul Getty Trust operates through its programs; it is made up of a museum, five institutes, and a grant program.

The J. Paul Getty Museum seeks to delight, inspire, and educate the public by acquiring, conserving, studying, exhibiting, and interpreting works of art of the highest quality within its fields of collecting. The Museum's collections include classical antiquities, European paintings, drawings, sculpture, illuminated manuscripts, decorative arts, and photographs. The Museum offers a wide range of public programs, including lectures, classes, films, and performances. The Museum has two venues: the Villa in Malibu overlooking the Pacific Ocean and the Getty Center, a few miles away (see below).

The Getty Conservation Institute is committed to the preservation of the world's cultural heritage – the monuments, sites, artifacts, and works of art that form an irreplaceable record of human achievement. The Conservation Institute conducts conservation research and shares its findings through training courses, conferences, publications, and a worldwide database. It also undertakes conservation projects at important cultural sites, and works to raise public awareness of the importance of conservation through exhibitions and other outreach efforts.

The Getty Information Institute makes information about the arts and humanities more accessible through digital technology. It serves as a catalyst within the fields of scholarship and technology to address the many challenges involved in creating the virtual libraries of the future. The Information Institute has created widely-used databases of art-historical information, thesauruses, and other reference works. It is a





recognized leader in developing databases of cultural information, including bibliographies, indices, and other reference works; most of these are available on-line and on CD-ROM and diskette, as well as in print. The Information Institute also produces a variety of other publications that address the intersection of art and technology.

The Getty Research Institute for the History of Art and the Humanities is dedicated to innovative scholarship in the arts and humanities. Its work is rooted in the belief that art is best understood within the broad historical and cultural contexts in which it was created. The Research Institute brings together an international group of scholars to exchange ideas while pursuing their own projects. Its resource collections contain more than 750,000 volumes on the history of arts and architecture, religion, history, ethnography, and the history of science; unpublished manuscripts and correspondence among artists, critics, patrons, and dealers; serials and auction catalogues; manuscripts; archives; nearly two million photographs documenting works of art and architecture; and other visual materials. The Research Institute reaches a broad audience through seminars, symposia, exhibitions, performances, and publications, as well as through collaborative projects with local and national institutions.

The Getty Education Institute for the Arts seeks to improve the quality and status of arts education in America's elementary and secondary classrooms. The Education Institute advocates a comprehensive approach to arts education that teaches students not only how to make art, but also how to understand the meaning of a work of art, its historical and cultural context, and the basis for evaluating it. The Education Institute develops model art education programs nationwide; works to change attitudes about arts education while ensuring that teachers have the resources needed to teach art comprehensively; and produces workshops, publications, curriculum materials, and on-line services.

The Getty Leadership Institute for Museum Management assists museum directors and senior staff in acquiring the business knowledge and skills needed to lead their institutions effectively. The Leadership Institute's core program, the Museum Management Institute, is an intensive three-week course, administered for the Getty by the American Federation of Arts. It is held each summer at the University of California, Berkeley, and is taught by instructors from leading business schools.

The Getty Grant Program provides crucial support for projects in the areas of art history, museum practice, and conservation. These projects, undertaken by institutions and individuals throughout the world, represent a wide range of geographic locations, subject matter, and methods. Over the last 10 years, the Grant Program has awarded approximately $60 million to support 1,500 projects in 135 countries.

The Getty Center

The J. Paul Getty Trust is completing its 110-acre campus in west Los Angeles. It will unite all parts of the Getty in one location. The Getty Center will welcome both the public and professionals in the arts and the humanities from around the world. The Getty Center, designed by Richard Meier, was inspired by the gardens and hill towns of Italy which provided historic precedents for settings similar to the Getty's. The campus covers 24 acres of the 110-acre site, and the six distinct buildings occupy approximately five acres, with the remainder occupied by gardens and terraces. An adjoining 600 acres preserves the natural quality of the area. The contrast between the architectural materials, the travertine and metal panels that enclose the upper levels of most buildings, suggests a sense of solidity and of permanent presence in the landscape. The stone suggests permanence, solidity, simplicity, warmth, and craftsmanship, while the metal panels have been molded to fit the fluid, sculptural forms of the buildings. The whole offers a sense of openness, and lightness of space.

Visitors who drive to the Getty Center will park in the structure north of the campus at the foot of the hill. They will board the electric tram for the 3/4 mile trip to the main plaza at the top of the hill. The tram, an electric horizontal elevator system, is pulled up the hill by cables and rides on a thin cushion of air, ensuring a smooth and quiet ride. The tram deposits visitors at the main plaza of the Getty Center and visitors climb the wide staircase to the new 360,000 square foot Museum. Reminiscent of the Spanish Steps in Rome or the entrance to the Metropolitan Museum in New York, the plaza will be the ideal place to gather, wait for friends, sit in the sun on the steps, and enjoy the 360 degree view of the Santa Monica Mountains, the Pacific Ocean, and the City of Los Angeles.

Visitors may enjoy lunch at the Getty Center in the restaurant which offers spectacular views of the Santa Monica Bay and the Pacific Ocean.

At the north end of the campus, the 450-seat auditorium offers a variety of lectures, symposia, discussions and small musical performances. It has the capability of simultaneous translation in five languages. In the auditorium throughout the day, visitors can view a short film about the work of the Getty programs.

A magnificent three-acre garden designed by California artist Robert Irwin sits in the ravine between the Museum and the Research Institute. The central garden re-establishes the natural ravine with an inviting, tree-lined walkway that leads the visitor through an extraordinary garden experience. The walkway traverses a stream, which is bordered on each side by a variety of grasses and gradually descends to a plaza where bougainvillea arbors provide scale and a sense of intimacy. The stream continues through the plaza and ends in a cascade of water over a stone waterfall or "chatter", and into a pool that contains a maze of azaleas. All of the foliage and materials of the garden are being selected to accentuate the interplay of light, color, and reflection. More than five hundred varieties of plant material are used in the landscaping of the Central Garden.

Conclusion

While over 1.5 million visitors annually will enjoy the most public areas of the campus, scholars and professionals from a variety of fields will be at work in the Getty Institutes. From its modest beginnings in 1953, the Getty has grown in scale and scope. The new Getty Center represents the next chapter in the young life of this unique private operating foundation, a California charitable organization.



ESTRUCTURAS LEGALES DE PATROCINIO PRIVADO

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Parte II: Formas legales – Regímenes nacionales

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I

Norman Palmer

Las asociaciones voluntarias no personificadas

La figura de la asociación no personificada (*unincorporated association*) es una categoría presente en el Derecho inglés que se halla lastrada por las desventajas derivadas de su rasgo característico, que no es otro que el de la ausencia de personalidad jurídica. De ello se deriva su incapacidad para ostentar por sí misma la condición de demandante o demandada, para ser parte en un contrato o sus dificultades para adquirir la titularidad dominical. Todo ello puede resultar en su falta de idoneidad como vehículo de gestión y protección de los monumentos. En contrapartida, su rasgo más atractivo es la limitación de la responsabilidad de sus miembros. La esencia de la asociación radica en el establecimiento de un sistema común por varios individuos con la finalidad de perseguir ciertos objetivos comunes. El sistema al que hemos hecho mención tiene su origen en un vínculo contractual entre los miembros – y no entre cada uno de éstos y la asociación.

Como señalamos anteriormente, una de las características de este tipo de asociación es su incapacidad para ostentar por sí misma la condición de demandante o demandada. Sin embargo, la normativa en materia procesal permite que lo sean uno o más miembros de la asociación en representación de todos los miembros que detenten el mismo interés en la acción, siempre que sean suficientemente representativos de la generalidad de los mismos. En cuanto a las dificultades para adquirir la condición de propietario, estas asociaciones – a excepción de las orientadas a fines caritativos – no pueden ser titulares del dominio por sí mismas salvo en virtud de un contrato entre los miembros para un plazo determinado, lo que crea la necesidad de recurrir a atribuciones a sus miembros como fiduciarios en los casos de legados realizados a las mismas.

Deriva de su falta de personalidad jurídica, como señalamos, su incapacidad para contratar y su no vinculación por los actos de sus supuestos agentes. Sólo si sus estatutos lo contemplan expresamente, pueden estas asociaciones autorizar a una persona en su representación a entablar contratos. La mera condición de miembros no hace en principios responsables a éstos por las deudas en que pueda incurrir la asociación. La responsabilidad de cada miembro individual se limita al montante de su aportación.

En lo que se refiere a la responsabilidad contractual, un tercero que reclame en virtud de contrato habrá de demostrar la presencia de un grado suficiente de autoridad en la relación entre la persona que lo concluyó y el miembro al que se reclama. Por regla general, sólo si éste último dio personalmente la orden de la que la reclamación trae causa, o autorizó expresa o implícitamente el que fuera dada en su nombre, habrá de responder. De este modo, los tribunales acostumbran a considerar que la responsabilidad de los miembros queda comprometida cuando los que han actuado pertenecen al órgano dirigente de la asociación, y no en caso contrario. En lo que hace a la responsabilidad extracontractual, el criterio jurisprudencial decisivo es la comisión del hecho generador por un miembro dentro de su esfera de intereses económicos, o, por el contrario, en tanto que delegado actuando en representación de la asociación y dentro de la esfera de intereses de aquélla.

Existen previsiones especiales en lo relativo a las instituciones de carácter científico o literario, que datan nada menos que de 1854. Para que una asociación sea considerada como tal, ha de concurrir una finalidad de instrucción y formación, sin que baste pues la de mero recreo o disfrute. Estas instituciones tienen cierta capacidad – bien que limitada – para ser titulares de terrenos u otros géneros de propiedades. En el caso de que tengan la condición de 'caritativas' y sin ánimo de lucro, pueden obtener la exención de los impuestos que gravan la propiedad, los ingresos y otros tributos. Desde otro perspectiva, existe una propuesta, publicada por vez primera en 1992 y objeto de modificación en 1993, cuyo objeto es posibilitar la creación de una Asociación Europea integrada por dos o más entidades nacionales, a los fines de aprovechar las ventajas que ofrece el Mercado Único. Habrá de tener una finalidad de interés público y de promoción de sus propios objetivos y destinar sus beneficios a la consecución de sus objetivos y no al reparto entre sus miembros. Sin embargo, el proyecto aún no está lo suficientemente maduro.

Como conclusión, hemos de señalar que la idea de contemplar la asociación no personificada como una forma de organización con ventajas sustanciales respecto a la sociedad de responsabilidad limitada es tentadora. Más aún por cuanto los terceros no pueden dirigirse contra los fondos de la asociación por cuanto, al carecer ésta de existencia jurídica, no tiene patrimonio alguno, lo que supone una importante limitación de la responsabilidad. a ello se une que respecto a este tipo de organización, no se da el conflicto, al que aludió en su ponencia la Sra. Hill, relativo a la 'esquizofrenia potencial' entre sus dirigentes a la hora de primar las funciones comerciales o las caritativas, por cuanto las asociaciones no tienen finalidades comerciales. Sin embargo, la realidad es más compleja. No se encuentra totalmente dilucidado, en primer lugar, hasta qué punto la responsabilidad de los miembros de una asociación no personificada está realmente limitada. Y, en todo caso, ha de señalarse que la limitación de la responsabilidad no ha de ser la consideración fundamental para un ente transnacional dedicado a la gestión del patrimonio histórico a la hora de optar por una forma u otra de organización. Por otra parte, la ausencia de personalidad jurídica supone una traba seria – p. e. a la hora de recibir legados – y determina la necesidad de la existencia de un ente distinto y dotado de personalidad jurídica en apoyo de este tipo de asociaciones que posibilite la recepción de legados y donaciones, la gestión o la capacidad de actuar en juicio. Todo ello nos lleva a concluir que sería necesaria una reforma y un desarrollo normativo de esta figura si se la quiere conformar como un vehículo para la gestión del patrimonio cultural.

Judith Hill

La estructura societaria

El objeto de este trabajo lo constituye la consideración de la forma societaria como posible estructura apropiada para la protección y el mantenimiento privados de los monumentos, centrándonos en el Derecho inglés, si bien la reflexión es en buena parte extrapolable a otros sistemas legales. Tomamos como base este Derecho, dado que en el mismo se carece de un tipo singular de personificación para los fines exclusivos de desempeño de actividades sin ánimo de lucro, por lo que existen en Derecho inglés ejemplos prácticos de utilización de la forma societaria como vehículo de protección del patrimonio histórico.

Dentro de los diversos tipos societarios presentes en los diferentes sistemas jurídicos, el que se ajusta a estos fines puede ser caracterizado por las siguientes notas: personalidad jurídica propia; responsabilidad limitada; propiedad fragmentada en títulos; estructura de gobierno basada en una asamblea general periódica y un consejo ejecutivo. Dentro de este tipo de sociedades, es aquélla en la que todos los socios son responsables en la misma medida, con independencia de sus aportaciones, la forma utilizada para la preservación del patrimonio histórico en el Derecho inglés y probablemente la más apropiada en el resto de los sistemas legales.

En aquel Derecho, a diferencia de en muchos otros, la preservación del patrimonio histórico puede ser calificada de '*charitable purpose*' ('finalidad caritativa o de interés público'). Siempre que la sociedad excluya mediante *Memorandum* la distribución de fondos por liquidación, estableciendo que en esta eventualidad éstos sean traspasados a otra entidad que obstante una finalidad semejante, la sociedad obtendrá con casi toda probabilidad la calificación de '*charity*', si cumple además otros requisitos como la no remuneración de sus gerentes o el compromiso de no involucrarse en activismo político. Este reconocimiento y la consiguiente inscripción en el registro previsto a estos efectos las exenciona de ciertos gravámenes fiscales. La utilización de una forma societaria tal plantea una serie de cuestiones entre las que apuntaremos las siguientes:

Responsabilidad limitada

Esta característica se adecua bien al objeto de la sociedad en cuanto que destinada a la protección de los monumentos. Pensemos que a menudo se trata de monumentos objeto de innumerables visitas. En caso de que alguno de los visitantes resultare dañado, lo que puede dar lugar a cuantiosas indemnizaciones, será la sociedad la que responda, y no el patrimonio del particular ni el de los socios. No obstante, tiene sus contrapartidas negativas, como los peligros para los propios fondos, ya que en caso de que existan deudas que lleven a la liquidación, los deudores se repondrán con los propios bienes de interés histórico.

Conflicto de deberes

El conflicto puede darse entre los deberes de los rectores de la sociedad, cuya tarea es proteger los intereses de la sociedad y la preservación de su objeto, y los deberes que se le imponen a la sociedad en cuanto que '*charity*', destinada a cumplir sus fines en beneficio público, lo que puede implicar, p.e., la obligación de permitir el acceso al mismo.

Control externo e interno

En cuanto al control externo, al común a todas las sociedades, formalizado particularmente en la presentación de las cuentas anuales, se une el propio de toda '*charity*', que están obligadas igualmente a presentar sus cuentas ante la '*Charity Commission*' – en un formato distinto, lo que supone una incomodidad cierta, bien que menor. En cuanto al control interno, han de diferenciarse los 'miembros' o 'socios', a los efectos de la Ley de sociedades, de los más genéricos 'miembros', en cuanto que simpatizantes, benefactores, amigos o 'miembros asociados'. En los casos en que esta diferenciación no se haya establecido, resulta que la mínima aportación puede convertir a un sujeto en titular de todos los derechos que concede la Ley que regula este tipo de sociedades a cada uno de los socios, como el de voto en la asamblea anual o respecto al nombramiento de los administradores, así como a la comunicación individual de todas las actividades de relevancia jurídica de la sociedad y a la eventualidad de formación de minorías de bloqueo, lo que, en definitiva, lleva al colapso funcional de la sociedad.

Flexibilidad

Es quizá uno de los puntos más atractivos de la forma societaria que, como sabemos, permite otorgar diferentes poderes y derechos de voto a diferentes clases de miembros, lo que permite, p. e., otorgar poderes especiales a los anteriores titulares del monumento, que no pueden o no quieren administrarlo por sí mismos, para el control de los administradores, que se encuentran, en cualquier caso, y en ausencia de tales poderes especiales, bajo el control de los miembros.

Por último, hemos de señalar que, desde un punto de vista más general, la sociedad es ante todo una forma de personificación jurídica originada en el ámbito comercial, bajo los principios de propiedad y beneficio, lo que se encuentra directamente en conflicto con la tarea de interés público y trabajo desinteresado que representa la conservación de los monumentos. Esta 'esquizofrenia' se plasma en la sujeción de este tipo de sociedades a la normativa mercantil, de una parte, y a la que regula las '*charities*', de otra, lo que origina ciertas disfunciones – p. e., en cuanto a los deberes de los administradores. Ello ha originado que se oigan voces que propugnan la creación de una nueva forma de estructura legal adecuada a las '*charities*', con la nota de limitación de la responsabilidad pero no ya bajo la forma societaria. Las propuestas se hallan ya en una fase avanzada y se basan en buena parte en estructuras desarrolladas en otros sistemas jurídicos para actividades sin ánimo de lucro. Todo ello parece converger en la conclusión de que la forma societaria descrita es la alternativa más adecuada hoy, pero no la mejor de las posibles.

Frits W. Hondius

Fundaciones

El papel de las fundaciones en la conservación del patrimonio es esencial. Así, de una parte, pueden ostentar la propiedad de bienes históricos, asegurando su destino exclusivo a fines específicos (p. e. museo, sala de conciertos, etc.), lo que supone una ventaja sobre la propiedad estatal o privada, que no proporciona tal garantía. Por otra parte, sirven de canalización del apoyo financiero para la conservación de monumentos o sitios, al igual que pueden actuar como organizadores de actividades a desarrollar en el propio monumento (p. e. conciertos). Asimismo, y sin ánimo exhaustivo, pueden promover la formación de expertos en restauración y de artistas y artesanos y, finalmente, actuar como vía de transmisión y concienciación de la riqueza del propio patrimonio y de la necesidad de su conservación.

Abordando ya el régimen jurídico de las fundaciones, hemos ya de apuntar como, en nuestra opinión, pretender que existe una división, respecto a las formas legales de personificación jurídica en dos grandes bloques, el de los países del Derecho común (*Common Law*) – Gran Bretaña e Irlanda, la *Commonwealth*, Norteamérica – y los del Derecho Civil (*Civil Law*) – Europa continental, la Federación rusa, Latinoamérica y algunos países de Africa y Asia – constituye una simplificación excesiva.

En lo que hace a los países del Derecho común, es cierto que existen características comunes en este campo (especialmente, respecto al papel activo de los tribunales). Pero existen también diferencias importantes. En el Reino Unido, el concepto crucial es el de finalidad de interés público' (*public benefit purpose*). Asimismo, otra de las claves del sistema es la regla fundamental, que a veces se torna en verdadera obsesión, según la cual estos fines no deben transgredir la frontera entre el voluntariado y el activismo político. Por contra, en los Estados Unidos, las fundaciones han estado siempre en la vanguardia del cambio social y político, y han sido independientes en todo punto del Congreso. El criterio decisivo para diferenciar a las fundaciones del resto de formas legales ha sido en este país la ausencia de ánimo de lucro. Sin embargo, este concepto se acuñó en relación íntima con la tributación de estas personas jurídicas y por ello mismo, no es fácilmente extrapolable a otros ámbitos (p. e. a los países excomunistas de Europa Central y del Este), por lo que el criterio que parece aplicable de forma útil tanto a los piases de Derecho Común así como a los de Derecho Civil es, en nuestra opinión, el de 'organización no gubernamental', acuñado hace cincuenta años en el artículo 71 de la Carta de las Naciones Unidas, y reconocido como útil por el resto de organizaciones internacionales, como la UNESCO, el Banco Mundial, el Consejo de Europa, UNICEF, etc. En cuando a los orígenes históricos de la figura y a su regulación, el régimen legal de las fundaciones en los llamados países de Derecho civil dista de ser uniforme. El origen común se halla en el Derecho Romano, el Corpus Juris Civilis, y, ya en el siglo XIX, en el Code Napoleon y el BGB alemán. Sin embargo, el Código napoleónico se limitaba al reconocimiento universal de la existencia de personas jurídicas e, incluso hoy, el término 'fundación' está ausente del Código Civil francés. Por su desconfianza hacia todo cuerpo intermedio entre el individuo y el Estado, no fue sino en 1901 cuando se legalizaron las asociaciones y hasta fecha tan reciente como 1987 que se adoptó la primera ley sectorial atinente a un grupo de fundaciones, sin que exista, por ello, ninguna ley general de fundaciones en Francia. A semejanza de lo que ocurre en el Reino Unido, también aquí es la autoridad pública la que decide si una fundación sirve un interés público (*charitable*, en el Reino Unido, *d'utilité publique*, en Francia).

El origen común en Europa de las fundaciones se localiza en las donaciones para el culto que recibía la iglesia, en forma de terrenos y edificios. En un principio se asemejaban a los *trust*, por cuanto no tenía existencia independiente por sí mismos. Esta variante pervive aún hoy en los países de Derecho Civil, referida a aportaciones pequeñas (p. e. camas de hospital), pero para otras mayores, que involucran bienes inmuebles, se estableció otro tipo de fundación,

que es el que es el que ha marcado lo que se entiende actualmente por la misma, en tanto persona jurídica detentadora de un patrimonio dedicado a una finalidad y administrado de acuerdo con las reglas establecidas en su carta fundacional. Eventualmente, existe un nuevo tipo de fundación, como es aquélla que posee un capital del que puede disponer para sufragar ayudas y becas. Esta distinción entre fundaciones que sirven y financian una actividad fijada y las que financian actividades a desarrollar por otros aún existe y se refleja en los términos *operational foundation* y *grant-giving foundation*. En la mayoría de los países, el término 'fundación' no constituye una guía indicativa sobre el tipo en que se incluye, lo que supone una fuente de desconcierto para las personas que a ellas desean dirigirse en busca de financiación.
Tras la Reforma protestante, el vínculo iglesia-fundación dejó de ser exclusivo. Tras la revolución industrial, el fenómeno de creación de fundaciones por ciudadanos adinerados o grandes corporaciones (Rockefeller, Ford, Wellcome, Nobel, etc.) se convirtió en la seña de identidad de los países no latinos y no católicos, tanto de Derecho Civil como de Derecho Común, ostentando de este modo el Estado meras funciones de supervisor. Poco a poco, este concepto de fundaciones ha ido calando también en la mayoría de estos países, como España e Italia.
El desarrollo histórico en los países de Derecho Civil, que acabamos de esbozar, ha convertido en rasgo principal de las fundaciones su consideración como personas jurídicas que pueden participar en el tráfico civil bajo los mismos presupuestos que las personas naturales. Ello no obsta para que, asimismo, se hayan establecido mecanismos de control: registro de fundaciones e intervención judicial cuando incumplen la ley. Dentro de los países de Derecho civil, continua existiendo una línea divisoria entre aquéllos que exigen el previo consentimiento de la autoridad pública (Austria, Bélgica, Francia, Alemania, a nivel de *Land*, Italia, Grecia y Luxemburgo) y los que no lo hacen, pudiendo sólo negar la inscripción en ausencia de las condiciones de forma establecidas por la ley (así, entre otros, en Portugal, España, o Noruega). En Dinamarca, Suecia y Suiza sólo se exige la inscripción para cierto tipo de fundaciones y la posesión de personalidad jurídica no depende de la inscripción en el registro. La mayoría de los países excomunistas se han alineado con la postura más liberal que no exige el consentimiento estatal, si bien, en contrapartida y por una cierta desconfianza, han regulado en detalle su régimen jurídico y las formas de control y supervisión. En algunos países se exige un capital mínimo inicial.
Los regímenes nacionales difieren a la hora de establecer qué finalidades hayan de reputarse como válidas para la constitución de una fundación, oscilando desde la libertad de opción, sólo condicionada a la expresa mención de un objetivo en concreto (Países Bajos) hasta la enumeración legal estricta de los propósitos admisibles, a menudo con una cláusula general adicional que cubre propósitos no enumerados. Para el objeto de nuestra exposición, basta examinar hasta qué punto monumentos y sitios pueden incluirse entre estos propósitos 'caritativos' o 'de interés público'. A diferencia de lo que pudiera esperarse, sólo dos países, entre los examinados, los incluyen explícitamente entre las finalidades de las fundaciones: Polonia y España. En otros países pueden entenderse englobados en términos más generales, como, p. e., la 'cultura' o el 'arte'.
Para terminar, dos notas acerca del régimen económico y fiscal de las fundaciones. La actividad económica para la consecución de los fines fundacionales no se halla en contradicción con su carácter de entidades sin ánimo de lucro. Sin embargo, todos los sistemas legales prohiben la retribución de su consejo directivo o el reparto de beneficios a los fundadores o a sus herederos. Dos son los grandes problemas que se plantean en cuanto al régimen económico y financiero de las fundaciones. En primer lugar, la dificultad de marcar una línea divisoria nítida entre actividad económica para la consecución de sus fines propios y actividad no relacionada con éstos (piénsese, p. e., en un museo con servicios de vídeo, catálogo, restaurante, etc. Se trata de actividades legales pero sujetas a gravámenes fiscales, especialmente si se ejercen en competencia con empresas locales, como restaurantes o tiendas de recuerdos. Lo mismo no puede decirse, p. e., de los ingresos por entradas o conferencias). Respecto a la fiscalidad, solamente apuntaremos que se dan dos grandes problemas: las diferencias de tratamiento fiscal entre los diversos regímenes nacionales y la ausencia de incentivos fiscales para las donaciones transfronterizas. Como conclusión, queremos destacar la necesidad de armonización legal en una causa internacional por excelencia como es la de la protección de los monumentos y sitios históricos.

PAUL KEARNS

La protección de los monumentos y el régimen de los trust

La ponencia tiene como objeto el estudio del patrocinio privado en la protección y el mantenimiento de los monumentos en el contexto del Derecho inglés de los *trusts*. Para que la constitución de éstos se repute válida, han de concurrir los requisitos de certeza de su tenor literal, de su sujeto y de su objeto. Entre las clasificaciones a las que se ha sometido esta figura, guarda una relevancia especial a los efectos de nuestro análisis la clasificación de los *trusts* en 'caritativos' (*charitable*) y 'no caritativos' (*non-charitable*).

Los trusts de fines 'no caritativos' (non-charitable purpose trusts)

Mientras un *trust* privado tiene como beneficiarios a individuos determinados, un *trust* 'caritativo' tiene como objeto la consecución de fines públicos gozando de la calificación legal de 'caritativos', debatiéndose sobre la misma posibilidad del establecimiento de un *trust* con fines no caritativos. Como regla general, están prohibidos. Sin embargo, hay que destacar que la jurisprudencia ha reconocido un cierto número de excepciones a esta regla general prohibitiva en relación a *trusts* cuyo objeto radicaba en la construcción o el mantenimiento de monumentos, sitios, tumbas, y sepulturas, dedicados a la propia memoria o la de los familiares, con ciertas condiciones respecto a que deban someterse a plazo límite y a la cuantía de los fondos que a ellos puedan destinarse.

Los trusts caritativos (charitable trusts)

Este género de *trust* recibe un tratamiento legal muy favorable. Se permite que se constituyan a perpetuidad – de hecho, algunos de los actualmente vigentes cuentan con unos quinientos años de antigüedad – y en un amplio abanico de modalidades. Entre ellos, gozan de un lugar preeminente los que tienen por objeto la construcción o mantenimiento de monumentos, memoriales y sitios. Cuando un *trust* caritativo no puede cumplir sus fines, puede aplicarse la llamada doctrina 'cy-près'. De acuerdo con la misma, los tribunales asignarán, cuando sea apropiado, los fondos de estos *trusts* a un objeto tan próximo como sea posible al originalmente designado. Hasta 1960, sólo podía aplicarse cuando el objeto había devenido imposible o impracticable. La 'Charities Act', de 1960, establece que, en ciertas circunstancias, los fines originales pueden ser modificados, cuando, p. e., han sido total o parcialmente cumplidos o no pueden ser continuados, al menos de acuerdo con las intenciones o el espíritu originales. Sin embargo, hasta el momento, esta posibilidad no ha dado lugar, respecto a los monumentos, a pronunciamientos judiciales.
Para ser considerado un *trust* de este tipo, los propósitos del mismo deben ser exclusivamente caritativos y no meramente incluir algunos propósitos que en efecto lo sean. En este último caso, el tribunal puede adoptar alguna de estas resoluciones: decidir que los fines no caritativos son sólo incidentales y por tanto que el *trust* es plenamente válido; decidir que es inválido en caso de que llegue a la conclusión opuesta; finalmente, los fondos pueden separarse en partes aplicándose cada una de ellas a uno de los géneros de finalidades, si bien esta última opción sólo cabe en los casos en que el instrumento de creación del *trust* pueda ser interpretado como encaminado a esta división. En el caso de un *trust* caritativo que abarque la protección de monumentos y sitios, será relativamente fácil cumplir el requisito de la condición de 'exclusivamente caritativo' orientándolo claramente a su (supuesto) objeto caritativo, vinculándolo así con fines a los que se les reconoce tal condición.

Por último, en lo que hace a los beneficios fiscales, en Inglaterra, los fondos destinados a este tipo de *trust* están exentos de ciertos tributos internos, entre los cuales figura incluso el IVA bajo ciertos presupuestos. Igualmente, hay una exoneración del 50 % del impuesto de sucesiones respecto a los bienes que se destinen a este tipo de fines. Más específicamente, no devengan tributo alguno las transferencias de bienes a la National Gallery, el British Museum, el National Trust, los entes locales, los departamentos gubernamentales, las universidades y varios otros museos y galerías. Los tribunales son cautos a la hora de reconocer el estatus de *trust* caritativo cuando estas significativas ventajas fiscales se muestran como la razón subyacente a la demanda de reconocimiento del mismo. La exoneración de tales cargas fiscales es sin duda atractiva por lo que la práctica normal consiste en asegurar que el fin (supuestamente) caritativo y el beneficio público son el núcleo central e inequívoco del *trust* y la razón del mismo, cuando se aspira a conseguir el estatus de *trust* caritativo. A modo de conclusión, hay que destacar que la normativa de los *trusts* presenta características singulares que pueden no resultar familiares para los juristas continentales. En el contexto específico de los monumentos y sitios ha de valorarse como positivo que el Derecho inglés frecuentemente se muestre proclive a privilegiar los *trusts* relacionados con la herencia cultural de naturaleza inmobiliaria considerándolos bien *trusts* no caritativos que gozan de validez o bien *trusts* caritativos. Es de esperar que la experiencia inglesa pueda ser de utilidad práctica para el resto del mundo jurídico.

II

FRANZ NEUWIRTH

La financiación de la restauracion del patrimonio arquitectónico en Austria

Austria es un Estado federal, compuesto por nueve *Länder*. De acuerdo con la Constitución austríaca, la protección monumental cae dentro de la competencia federal, mientras que en el planeamiento regional, la regulación de la edificación y la protección de la naturaleza es competencia de los *Länder*. La Federación recauda la mayoría de los impuestos, y traspasa parte de la recaudación a los *Länder* y a los entes locales, que, en el ámbito de sus intereses, también tienen ciertas competencias impositivas propias.
La protección de los monumentos se regula en la "Ley para la protección de los monumentos" de 1923, modificada en 1978 y en 1990. Según esta Ley, son monumentos todos los objetos muebles o inmuebles creados por el hombre cuya preservación es de interés público por su importancia artística, histórica o cultural. La Oficina Federal de Monumentos Históricos, incardinada en el Ministerio de Cultura, es la encargada de decidir sobre la presencia o no de tal interés público. El interés público se presume respecto de los objetos en manos públicas o de la Iglesia, salvo que la citada Oficina resuelva expresamente en sentido contrario. Respecto a los objetos de titularidad privada, la situación es la inversa. En cualquiera de los dos casos, rige el sistema de catalogación. Los monumentos catalogados no pueden ser demolidos, alterados, vendidos ni hipotecados sin permiso de la Oficina.
Pueden solicitarse y otorgarse subsidios para el mantenimiento y restauración de los monumentos incluidos en el catálogo, si bien no existe un derecho preexistente a los mismos. Se conceden normalmente en caso de costes de mantenimiento por encima de lo normal.
La reforma de la Ley para la protección de los monumentos llevada a cabo en 1990 y las reformas fiscales de 1989 han concedido a los propietarios de monumentos beneficios fiscales respecto de los gastos de conservación. Dependiendo del origen de los ingresos, ciertos gastos pueden deducirse de los impuestos sobre los ingresos a lo largo de un período de diez años en el caso de monumentos destinados a usos comerciales, o de quince, en el caso de monumentos alquilados o cedidos. La Oficina es la encargada de certificar que los gastos realizados tenían una finalidad de conservación del monumento. La adquisición de un monumento no es un gasto deducible.
El hallazgo de restos arqueológicos ha de ser comunicado a la Oficina y, automáticamente entran en el campo de aplicación de la Ley durante el mes siguiente a la fecha del hallazgo. Posteriormente será la Oficina la encargada de determinar si existe interés en su conservación.
Las donaciones a la Oficina son deducibles del impuesto sobre los ingresos en un importe de hasta el 10% de los ingresos del año anterior. En caso de que se designe a qué monumentos se pretende que se destine el importe donado, tiene mero valor de propuesta pero no condiciona a la autoridad pública.
El Ministerio de Cultura apoya de una forma muy especial la restauración de fachadas, en cooperación con las autoridades nacionales y locales. La financiación pública cubre entre el 30 y el 60% de los costes de restauración. Esta posibilidad sólo afecta a las fachadas de pueblos y ciudades cuya preservación haya sido considerada prioritaria por la Oficina a instancia de la comunidad respectiva.
Otra línea de actuación es la prevista en la "Ley para la mejora de la vivienda", que es de aplicación a las edificaciones con más de veinte años de antigüedad. Dentro del marco de esta Ley federal, los *Länder* han aprobado Decretos, por lo que las mejoras de las condiciones de habitabilidad y salubridad reciben el apoyo financiero conjunto de la Federación y del *Land*. Se establecen requisitos de tamaño máximo de las viviendas para tener derecho a la ayuda así como que el coste no puede exceder de lo que importaría una nueva vivienda de similares características. Se prevé que la financiación pública pueda llegar a la totalidad del coste de las obras en determinadas condiciones de ingresos, tamaño de las familias que las habitan y envergadura de la reforma.
La "Ley de promoción de la vivienda" es el marco normativo de referencia para los *Länder* en su política de promoción de viviendas de tamaño pequeño o mediano, bien mediante la edificación de nueva planta, bien a través de la reforma de edificios ya existentes objeto de la protección de la Ley para la protección de los monumentos. La Ley se ha revelado como un importante apoyo para la revitalización de monumentos y de antiguas estructuras que, en su mayoría, precisan de espacio adicional mediante ampliaciones para poder reunir los requisitos actualmente exigidos.
La "Ley de renovación urbanística" prevé la renovación de distritos y barrios, para lo que establece ayudas de hasta el 70% del coste de las obras y préstamos a 12 años con un interés del 7,75% – siendo el tipo normal bancario del 16%. Se trata de planes de renovación integrar y no de mera conservación, insertos en el planeamiento urbanístico, con acciones, p.e., de subvenciones para la construcción de garajes. En determinados casos de edificios o áreas de especial importancia, la ayuda puede llegar al 100% del coste total. Además, la Ley prevé ciertos beneficios fiscales similares a los contemplados en la Ley para la protección de los monumentos.
La "Ley de arrendamientos" es fuertemente protectora del inquilino y data de la Primera Guerra mundial y de los tiempos de crisis que le siguieron. Ello causó un cierto desinterés de los arrendadores en el mantenimiento de viejos edificios que pronto comenzaron a resultarles antieconómicos, lo que provocó el fuerte deterioro de los mismos. De acuerdo con los nuevos cambios legales introducidos, esta vigorosa protección es ya sólo de aplicación a los casos de los contratos anteriores a los mismos. Además, la nueva legislación faculta en unos casos a los inquilinos y en otros a los arrendadores a forzar a la otra parte a realizar obras de conservación del inmueble. Estas reformas pueden beneficiarse de ayudas públicas si entran dentro de los supuestos anteriormente reseñados. La renta está sometida a unos topes que dependen de las condiciones de construcción de la propia vivienda y su emplazamiento, si bien en casos de edificios catalogados o dentro de los planes especiales de protección urbana, en los que el propietario haya efectuado importantes desembolsos para su restauración, esos topes pueden superarse.
La "Ley de viviendas para jóvenes familias" prevé créditos a interés cero a devolver en 25 años para la reparación y modernización de apartamentos alquilados, siempre que no excedan una superficie máxima de 90 metros cuadrados, la construcción date de fecha anterior a 1945, los solicitantes tengan menos de 30 años y sus ingresos anuales no excedan de ciertos límites.
Por último – aunque evidentemente esta exposición no es exhaustiva – se prevén beneficios fiscales en el impuesto sobre el patrimonio para aquellas propiedades de valor cultural, especialmente edificios catalogados, que tributarán sólo por el 30% de su valor en caso de que los costes de mantenimiento excedan de una determinada cuantía.

LÉONARD AHONON

Protección y mantenimiento de los monumentos: La Contribución del patrocinio privado en Benin

El patrimonio arquitectónico de Benin se compone de construcciones tradicionales regionales, edificios coloniales de rico estilo portugués, y de sitios como p. e. cataratas. Podemos agrupar los niveles de protección en tres grupos:

1. Los principales monumentos y sitios pertenecen al Estado, cuentan con un especialista encargado de su conservación y reciben fondos tanto del Estado como de organizaciones gubernamentales y no gubernamentales. La Dirección del Patrimonio del Ministerio de Cultura aporta la estructura técnica.
2. Los monumentos y sitios de importancia regional y los construidos recientemente pertenecen a las comunidades locales, que deben obtener por sí mismas los fondos para la conservación. Reciben asistencia técnica de la Dirección del Patrimonio.
3. Los monumentos y sitios en propiedad de los particulares se encuentran en muchos casos en un grave estado, por falta de competencia técnica, de concienciación de los propietarios, de leyes que obliguen a la conservación, de conocimiento de su valor, y por la tendencia a derribarlos y construir edificios de nueva planta.

El patrocinio privado del patrimonio cultural se desarrolla usualmente a través de organizaciones no gubernamentales. Para su creación se requiere un acuerdo con las autoridades, que en caso de alcanzarse, provee a la O.N.G. de ciertas facilidades, que van desde un emplazamiento para su sede hasta la exención de algunos impuestos, como el de bienes inmuebles, el IVA, etc. Concluimos reiterando que la protección de los monumentos y sitios en Benin es muy problemática. Se podría establecer un orden de prioridades dentro de las acciones que se presentan a todas luces como necesarias, que iría desde el inventariado sistemático de los monumentos y sitios, a la clasificación de los mismos para llegar, finalmente, a la elaboración de un importante programa de conservación. El patrocinio privado ha aportado mucho, pero es más aún lo que queda por hacer.

DIMITAR KOSTOV

La conservación del patrimonio histórico en Bulgaria: Cuestiones relativas al patrocinio privado

Bulgaria posee un inmenso patrimonio cultural. En la actualidad, 40.000 monumentos gozan de especial protección. La legislación nacional relativa al patrimonio cultural data ya de antiguo, con el restablecimiento del Estado en 1878. Los primeros textos normativos están fechados en 1888 y 1890. Los cambios políticos que siguieron a la Segunda Guerra Mundial comenzaron un proceso de cambio radical del sistema legal, y, dentro del mismo, de la organización y gestión en la conservación del patrimonio histórico, marcado por los nuevos principios en el régimen de la propiedad.

Las políticas en este ámbito desarrolladas entre 1945 y 1969 estuvieron fuertemente influenciadas por el modelo soviético, basado casi exclusivamente en la acción estatal, a resultas de la masiva nacionalización de la propiedad inmueble, la fuerte centralización, la orientación totalitaria hacia políticas culturales globales, y la tendencia permanente a imponer marcos ideológicos y políticos estrictos a los estudios sociales y humanísticos, a la historia del arte y al arte oficial en orden a justificar la doctrina política dominante. De este modo, aunque legalmente posibles, en la práctica no existieron ningún tipo de entes públicos ni movimientos para la protección del patrimonio histórico con influencia real en el proceso de toma de decisiones políticas. El monopolio estatal quedó por fin socavado a partir de la Ley de Monumentos culturales y Museos de 1969, complementada por otras normas emanadas en el período 1976-1979, aún en vigor. La Ley se basaba principalmente en el papel subvencionador del Estado, también en relación a aquellas residencias de valor arquitectónico que permanecían en manos privadas. En este último caso quedaban gravadas por una hipoteca que sólo se ejecutaba en caso de venta o transacción de la parte del inmueble restaurada. Los propietarios de edificios catalogados estaban exentos del impuesto sobre bienes inmuebles, pero a la vez estaban sujetos a restricciones que afectaban al mantenimiento y libre disposición de su propiedad.

No existían prácticamente organizaciones enteramente no gubernamentales ni iniciativas privadas, con la sola excepción de algunos casos aislados de donaciones. El cambio radical político y social de la última década enfrentó a Bulgaria ante el reto de la modernización de su sistema de protección del patrimonio histórico. A pesar de los esfuerzos de algunos especialistas que han llegado incluso a la redacción de algunos proyectos, aún no se ha aprobado una nueva ley. El primer paso en la promoción del patrocinio privado y la donación se llevó a cabo en 1995 mediante una reducción de la Ley de 1969. En concreto, se estableció una reducción en el impuesto sobre los ingresos de las donaciones para proyectos de investigación, conservación y protección. Los resultados, hasta el momento, son no obstante discretos, como lo es la inversión en actividades relacionadas con el patrimonio histórico en tanto que comercialmente rentables, por cuanto:

- El marco jurídico regulador de las fundaciones y organizaciones no gubernamentales data de antes de 1990 y es inadecuado para los tiempos actuales.
- Las ONG consagradas a tal fin no se encuentran entre las que reciben más fondos – sí despiertan más interés las organizaciones fundadas para la protección de un edificio en concreto.
- Existe una falta de conciencia y experiencia sobre la capacidad de la inversión en patrimonio histórico en tanto que capaz de generar ganancias económicas, p. e., a través del turismo.
- Las autoridades no son conscientes de que fomentar este tipo de inversiones, mediante deducciones fiscales, aunque provoque a corto plazo una mengua de los ingresos, las exime de tener que asumir ellas mismas esta inversión en conservación del patrimonio.

De este modo, la financiación estatal directa sigue siendo proporcionalmente la fuente de inversión más importante, aunque muy menguada y claramente insuficiente. La participación privada, aunque con excepciones notables, aún es incipiente. ICOMOS Bulgaria no ahorra esfuerzos en su tarea de promoción de las necesarias reformas legislativas y administrativas, así como de concienciación pública. En este sentido, la celebración de la undécima Asamblea General de ICOMOS en Sofía en 1996 tuvo un efecto apreciable.

MARC DENHEZ

Marco general de las relaciones entre el sector público y el privado

En Canadá existen varias formas legales susceptibles de servir de vehículo para la realización de actividades relacionadas con la protección monumental, que incluyen los *trusts*, las corporaciones sin ánimo de lucro, las fundaciones, las *charities*, etc. Sin embargo, ello no obsta para que las donaciones de monumentos sean infrecuentes, debido a la fiscalidad que las grava. Nuestra exposición trascenderá al estudio del patrocinio privado individual para abordar la creación de un marco general nacional de participación del sector privado en la protección y revitalización de la propiedad monumental.

En Canadá concurren – o, si se quiere, están ausentes – una serie de notas características en relación a la protección monumental: un porcentaje muy inferior, en términos relativos, al de otros países de monumentos catalogados como tales; inexistencia de tipologías de edificios catalogadas en sí mismas como monumentos, también a diferencia de otros países – p. e. los edificios religiosos –; ausencia de una larga tradición de planeamiento urbanístico, con su virtualidad protectora *de facto*; falta, por último, de un entendimiento amplio de los controles de impacto medioambiental de suerte que engloben, por extensión, la protección monumental. No obstante, existen, en nuestra opinión, al menos cinco áreas en las que la experiencia canadiense puede resultar de utilidad para la comunidad internacional, en un orden ascendente de gradación en cuanto a su importancia:

1. La audacia de algunos de nuestros proyectos de protección, que incluyen edificios de construcción muy reciente.
2. La filosofía que impregna nuestro modelo. Durante años, los conservacionistas canadienses estuvieron guiados por una estrategia de protección ad hoc de los monumentos que en cada momento se consideraron necesitados de protección. Sin embargo, a partir de los años ochenta, ICOMOS Canadá decidió ir más allá, y enfocar la protección monumental y medioambiental como un todo.
3. Los códigos y estándares de construcción, que al establecer prescriptivamente unos modelos y técnicas unitarias de reforma de la construcción no se adaptaban a las necesidades y características de los viejos edificios construidos con modelos y técnicas distintas, y de este modo quedaban condenados al deterioro o al menoscabo. Por ello, desde los ochenta se ha dotado a la normativa relativa a los proyectos de rehabilitación de una adecuada flexibilidad.
4. Evaluación y corrección de los errores potenciales evitables. Canadá ha tendido durante décadas a importar modelos de protección, basados en subsidios y en la protección pública, a la vez que se potenciaba la nueva edificación, especialmente tras la Segunda Guerra Mundial, lo que a veces ha tenido efectos contraproducentes. Estas políticas públicas, aunque bien intencionadas, han sido en ocasiones incluso desincentivizadoras.
5. En lugar preeminente, la colaboración con el sector privado, que, en lugar de prohibir todo cambio en las propiedades monumentales, está enfocada a consensuarlos. Y ello basado no ya en un enfoque individual para cada propiedad, sino tratando de definir un marco a nivel nacional, en colaboración también con las asociaciones de constructores y las dedicadas a la rehabilitación. El objetivo no es específicamente 'cultural', sino que se inserta en el intento general de llegar a un desarrollo sostenible del hábitat humano.

Por último, y a modo de conclusión, intentaremos satisfacer a aquéllos que esperan algunas predicciones sobre lo que habrá de ser el futuro reparto de responsabilidades en materia de protección monumental. Entre ellas, señalaremos sólo: que no hay amenaza al patrimonio sin causa, y que un análisis jurídico de las mismas ha de descubrir qué errores están en la base de los actuales problemas; que no es correcta la estrategia consistente en decir a los propietarios lo que no deben hacer, sino que es más conveniente unir fuerzas entre profesionales y gobiernos para posibilitar que los propietarios conozcan lo que podrían hacer, y, finalmente, que ha llegado el tiempo para todas las partes interesadas de compartir un esfuerzo reflexivo en aras a resolver los problemas de nuestro patrimonio. No bastan simplemente los deseos y las intenciones. Nuestros edificios monumentales son algo más que reliquias del pasado. Son un 'recurso renovable'. Son una inversión llevada a cabo por diferentes generaciones que constituyen nuestro 'medio ambiente urbano': su conservación es la clave del 'desarrollo sostenido' en el contexto urbano. En cuanto que tal, constituye el fundamento de la ciudad habitable del mañana.

SARA CASTILLO VARGAS

Estructuras legales en Costa Rica para el patrocinio y la protección del patrimonio histórico

La exuberante belleza de Costa Rica y su riqueza natural han oscurecido hasta cierto punto su patrimonio arquitectónico urbano, relativamente pequeño y modesto, y compuesto en su mayor parte por escuelas, iglesias y arquitectura vernácula. En este marco, la rama costaricense de ICOMOS se constituyó en 1983, bajo la forma legal de una asociación, que se conforma como una organización no gubernamental sin ánimo de lucro, con objetivos profesionales y culturales. De acuerdo con la normativa que las regula, este tipo de organizaciones disfruta de ciertos beneficios en atención al importante servicio que prestan al gobierno y a la comunidad. Sus recursos provienen de aportaciones de los miembros, donaciones y cualquier otro recurso legal del que puedan beneficiarse.

En un principio, el único recurso del que se disponía eran las aportaciones de los 10 o 15 miembros que conformaban inicialmente el grupo. En mayo de 1989, el Presidente Oscar Arias firmó el Decreto según el cual los productores de bananas donaban un colón (la unidad de cuenta local) por cada caja de bananas exportada, para ayudar a la preservación del patrimonio histórico nacional. Este dinero era recolectado por la Asociación Nacional de la Banana y puesto a disposición de ICOMOS Costa Rica, y supuso una cantidad considerable para una organización sin recursos como la nuestra.

En marzo de 1990, sólo once meses más tarde, el Decreto fue abolido. Sin embargo, el dinero ya recolectado sirvió como capital inicial para la organización, que, a través de inversiones rentables y una política austera, duplicó el dinero en 1996. Ello permitió diseñar un plan director para el centro histórico de Limón, ciudad de gran importancia por su rica cultura multiétnica de indígenas e inmigrantes de origen africano y asiático, reflejada en la estructura arquitectónica y urbana. Asimismo pudo adquirir una importante propiedad de alto valor patrimonial en el centro histórico de San José para establecer el cuartel general de ICOMOS Costa Rica.

También con estos fondos se lleva a cabo un plan anual de actividades en las que se incluye la difusión, promoción, propagación, restauración y defensa del patrimonio, a través de intervenciones en múltiples frentes. En 1994, ICOMOS fue declarada Asociación de Interés Público por el Gobierno. Esta declaración conlleva beneficios fiscales para la adquisición e importación de bienes, de la que aún no se ha hecho uso, pero de la que se esperan importantes resultados. Recientemente, ICOMOS ha iniciado la prestación de servicios profesionales remunerados por sus miembros, actividad que permite recolectar fondos y a la vez preservar el patrimonio. A su vez, se buscan nuevas vías de financiación para el enorme trabajo que queda por delante.

Abordaremos ahora muy brevemente el tema de los incentivos para la preservación del patrimonio. Desde 1995, Costa Rica tiene una nueva legislación para la protección del patrimonio arquitectónico. Una de las novedades de esta Ley es la sección dedicada a los incentivos fiscales de que gozan las aportaciones a instituciones que preservan o patrocinan la conservación del patrimonio. Se pretende fomentar la readquisición del patrimonio por los particulares. La legislación precedente iba en otra línea, como era la de promover la adquisición por parte del Estado, lo que resultaba extraordinariamente gravoso. La nueva ley establece 5 tipos de incentivos:

1. Deducción del impuesto sobre la renta.
2. Exoneración del pago de tributos sobre transmisiones de inmuebles y edificaciones de lujo para los edificios previamente declarados de interés histórico.
3. Autorización de inversiones y donaciones por parte de las instituciones públicas para la preservación y adquisición de propiedades de valor arquitectónico.
4. Adscripción de los importes recaudados a través de las multas impuestas por infracción de la propia Ley al presupuesto del Ministerio de Cultura.
5. Establecimiento de líneas de crédito para la financiación de trabajos de restauración de bienes de interés arquitectónico e histórico.

Finalmente, se añade un gravamen del 15 % sobre la tarifa ordinaria del servicio postal internacional que se destinará a la ejecución de la Ley de preservación del patrimonio. No obstante, y a pesar de la bondad de las determinaciones legislativas, tenemos aún la impresión de que queda un largo camino de concienciación por recorrer, y que el deterioro progresivo del patrimonio arquitectónico urbano aún es un fenómeno palpable. En ICOMOS, estamos haciendo esfuerzos en pro de que Costa Rica no se convierta en un espacio vacío, sin identidad, historia ni alma, al albur de los vientos de la modernización y de la economía global.

VJEKOSLAV VIERDA

Presentación del régimen legal en Dubrovnik, Croacia

El marco legal que rige el mantenimiento y restauración de la integridad monumental de Dubrovnik está establecido por la normativa nacional e internacional que regula el estatus de los monumentos históricos y por la normativa especial para la preservación de la unidad del patrimonio histórico de Dubrovnik. En cuanto a la regulación nacional, son de aplicación los instrumentos internacionales

firmados por Croacia Y aquéllos cuya adhesión procede de la antigua Yugoslavia y que han pasado a ser de aplicación mediante el procedimiento de sucesión legal. Así, son de aplicación los convenios internacionales y europeos así como las recomendaciones relativas a la protección del patrimonio cultural. El centro histórico de Dubrovnik fue incluido en el catálogo del patrimonio universal por la UNESCO en 1979.
En lo que se refiere a la legislación nacional, está fundamentalmente constituida por un conjunto de leyes generales de protección del patrimonio histórico que eran de aplicación en la antigua Yugoslavia, que están siendo objeto de una ingente labor de adaptación a las particularidades del nuevo sistema estatal y de perfeccionamiento y modernización. Un órgano particular y significativo en la tarea de protección del patrimonio histórico es el Servicio de Protección, que se integra en el Ministerio de Cultura como una unidad separada y actúa a través de un sistema descentralizado de departamentos de conservación artística. Sus actuaciones para la protección y restauración de monumentos son directamente ejecutivas, a la vez que goza de funciones de registro y supervisión. Cuando se trata de monumentos de valor preeminente o de importantes zonas monumentales actúa, incardinado asimismo en el Servicio de conservación artística, la institución del Conservador Jefe.
El conjunto monumental de Dubrovnik es el único que goza de un estatuto especial – condicionado, singularmente, por la inestabilidad sísmica que aqueja a esta ciudad – regulado por una Ley especial. Dicha Ley establece el reforzamiento sistemático de las construcciones, con cargo a fondos públicos, y prevé la aprobación de un presupuesto para la restauración separado del destinado al resto de monumentos de Croacia. Para ello se destinan, entre otros, parte de los ingresos obtenidos de actividades relacionadas con el turismo. Igualmente prevé la figura del llamado Instituto para la Restauración de Dubrovnik (IRD) para la implementación de los contenidos de la Ley, que opera como institución independiente incardinada en el Ministerio de Cultura. El citado organismo habrá de reconvertirse antes del 31 de diciembre de 1997, probablemente bajo la forma de empresa pública, sobre la base de un acuerdo entre el gobierno croata y la ciudad de Dubrovnik. El IRD está regido por un Administrador jefe nombrado por el Ministro de Cultura, al igual que lo son los miembros del Consejo, entre los que se encuentran representados la ciudad, el condado, la Iglesia y el Ministerio de Cultura. La implementación de la Ley es objeto de supervisión por parte de una Comisión parlamentaria para la restauración de Dubrovnik, de la que a su vez depende un Comité de expertos.
El proceso de restauración es gradual. Tras la presentación de proyectos, se pasa a una fase preparatoria e instructora del expediente, en la que interviene el Comité de Expertos. Cualquier acción que afecte a la construcción necesita de una licencia que es competencia, no ya del Ministro de Cultura, sino del Ministro de la Construcción, el Medio Ambiente y la Vivienda. Ello provoca interferencias, pues los requisitos de construcción en atención a la naturaleza sísmica del terreno pueden no compadecerse bien con la forma tradicional de restauración. En estos casos, cada uno de los Ministerios suele aparecer más interesado en garantizar, respectivamente, el valor monumental y la seguridad de la construcción. A ello se le une el que la interpretación del Ministerio del Desarrollo y la Reconstrucción, encargado de la restauración de las instalaciones dañadas por la guerra, tiende a adoptar los planteamientos del Ministerio de la Construcción.
Las actuaciones de saneamiento de los edificios se hacen con cargo a fondos públicos presupuestarios, y otras actuaciones complementarias, en caso de llegarse a un acuerdo con el propietario, también pueden ser ejecutadas por el IRD y financiadas con medios no presupuestarios (del propio propietario, donaciones, etc.). Las edificaciones ostentadas por la ciudad pueden ser objeto de concesión a sujetos privados, mediante el pago de un canon, de acuerdo con la Ley de Concesiones de 1992, que, no obstante, es una norma demasiado general y difícilmente aplicable en la práctica, ya que, en lo que hace a los monumentos históricos, establece un procedimiento muy rígido, en el que se requiere la intervención de las autoridades estatales para cada concesión singular. Igualmente, el procedimiento para la creación de fundaciones, competencia del Ministerio de la Administración, es caro, complicado y lento. El resultado de todo ello es que hasta el día de hoy no se ha creado ninguna fundación para la protección de los monumentos ni se ha otorgado ninguna concesión sobre monumentos en Dubrovnik.
En resumen, podemos señalar que el sistema no se caracteriza por su transparencia, puesto que no hay una separación nítida entre los niveles estatal y local. Ello se complica aún más por el proceso de 'desnacionalización' de las propiedades anteriormente publificadas por el gobierno socialista, ya que en caso de ausencia de los antiguos propietarios o de sus herederos, éstas pasan al Estado y no a la administración municipal. Actualmente, existen propuestas de simplificación del sistema y de modernización de las leyes, para dar acogida a las más novedosas técnicas de financiación conocidas en otros sistemas.

EDWIN ESPINAL HERNÁDEZ

Legal framework for building restoration in the Dominican Republic

The first text where there is any reference to building restoration in the Dominican legislation is Ordinance No. 1164 from 3 February 1870. After this ordinance, in the rest of the 19th century, there is no sign of any legislation measures that embrace that kind of intervention.
Within the effective legislation Art. 11 of Law 318 from 1968 prohibits the proprietors or owner of any property that belongs to the cultural patrimony from altering it without consultation. Breaking that rule can be punished by a prison sentence of six months to a year or by a fine of 200 to 2,000 pesos (Art. 15).
On the other hand, Art. 13 of Law 492 prohibits all efforts at reconstruction of monuments; using techniques of conservation and consolidation, they should only restore what is essential, and always make the additions recognizable.
A monument (from a combined reading of articles 257 of the Penal Code and 2 of Law No. 318 from 1968) is understood as a construction of any historical or artistic interest, dedicated to the public utility, and raised or built by the public authority. The denomination "National Monument" is given by law (Art. 7 of Regulation No. 4195 September 20, 1969) to the buildings specified in Art. 2 of Law No. 318, 1968. Its says that the monuments, ruins and pre-Colombian archaeological sites, colonial buildings, urban groups and other constructions of historical or artistic interest (including statues, pyramids and crowns) are destined to remain in a public site with conmemorative character.
Concerning charters about monument restoration by international groups and their relationship with the internal laws, we must point out that the Venice Charter from the year 1964 is the only one which had space in the national legal ordinance. Art. 13 of Law 492 prohibits any reconstruction of monuments, and their conservation and consolidation shall be procured by any possible technique. That document also does not accept any reconstruction.
Our constitution points out that the only international documents that obligate the country are the pacts or agreements made by the executive power and ratified by the National Congress. Thus those Declarations and Recommendations do not tie state powers, and therefore they should be used as simple normative guides.
The institutions that guide the practice known as restoration in our country are:

1) The Office of Cultural Patrimony created by Ordinance No. 1397 in June 15, 1967, whose main function is "the realization, coordination and execution of the initiative and plans that carry out the practice" related to the National Monumental Patrimony (Art. 1 of Regulation), and
2) the Commission for the consolidation and landscaping at the historical monuments of Santo Domingo city, joined to the Office of Cultural Patrimony, which carries out its functions exclusively within the environment of the main city.

Although the criteria for building restoration is supposed to be fixed by these entities, the outcome depends in the majority of cases on the restoring architects, who follow the diverse tendencies that exist in the field on a worldwide level. Therefore their solutions do not always have coherence or are consistent with institutional politics.

The dispositions of Art. 13 of the Law of 1969 say restore only the indispensable and always leave the additions recognizable because they introduce a totally irrelevant element to the initial aesthetic concept of the building.

SOPHIE MOUSSETTE

El patrocinio y sus formas legales

El presente escrito ha de comenzar destacando la importancia del patrocinio privado en sus diversas modalidades. Respecto al invertido por las empresas, el montante se calcula en unos 800 millones de francos. A pesar de la dificultad del cálculo, ha de estimarse que el de las personas privadas oscila entre 1.000 y 2.000 millones de francos. Ha de advertirse que estas cifras se refieren a todos los sectores de 'interés público', como la cultura, la sanidad, el medio ambiente... Respecto al patrocinio por parte de empresas, se observa que la protección y conservación de monumentos es un sector elegido por éstas con frecuencia: el 9% del importe total que a él destinan se dedica a su protección. Algunas se orientan hacia la restauración de monumentos o la arqueología. Otras hacia la restauración de obras de arte pertenecientes a museos. En cuando a las modalidades a través de las cuales se lleva a cabo esta acción de patrocinio privado, son diversas, así:

Asociaciones

Se trata del sector más importante y diversificado. De acuerdo con la ley, pueden ser de tres tipos:
– Asociaciones no declaradas, carentes de estatuto legal.
– Asociaciones declaradas, reguladas por el Acta de 1901.
– Asociaciones de utilidad pública, registradas como tal, que constituyen una pequeña parte de las asociaciones declaradas.
Sobre las primeras, poco se sabe: se trata de iglesias o grupos vecinales informales.
Respecto de las segundas, se trata de la categoría más amplia. El Acta de 1901 establece un régimen liberal y flexible, razón por la que éste no ha sido alterado desde su promulgación. Son muy diversas las organizaciones que gozan de dicho estatus, y algunas de ellas tienen como objetivo la restauración de monumentos o la adquisición de obras pictóricas destinadas a engrosar los fondos de museos (la más importante es la Sociedad de Amigos del museo del Louvre). Según el Acta de 1901 una asociación es un acuerdo entre dos o más personas que ponen en común de modo permanente conocimiento o actividad, con un objetivo diferente al de reparto de beneficios económico. También pueden ser creadas por personas morales. su número, en cálculo estimado, debe oscilar entre las 600.000 y las 700.000. La 'declaración' la lleva a cabo el Prefecto.
Las asociaciones declaradas tienen una capacidad legal limitada: p. e., no pueden ser titulares de bienes raíces o recibir legados. Por su parte, se benefician de exención de impuestos: no sólo respecto a impuestos sobre los ingresos y beneficios sino también en el IVA (sólo respecto a las primeras seis ventas de cada año). Las donaciones a las asociaciones declaradas son deducibles hasta un 3 % de los ingresos computables y hasta un 2 por mil del volumen de negocios de las empresas.
Por último, referente a las asociaciones de utilidad pública, han de ser aprobadas por el Consejo de Estado, a la finalización de un procedimiento que tiene una duración de dos años. Son pocas (1948 en 1990), pero en general de gran tamaño. La mayoría están relacionadas con la sanidad o el bienestar público. Pueden ser titulares de bienes inmuebles y de valores financieros. Las donaciones en su favor son deducibles hasta un 5 % de los ingresos computables y los legados a las mismas se fomentan a través de la exención del impuesto de sucesiones.

Fundaciones

Gozan de los mismos privilegios que las asociaciones de utilidad pública. Su número es escaso (428 en 1990), motivado por el capital exigido para su constitución: 5 millones de francos. Desde la ley de 23 de julio de 1987 sobre el patrocinio, sólo pueden crearse fundaciones con la aprobación del Primer Ministro y el Consejo de Estado. Estas fundaciones, al contrario de lo que ocurre con las asociaciones, gozan de una amplia capacidad legal: pueden realizar todos los actos de la vida civil, entre otros, poseer casas o edificios (p. e., tener un palacio a su cuidado). Están regidas por un Consejo al que pertenecen los fundadores, personas cualificadas del mundo de las artes y representantes de las autoridad. Podemos reseñar en este punto la creación de una nueva fundación, que presenta caracteres originales: se trata de la "Fondation du Patrimoine", creada por ley, con un capital de 30 millones de francos, donado por diez importantes empresas, cuya actividad se basará en la conservación y preservación de los monumentos nacionales, en paralelo a las actividades de la National Heritage en Gran Bretaña.
Para fomentar el patrocinio, el legislador y el ejecutivo francés han trabajado en el diseño de una nueva forma legal a caballo entre la asociación y la fundación. Esta nueva forma es la llamada 'fundación de empresa' (*firm foundation*). Sólo puede ser creada por empresas, por períodos de cinco o más años. Tienen una capacidad legal limitada, al igual que las asociaciones – p. e., no pueden recibir donaciones ni legados. Las empresas realizan un desembolso económico en el momento de la fundación. Existe un Consejo rector, compuesto por los fundadores. Han de ser autorizadas por el prefecto. Su número actual es de unas 50.

HUGBERT FLITNER

Formas organizativas para el patrocinio privado y presentación del Alfred Toepfer Stiftung F.V.S.

La normativa alemana distingue esencialmente tres tipos de organizaciones que se ajustan a la actividad de patrocinio por parte del sector privado en el sector de la protección de los monumentos:

Asociaciones

Integradas por miembros, en un mínimo de siete para su constitución. Sus notas distintivas son la facilidad de incorporación y salida de sus miembros y la importancia de cada uno de ellos en su funcionamiento. En sus estatutos han de figurar sus fines. Se rigen por una asamblea de todos sus miembros y un cuerpo ejecutivo que las representa en asuntos legales y cuyos poderes pueden definirse libremente en los estatutos. Adquiere personalidad jurídica con su inscripción en el Registro de asociaciones.

Sociedades limitadas

También tienen miembros – llamados 'socios' – pero, por regla general, en menor número, bastando uno. Los socios responden hasta la cuantía de su aportación. El capital social mínimo se cifra en 50.000 marcos y en un mínimo de 500 marcos cada socio. La adquisición y pérdida de la condición de socio es más difícil que en el caso de las asociaciones. Su organización interna se regula exhaustivamente en la Ley de Sociedades Limitadas. Constituye la principal forma de organización en el mundo de los negocios, y su normativa es compleja, lo que hace que su utilización fuera de ese mundo se limite a aquellas áreas de la vida cultural en que los aspectos comerciales son importantes – como teatros, óperas y grandes instituciones de investigación científica. La mayor autoridad dentro de este tipo de organizaciones es la Asamblea General de socios, presidida por el director ejecutivo, cuyos poderes de actuación son prácticamente ilimitados. Adquiere personalidad jurídica mediante su inscripción en el Registro de sociedades comerciales.

Fundaciones de Derecho Civil

No tienen miembros ni socios. Necesita de un patrimonio. Tras el fundador, la gestión corresponde al consejo de la fundación como máxima autoridad, al que se suelen adicionar un consejo ejecutivo o

un director ejecutivo. Para su constitución, requiere una autorización estatal, a diferencia de las anteriores figuras.
Para gozar del reconocimiento de su finalidad pública y social, del estatuto de *'charitable'*, y de los consiguientes beneficios fiscales, todas ellas han de tener por finalidad servir de forma exclusiva, directa y en ausencia de interés propio, a la población general en un sentido material, cultural o moral.
La asociación es la forma más común de organización para todos los géneros de actividad dentro del sector privado. Existen unas 240.000 asociaciones en Alemania, lo que contrasta con el mucho más reducido número de fundaciones, cifradas en 1994 en unas 5.600. En cuanto al número de sociedades limitadas, no tenemos datos disponibles sobre cuántas de las 610.000 existentes tienen una finalidad no económica. Tras esta exposición general, permítansenos unas palabras sobre la Fundación Alfred Toepfer F.V.S., a la que represento. Fue instituida por el comerciante de Hamburgo del que, tras su muerte, recibió la primera parte de su nombre y comenzó sus actividades en los años veinte. Su principal actividad inicialmente fue la creación de alojamientos juveniles. Posteriormente fue la primera organización privada en dedicarse al otorgamiento de galardones culturales. Ambas actividades fueron atraídas a su órbita por las fuerzas pro-hitlerianas y Alfred Toepfer fue desplazado del control de la fundación. Tras la Segunda Guerra Mundial, y tras un período de encarcelamiento, logró hacerse de nuevo con las riendas de la fundación, estableciendo un Galardón Europeo en el sector de la agricultura. Es en este contexto en el que se originó el Premio Europa para la Preservación de Monumentos.
En la construcción de alojamientos para la juventud, Alfred Toepfer siempre tuvo en cuenta la preservación de los monumentos y el paisaje natural, lo que le llevó a la rehabilitación de antiguas granjas. Igualmente, la preservación de parques naturales se encontró entre las actividades a que dirigió sus esfuerzos, siendo el fundador de la Federación de Parques Naturales, Nacionales y Europeos. En contraste con su actividad en el terreno de la conservación de la naturaleza, la fundación no se ha ocupado directamente hasta ahora de la preservación de los monumentos o de las identidades regionales. Esa actividad requeriría un fuerte desembolso que consumiría sus fondos en poco tiempo. Sí ha pugnado por la adopción en Alemania y en toda Europa del modelo británico de *National Trust*, si bien han de reconocerse las dificultades de adaptación a las características federales y a las propias características del conjunto arquitectónico alemán. No obstante, en nuestra opinión no se trata de una tarea imposible. Las condiciones legales para su constitución deben ser facilitadas por el Derecho Comunitario que ha de crear las posibilidades legales y fiscales que, actualmente, sólo están presentes en el Reino Unido.

KARL WILHELM POHL
La Fundación Alemana para la Proteción de los Monumentos

"Dar al pasado un futuro", ése fue el lema que presidió la constitución de la Fundación alemana para la Protección de los Monumentos en 1985. El entonces presidente de la R.F.A., Dr. Richard von Weizsäcker, se convirtió en la cabeza de su Patronato. La Fundación se impuso la tarea de apoyar la preservación y restauración de importantes monumentos culturales en Alemania, allí donde era factible hacerlo exclusivamente con financiación privada. Otro objetivo de la Fundación era el de introducir la idea de la preservación monumental en la opinión pública y motivar a los ciudadanos a contribuir a ella activamente. El capital inicial fue de 500.000 marcos, donados por veintitrés renombradas empresas alemanas.
Tras la apertura de la frontera del Este en 1989 la misión de la Fundación ganó una nueva dimensión. La penosa situación de edificios deteriorados y viejas ciudades en ruinas imponía una acción de urgencia.. En dos años, entre 1989 y 1991, el capital de la Fundación casi se quintuplicó, llegando a 3,1 millones de marcos. Desde 1991, se ha invertido una suma de 277 millones de marcos en la restauración de 857 monumentos, de los cuales 735 se localizan en la antigua Alemania del Este. Para la selección de proyectos, la Fundación trabaja codo a codo con las autoridades locales y federales competentes. Asimismo, recibe el asesoramiento de una Comisión científica compuesta por arquitectos, historiadores del arte, conservadores de museos e historiadores. La Fundación suministra apoyo bajo la forma de fondos, consultoría organizativa y administrativa, custodia temporal o definitiva de objetos especialmente deteriorados o asistencia en la búsqueda de nuevos y adecuados usos y de patrocinadores. Todos los miembros trabajan de modo honorario. El número actual de patrocinadores privados se eleva a más de 70.000.
La Fundación también ha apoyado los Días del Patrimonio Europeo desde 1993 y coordina en Alemania el Día de puertas abiertas a los monumentos, que en 1996 tuvo un balance de 3 millones de visitantes para más de 5.500 monumentos que habitualmente son inaccesibles para el público, lo que prueba el creciente interés popular.
La Fundación facilita información sobre sus actividades a través de una amplia red de relaciones públicas, pues sólo la concienciación puede conducir al interés por la protección de los monumentos. En esta tarea, la revista bimestral *Monuments* tienen un papel destacado. Asimismo, se complementa con reportajes y anuncios gratuitos en los medios de comunicación.
Mediante la creación del Centro de Cursos de formación en el mantenimiento de monumentos, con sede en Görlitz, la Fundación apoya la formación de especialistas en técnicas de restauración y conservación de monumentos. Por su parte, participa en la concesión de un Premio Federal a las mejores obras de mantenimiento de monumentos que premia a propietarios y artesanos-restauradores. 500.000 monumentos individuales en los antiguos Estados federales y más de 350.000 de ellos, así como alrededor de 180 cascos históricos en los nuevos Estados necesitan restauración y mantenimiento. Sólo si los ciudadanos y las instituciones públicas se consagran a esa tarea, las futuras generaciones tendrán la oportunidad de utilizar estos testimonios del pasado como fuente de entendimiento del presente y de conformación del futuro.

ANDRÁS PETRAVICH
La protección de los monumentos en Hungriá. Las estructuras legales de patrocinio privado

La tormentosa historia de Hungría no ha hecho posible que sobrevivan un gran número de edificios y conjuntos de diversos períodos históricos. Hungría ha suscrito los más importantes instrumentos internacionales para la protección de los monumentos. No obstante, el estado general de su patrimonio histórico puede reputarse como en progresiva degradación. En los años de transición que siguieron a la caída del régimen comunista, nuevos problemas se añadieron, arrastrados por la privatización, el comportamiento de 'capitalismo salvaje' de los nuevos propietarios, la escasez de recursos económicos de los gobiernos locales en tanto que nuevos propietarios de muchos monumentos, y el descenso general del nivel de vida. Hoy el 10-15% de los monumentos pertenecen al Estado, 25-30% a los gobiernos locales, 30-35% a las iglesias, y 25-30% a personas privadas y empresas, siendo el presupuesto de 1997 para la protección del patrimonio de 11.3 millones de dólares, lo que supone alrededor del 10% de las necesidades nacionales para el mantenimiento de los monumentos. En estas circunstancias, no es necesario insistir en la importancia del papel de las organizaciones no gubernamentales y del patrocinio privado. El mismo ha sido posible legalmente gracias a una serie de nuevas leyes y a reformas de otras anteriores aprobadas desde 1987 en adelante.

Fundaciones

La Ley del impuesto de sociedades, de 1996, exenciona de impuestos las actividades de las fundaciones, bajo ciertas condiciones. A pesar de ello, aún existen pocas fundaciones para la protección de los monumentos. La más famosa es la Fundación pública Palacio de Grassalkovich, establecida por instituciones estatales pero que también recibe aportaciones locales y privadas. La Ley del impuesto sobre la renta personal, de 1995, permite una deducción del 30% de las donaciones a fundaciones o destinadas a finalidades públicas, como la protección de los monumentos, con un límite del 20% de los ingresos en el caso de los empresarios individuales. No obstante, estas medidas serían eficaces si existiera una amplia y concienciada clase media, ya que el bajo nivel de vida, el alto desempleo y la lucha diaria por la vida no permiten el patrocinio privado. El año pasado, en 1996, se aprobó una nueva Ley con el objetivo de incrementar la concienciación de la población como ciudadanos y como contribuyentes, fomentando las fundaciones y las actividades con ellas conectadas. La Ley posibilita que el contribuyente decida por sí mismo el uso público del 1% de su declaración de la renta. La protección de los monumentos está entre las finalidades públicas que pueden elegirse, y pueden designarse fundaciones como beneficiarias.

Asociaciones

Pocas de entre ellas tienen por objeto específico la protección de monumentos. Son más significativas las asociaciones para la protección de ciudades y pueblos, que gozan ya de una larga tradición en Hungría y forman una red extensa agrupada en una federación nacional (*Hungaria Nostra*). Promocionan los monumentos mediante el trabajo de voluntariado, la difusión del conocimiento y a veces funcionan también como grupo de presión. Igualmente puede mencionarse el Baile anual organizado, desde hace tres años, por los profesionales dedicados a la protección y conservación del patrimonio en beneficio de monumentos deteriorados, cuya recaudación se destina a tal fin.

Sociedades

Pueden jugar diversos papeles en relación a la protección de los monumentos. Su actividad de mecenazgo a través de aportaciones económicas para la conservación de monumentos aún no es significativa – con las correspondientes excepciones – debido a la época de 'capitalismo salvaje' que estamos atravesando. Sí es destacable su actividad de patrocinio en otras actividades culturales, como exposiciones, edición de libros, películas, etc. Como propietarios y poseedores de monumentos, los bancos y las compañías de seguro son los principales detentadores de monumentos, ya que la ubicación en palacios o villas se ha convertido en una atractiva imagen de empresa. Igualmente, muchos de estos edificios, al calor de un programa gubernamental hoy ya derogado, fueron reconvertidos en hoteles. El Código Civil, por su parte, define un tipo especial de sociedad: la sociedad de utilidad pública. Se trata de organizaciones sin ánimo de lucro, algunas de cuyas actividades – p. e. la protección de monumentos – están exentas del impuesto de sociedades.
La legislación y la organización de la protección de los monumentos en Hungría se enfrenta de nuevo a cambios venideros. Tras ocho años de discusión, el Parlamento discute en estos momentos el proyecto de la que ha de ser nueva Ley del Patrimonio histórico. El proyecto incluye todo un elenco de elementos novedosos y progresistas, entre otros, la inalienabilidad de ciertos monumentos de propiedad estatal, la atención especial a jardines históricos, cementerios, restos subterráneos de estructuras arquitectónicas o fragmentos de monumentos pertenecientes a los fondos de los museos, principios acerca de la financiación de la acción protectora y sanciones por infracción de la propia ley. Sin embargo, no he de dejar de expresar mi insatisfacción, en la medida en que el sistema continua girando en torno a los derechos del Estado y los deberes de los propietarios, y no se enfoca pues sobre los principios de cooperación y reciprocidad. Por otra parte, no se atribuye a los gobiernos locales la autoridad que sería necesaria ni se potencia en absoluto la esfera civil y las organizaciones no gubernamentales. En otras palabras, la Ley parece proteger los monumentos más frente a la gente que con ella. Estoy convencido que el ejemplo de múltiples países altamente desarrollados muestra que la protección de los monumentos en el futuro habrá de construirse sobre la cooperación y la unidad de intereses.

GIDEON KOREN
Formas legales de patrocinio en Israel

El Estado de Israel cuenta con cincuenta años de existencia aproximadamente. Sin embargo, el territorio israelí cuenta con un patrimonio cultural que data de muchos siglos atrás. La historia del país se extiende a lo largo de un período de unos cinco mil años. Durante este tiempo, el territorio de Israel ha sido gobernado por muchas naciones diferentes cada una de las cuales ha dejado su influencia en el sistema legal. De este modo, tras el período de dominio otomano, que se extendió entre los años 1516 y 1917, el mandato británico que le siguió optó por conservar el sistema jurídico otomano tal y como se encontraba, a la vez que aprobaba nuevas leyes, algunas de las cuales modificaban determinadas previsiones del régimen jurídico anterior, y asimismo previó en todo caso el carácter de derecho supletorio del Derecho inglés para colmar las abundantes lagunas jurídicas. A la proclamación en 1948 del Estado de Israel, le sucedió muy pronto la guerra contra las naciones árabes. El tiempo y los esfuerzos disponibles para legislar fueron escasos, y de este modo, se declararon vigentes las normas establecidas por las autoridades británicas así como el carácter supletorio del Derecho inglés, hasta su abolición en fecha tan tardía como 1980. Incluso con la abolición de dicha previsión en 1980, se estableció que las lagunas que habían sido hasta entonces rellenadas por referencia a ese Derecho permanecerían rigiéndose por el mismo. A su vez, comenzó una gran aceleración en la tarea legislativa del Parlamento israelí, siendo así que las nuevas leyes siguieron en unos casos el modelo continental y en otros el del *common law* inglés, o utilizaron en ocasiones conceptos importados del Derecho americano. En otros casos, justo es decirlo, se optó por modelos originales.
Una vez expuesto este marco general, puede entenderse mejor la afirmación de que una de los mejores ejemplos de la complejidad del ordenamiento jurídico israelí es precisamente la normativa referida a la propiedad inmobiliaria. En ella, puede encontrarse un microcosmos en que se hallan representados casi todos los sistemas legales tradicionales. De este modo, el simple concepto de "preservación" no tiene una expresión clara o específica en Derecho israelí. Valga este ejemplo como botón de muestra de las dificultades de una exposición de nuestra materia de estudio inteligible para el jurista extranjero.
La protección de los monumentos y edificios antiguos está regulada por la *Ley de Antigüedades,* cuyo ámbito de aplicación se extiende a todas aquellas edificaciones que datan de fecha anterior a 1700. Esta Ley otorga a todas las antigüedades a cargo de una organización oficial gubernamental: la *Antiques Authority*. Financiada con cargo al presupuesto estatal, a ella pertenece de modo automático todo resto de una antigüedad encontrado o excavado en Israel, y se encarga de su gestión. De este modo, las posibilidades de participación privada en este sentido son nulas.
Respecto a los *trust*, la *Ley de Trusts* regula varias formas de *trusts* siguiendo el patrón angloamericano. No se exige una forma ni un procedimiento predeterminado para su constitución. Las características de la normativa reguladora de los *trusts* no los hace necesariamente apropiados para la preservación de monumentos y sitios históricos, ya que no limitan las facultades de los órganos o las personas encargados de la gestión del mismo. De hecho, el fin del *trust* puede entrar en contradicción con el propósito de preservación y el beneficiario puede incluso estar obligado a oponerse a dicha preservación. Por otra parte, en caso de tratarse de un *trust inter vivos*, el problema radica en que el control sobre el patrimonio pasa al órgano rector del mismo y no al propietario que lo constituye, lo que lleva
A menudo a éste último a mostrarse reacio a perder su capacidad de control e influencia ya en vida. En el caso de los *trusts mortis causa*, la dificultad deriva en este supuesto de su consideración como acto testamentario y la posibilidad de objeciones a su ejecución basada en diversas causas que ello conlleva. Por último, y desde luego sin carácter exhaustivo, otro inconveniente de la utilización de los *trusts* con fines de preservación del patrimonio radica en la determinación del beneficiario. La mayoría de los deberes de las personas a las que se encomienda la administración del *trust* están más relacionados con intereses privados que con una situación. Tal que la preserva-

ción de los monumentos y sitios, en que el beneficiario es, normalmente, el público de modo genérico. Todo ello nos lleva a concluir en la falta de idoneidad de esta figura a los fines de la preservación del patrimonio.
En cuanto a la llamada *fundación pública* (*public endowments*), se trata de una forma legal cercana al *trust*, cuyo rasgo característico, que la convierte en un *trust* cualificado, radica en que uno de sus objetivos es la promoción de un fin público. El término 'público' se opone aquí a 'personal', e implica que el beneficiario no es una persona particular o una institución determinada, sin que sea necesario, por lo demás, que se refiera al público como un todo, pudiendo así hacerlo a un específico grupo de personas con una característica peculiar, p. e., un grupo de minusválidos. Según la Ley de *Trusts*, los *trusts* que tienen entre sus objetivos la promoción de un fin público han de ser objeto de inscripción en un Registro. La jurisprudencia los ha caracterizado por cuatro notas diferenciales: expresión de la voluntad del creador de constituirlos; determinación de los objetivos del *trust*, incluyendo los beneficiarios del mismo, la identificación del patrimonio del que se le dota; y la definición de los términos en los que se establece el *trust*.
En conclusión, se trata de una forma legal susceptible de ser utilizada a los fines de la protección del patrimonio, pero que carga con los mismos lastres generales de los *trusts* a los que hicimos alusión.
En cuanto al resto de figuras, las asociaciones y fundaciones son formas no dotadas de personalidad jurídica propia, y en cuanto a las sociedades, cooperativas y otras formas comerciales, no se adaptan, por su propia naturaleza, a la persecución de finalidades públicas, tales como la preservación del patrimonio cultural.
Debido precisamente al dato de que las formas legales 'tradicionales' no son suficientes para la preservación de los edificios y sitios, la solución parcial finalmente encontrada se halló en la *Ley de planificación y edificación*. En lo que a la preservación del patrimonio interesa, en 1991 el Parlamento israelí aprobó una modificación a dicha Ley, que permite a las autoridades públicas o cualquier interesado, tales como propietarios de terrenos u organizaciones reconocidas en este ámbito de actuación, proponer que un sitio deba ser preservado. La definición de 'sitio' es la de "un edificio o grupo de edificios o una parte de ellos, incluyendo sus alrededores inmediatos, que en opinión de un instituto de planificación son de importancia histórica, nacional, arquitectónica o arqueológica".
En esta reforma de la Ley se prevé que cada autoridad local establezca un comité para la preservación de los sitios. Estos comités tienen como misión elaborar un catálogo de sitios merecedores de ser preservados, coordinar su acción con las demás instancias públicas. Asimismo, tiene amplias facultades en orden a evitar los daños o la destrucción de los sitios existentes que aparezcan como inminentes e incluso a expropiar sitios dignos de preservación. En el primero de los casos, pueden instar a los propietarios, siguiendo un procedimiento establecido, a ejecutar las obras de mantenimiento necesarias y, en caso de inactividad por los propietarios, proceder a la ejecución subsidiaria, resarciéndose luego por vía de regreso. En cuanto a la expropiación, al ser la medida más drástica, habrá de obtener además el visto bueno del Consejo regional.
Una vez realizada la propuesta de preservación, se procede a su publicación y se acuerda una medida de protección cautelar consistente en la restricción de las licencias de obra sobre el sitio objeto de la propuesta por un período de un año. Posteriormente, en caso de acordarse la protección, implicará restricciones al libre ejercicio de las facultades del propietario. Restricciones que, en caso de ser injustificadas o exceder de lo necesario, habrán de ser indemnizadas. Existe en este sentido, la recaudación de la llamada '*betterment tax*' (impuesto de mejora) se aplica por los gobiernos locales a la compensación a los propietarios afectados por dichas restricciones. Esta normativa de 1991 es aún reciente, pero ya ha mostrado su eficacia en orden a la protección de los monumentos. Como ha podido comprobarse, la responsabilidad se atribuye a las autoridades públicas, y en concreto, a la voluntad de cada una de ellas. En lo que hace a la participación privada, no existen, como ha podido comprobarse, incentivos significativos.
Un último aspecto que nos gustaría abordar es el de los *incentivos fiscales*. Según régimen generales de los gastos deducibles, tienen esta consideración aquellos que son necesarios para la obtención de los ingresos computables. Se deriva de ello el que, como norma general, los gastos en preservación monumental no son deducibles. Existen sin embargo algunas excepciones:
- Cuando el edificio es propiedad de la misma entidad que efectúa los gastos para su preservación;
- Cuando la inversión puede considerarse incluida dentro de los gastos de publicidad de la empresa que la efectúa – si bien en este caso, probar la conexión directa beneficios-gastos puede resultar complicado;
- En los casos de aportaciones a organizaciones sin ánimo de lucro, en los que la regla general es el carácter deducible de las mismas, sujeta a las siguientes condiciones: personalidad jurídica independiente de dicha organización; que esté formada por individuos privados; que haya sido reconocida por las autoridades como organización sin ánimo de lucro; limitación de las aportaciones deducibles; no realización por dicha organización de actividades comerciales.

Este año se está elaborando un nuevo proyecto de reforma de la Ley de planificación y edificación, que incluye nuevas vías para fomentar la preservación, y que pone el énfasis en la promoción de la participación privada, a través principalmente de medidas fiscales.

TOSHIYUKI KONO

Corporaciones de interés público y tributación en Derecho Japonés

El Código Civil japonés distingue dos tipos de corporaciones: las corporaciones 'con ánimo de lucro' y las corporaciones 'de interés público', dedicadas a la religión, la caridad y la ciencia. Éstas se distinguen a su vez en dos categorías dependiendo de la naturaleza de la organización: asociaciones y fundaciones.
Para la creación de una corporación de interés público, es necesario obtener la autorización del órgano administrativo competente en la materia a la que se refiera la finalidad propia de cada concreta corporación. En caso de que ésta abarque varios campos y entre de este modo dentro de la competencia material de dos o más departamentos ministeriales, se requerirá la autorización de cada uno de ellos. La potestad para el otorgamiento de la autorización es ampliamente discrecional. De este modo, p. e., el 'interés público' debe ser clarificado y determinado en cada caso mediante intercambio de alegaciones con la Administración. En la práctica, el procedimiento comienza con una reunión informal con el órgano administrativo y tiene una duración total aproximada de un año. Es una norma no escrita que para la obtención de la autorización, la corporación debe haber iniciado sus actividades de interés público aproximadamente dos o tres años antes de dicha reunión informal. Igualmente, se requiere un capital mínimo.
Las ventajas derivadas del otorgamiento de una condición tal se cifran, de una parte, en la alta consideración social, lo que se refleja en que suelen estar presididas por conocidos artistas y hombres de negocio, lo que incrementa sus posibilidades de recibir aportaciones públicas o privadas; de otra, en el reconocimiento de personalidad jurídica y capacidad de obrar; y, por último, en determinados beneficios fiscales, a los que enseguida haremos alusión. La contrapartida radica en el dato de que se hallan sometidas a un severo control administrativo.
Las corporaciones de interés público gozan bajo la presente regulación, como acabamos de señalar, de determinados beneficios fiscales. No obstante, existen determinados puntos oscuros al respecto, entre los que podemos mencionar:
1. En primer lugar, al ser organizaciones sin ánimo de lucro, se les aplica un tipo impositivo reducido. En la práctica, al abusar de este privilegio, las corporaciones de interés público obtienen en ocasiones importantes beneficios que son distribuidos entre sus miembros.
2. Por otra parte, este tipo reducido se aplica a todas las corporaciones sin distinción en razón del tamaño o el contenido de sus actividades, lo que da lugar a situaciones dispares.
3. Finalmente, su situación financiera y fiscal no puede ser calificada de transparente, y así se dan casos de fundaciones con un capital muy alto que realizan inversiones en lo que constituye su finalidad considerablemente reducidas en proporción al mismo.

Abordaremos ahora el tema del régimen jurídico de las donaciones a las corporaciones de interés público y su tributación. Hay que distinguir para ello dos supuestos, según que los donantes sean:

Corporaciones

La normativa distingue dos tipos de donaciones: las regulares y las específicas, y permite ciertas deducciones fiscales hasta un determinado límite.

Particulares

Existen dos posibilidades de deducciones fiscales:
1. Sobre el impuesto de sucesiones. Cuando alguien recibe unos bienes por sucesión o legado, y los dona con fines de caridad pública dentro de los seis meses siguientes a la transmisión, puede deducir la totalidad del montante de la donación.
2. Sobre el impuesto de la renta. No engloba a las donaciones regulares, que no dan derecho a deducciones fiscales, pero sí a las específicas en beneficio del Estado o para fines de caridad pública, sometidas a ciertos límites cuantitativos.

Por último, unas palabras sobre las tendencias recientes en la materia objeto de nuestra exposición. El catastrófico terremoto de Kobe en 1995 desató un vigoroso movimiento de voluntariado ciudadano. En el actual sistema legal, las organizaciones sin ánimo de lucro sólo tienen una posibilidad de cobertura legal, que es precisamente la de la 'corporación de interés público'. Debido al intenso control administrativo y los requisitos referentes al capital mínimo, a los que aludimos, muchas organizaciones sin ánimo de lucro no pueden o no estiman conveniente constituirse como corporaciones de este tipo, deseando, no obstante, acceder a los beneficios fiscales y alcanzar cierta notoriedad y relieve social. Para ello, los tres partidos que forman la coalición de gobierno han llevado a cabo un proyecto de ley llamado 'de organizaciones sin ánimo de lucro', que parece destinado a cubrir esta laguna.
En resumen, en Japón la forma legal más popular de organización sin ánimo de lucro es la corporación de interés público, que se rige por el Código Civil y algunas leyes especiales. Cuando una organización adquiere tal condición, siempre goza de beneficios fiscales. Este sistema, formal e inflexible, causa a veces resultados indeseables. Actualmente se ha aprobado un Proyecto de ley destinado a crear un nuevo tipo de corporación de ánimo de lucro que posiblemente sea aprobado en este mismo período de sesiones.

ANDIS CINIS

Estructuras legales de patrocinio privado y participacíon en la conservación y mantenimiento de los monumentos en Letonia

La situación política y económica general del país ha de tenerse en cuenta a la hora de llevar a cabo cualquier aproximación al tema de la financiación de la protección del patrimonio histórico. Así, no se puede obviar que, tras los vertiginosos cambios que llevaron a la caída del régimen comunista, el gobierno hubo de concentrar sus esfuerzos económicos en paliar los déficit provocados, entre otros, por la necesidad de crear fondos de pensiones ante la grave situación social y de hacer frente a la situación provocada por las empresas que, mediante actividades ilegales o dudosas, hicieron 'dinero fácil' para llegar luego a la bancarrota. A ello hay que sumar que el socialismo distanció el poder del pueblo, que tiende a contemplar al 'Estado' como algo ajeno a él mismo y a su responsabilidad, lo que se traduce, entre otras actitudes, en un importante fraude fiscal.
En cuanto a los beneficios fiscales que derivan del sistema legal y que pueden conectarse con la protección de los monumentos, podemos señalar que: En lo que hace al *impuesto sobre la vivienda*, cuando se desnacionalizaron la mayoría de las viviendas y edificaciones en 1990, se encontraban en su mayor parte en un estado de deterioro, por lo que su valor a efectos fiscales era pequeño. Aquéllas dotadas de valor arquitectónico y catalogadas gozaban de exención fiscal. Sin embargo, el proceso de restauración ha conllevado una mejora sustancial de algunas edificaciones que han mostrado ahora su valor arquitectónico a la vez que se han apreciado en su valoración a efectos fiscales. Los propietarios de estas edificaciones claman ahora en pos de la concesión de beneficios fiscales.
Ha ocurrido algo similar respecto al *impuesto sobre los terrenos*, pero la situación no es tan clara pues no existe tal sistema de catalogación. En este caso, la exención se predica de los terrenos que no pueden tener uso comercial y en los que se encuentran emplazados objetos de valor cultural y educacional, lo que supone cierta ambigüedad a la hora de su determinación – hasta 1993, se hablaba de aquéllos donde se hallaran "edificios catalogados".
Respecto a las *donaciones*, podemos decir, en primer lugar, que a pesar de que la lista de las organizaciones autorizadas para recibir donaciones cuenta con más de trescientos nombres, sólo un pequeño número están relacionadas con el patrimonio cultural, entre las que muchas, además, tienen objetivos generales y no se dedican específicamente a los monumentos. Además, el país tiene urgentes problemas socioeconómicos, lo que no fomenta las donaciones para el patrimonio cultural, salvo en los casos de un monumento muy famoso o importante en la conciencia social. Además, está el problema añadido de que sólo pueden ser donatarias las organizaciones públicas sin fines comerciales, siendo así que parte del patrimonio monumental se halla en manos privadas.
El 'Fondo de Cultura' es una organización de importancia nacional, establecida en los años veinte y reinstaurada en 1986. Tiene como finalidad fomentar el desarrollo cultural y artístico nacional. Desarrolla sus actividades a través de programas abiertos a la participación ciudadana activa. Se trata de una de las organizaciones autorizadas a recibir donaciones y patrocinios de sus actividades, que incluyen la protección del medio ambiente y algunos trabajos de restauración de monumentos específicos. Algunas voces arguyen que no existe hoy en el país capacidad económica para el patrocinio privado. Sin embargo, creo que es un argumento que parte de presupuestos incorrectos. Y ello por cuanto el patrocinio es una actividad con contraprestación, normalmente intangible, en forma de publicidad, y a veces incluso material, como se ha demostrado en el ámbito del patrocinio deportivo. Si bien es cierto que la inversión en este ámbito, es, por la fuerza de las cosas, más atractiva para las empresas que la inversión en patrimonio histórico, un régimen fiscal favorable puede jugar un papel decisivo. A ello hay que sumar que las autoridades habrían de ser las primeras interesadas en facilitar el patrocinio privado, por cuanto el turismo es una de las fuentes importantes de nuestra economía y el alto grado de deterioro de nuestro patrimonio monumental no puede sino disuadirlo.
Como acabamos de señalar, la inexistencia de beneficios fiscales para las donaciones a favor de monumentos incluidos en la lista o de las inversiones en conservación del patrimonio llevadas a cabo por los mismos propietarios es el déficit más importante, que subsiste a pesar de las voces que han clamado por su regulación. No obstante, es cierto que los cambios sociales, políticos, y económicos han sido vertiginosos, y los consiguientes cambios jurídicos no habrán de tardar en llegar.

ROBERTO NUÑEZ ARRATIA

Instrumentos legales para la protección y conservacíon de los monumentos en Méjico

La riqueza de la herencia cultural de las civilizaciones que han pasado por el territorio mejicano es extraordinaria, como lo son los monumentos y sitios que han dejado como huella. La normativa de protección del patrimonio los clasifica con un criterio temporal: considera monumentos arqueológicos a los que datan de fecha anterior a la llegada de los españoles; monumentos históricos a los fechados entre los siglos XVI al XIX; y monumentos artísticos a los erigidos en este siglo y dotados de un valor estético relevante. Las formas de protección de este vasto patrimonio han variado a lo largo del tiempo, datando las primeras disposiciones legales de la segunda mitad del siglo XVIII. La competencia para la salvaguarda de la herencia arquitectónica pertenece a las autoridades federales. Las

autoridades municipales y estatales sólo pueden intervenir con el permiso y bajo la dirección de aquéllas.
Son importantes los problemas de deterioro a los que se enfrentan numerosos centros históricos urbanos. Para ello, una reunión de expertos recientemente celebrada en Zacatecas, propuso un programa de actuación para la protección de los mismos basado en la conexión entre los aspectos técnicos de la restauración y el planeamiento urbanístico: la necesidad del fomento por parte de los gobiernos federal y estatales de la independencia municipal y su suficiencia financiera; la ayuda a las administraciones nacionales y municipales para el establecimiento de patrocinadores y de *trusts* independientes; y, por último, el establecimiento de medidas preventivas para evitar el abandono de los centros históricos por parte de sus habitantes y para el fomento de incentivos fiscales y campañas de concienciación destinadas a la creación de programas para las personas sin hogar, fueron sus conclusiones.
Respecto al caso concreto del centro histórico de Ciudad de Méjico, en diciembre de 1990 se estableció el Patronato del Centro histórico como un organismo autónomo, que con el apoyo del Gobierno ha establecido el Fondo del *trust* del Centro Histórico de Ciudad de Méjico. Promociona, negocia y coordina entre el sector privado y las autoridades la ejecución de acciones, trabajos y servicios conducentes a la restauración, protección y conservación del centro histórico. Durante los seis años que ha venido operando dicho Fondo, ha sido capaz de detener el proceso de deterioro y mejorar la imagen urbana de algunas de las calles más importantes. El programa "Échanos una mano" ha participado en 1.146 proyectos. El Fondo provee de asistencia técnica a los propietarios para el desarrollo de proyectos y trabajos, dotación de nuevos usos a las propiedades, consultoría jurídica cara a obtener licencias y permisos, etc. Asimismo, se han establecido una serie de incentivos fiscales.
Aunque los resultados obtenidos son alentadores, no es menos cierto que persisten numerosos casos de edificios ocupados sólo en la planta baja por locales comerciales y deshabitados en las plantas superiores. Por ello, el Fondo ha iniciado un programa llamado "Vive en el centro" con el propósito de mejorar las condiciones, de suerte que impulse a la gente a volver al centro. Para conseguirlo, el Fondo está intentando convencer a los propietarios para que participen en el plan para rehabilitar las plantas superiores de sus edificios y los conviertan en viviendas. Para este programa, se ha establecido un Fondo específico con los siguientes objetivos: crear un clima de negocios en el centro histórico; rehabilitar y dotar del mayor valor de mercado a las plantas superiores mediante la construcción de apartamentos de buena calidad; y desarrollar en áreas previamente seleccionadas proyectos de revitalización de ciertas manzanas y calles. En este Fondo participan inversores, patrocinadores y empresas que tienen interés económico en el centro histórico; el gobierno municipal; y los futuros habitantes de los apartamentos.
El esquema del Fondo incluye los siguientes elementos:
- Los patrocinadores e inversores aportan el capital inicial para comenzar las operaciones.
- Un Comité designado por el Fondo selecciona y evalúa cada proyecto y administra los recursos.
- Se ejecutan los proyectos aprobados en las áreas de rehabilitación preferente.
- Se inicia la captación de renta y se reinvierte en otros proyectos.

Actualmente se está trabajando en este proyecto, a pesar del lastre de la grave crisis económica sufrida, y se confía en la obtención de resultados positivos y el logro de la restauración completa del centro de la Ciudad de Méjico y su conservación para futuras generaciones, ya que se trata del centro histórico más importante de América.

DIEDERIK VAN ASBECK

Posibilidades legales de organización del patrocinio privado en el sector del patrimonio histórico y sus realizaciones en los Países Bajos

La regulación sobre restauración de monumentos prevé la posibilidad de una ayuda pública del 30% de los costes de restauración, porcentaje que desde junio de 1997 se ha recortado al 20%. Esta ayuda se acompaña de incentivos fiscales.
Asimismo, se ha creado un Fondo Nacional de Restauración a iniciativa del Estado, como medio de apoyo a los propietarios para sus inversiones privadas en restauración. El Fondo otorga créditos a tipos de interés reducido. Los ingresos obtenidos, entre otros, mediante estos intereses se aplican a financiar restauraciones problemáticas. Este medio de financiación en la práctica resulta en una mayor participación financiera privada en el mantenimiento del patrimonio monumental.
Un paso ulterior lo constituiría el desarrollo de un sistema encaminado a inventariar, describir y llevar a cabo el planeamiento de áreas con sus elementos históricos y su identidad, junto a sus posibilidades de desarrollo económico. En esta concepción, sólo los monumentos 'sin utilidad económica' serían objeto de subvenciones estatales. El resto del patrimonio arquitectónico es parte del mercado, y en cuanto que tal su conservación debe ser financiada por él mismo. ¿Será tal vez éste el futuro del patrocinio privado?.

WOJCIECH KOWALSKI

Estructuras legales de participación pública y protección del patrimonio cultural en Polonia

El emplazamiento de Polonia, sometida a influencias de los países del Oeste, Centro y Este de Europa, explica su singular herencia multicultural. Sin embargo, las guerras que la han asolado y los estragos del paso del tiempo han provocado que su patrimonio arquitectónico no sea muy extenso y es precisamente por ello por lo que la protección de los edificios y monumentos aún subsistentes se contemple de una forma especial como una obligación nacional.
Aunque por una razón diferente, nuestro patrimonio histórico fue objeto de protección por nuestros antepasados durante el siglo XIX y principios del siglo XX, al calor del fuerte sentimiento patriótico y sus esperanzas de recuperar la independencia perdida. Un grupo de ilustrados llevó a cabo los primeros intentos de protección organizada del patrimonio histórico. Al no contar con el baluarte de su propio Estado ni de su propio Derecho, hubieron de ampararse en los tres sistemas legales entonces vigentes en las distintas zonas del país: así se organizaron fundaciones y asociaciones que se regían respectivamente por el Derecho alemán, austríaco y ruso. Incluso tras la Primera Guerra Mundial, y la obtención de la independencia plena, las leyes alemanas y austríacas, que habían demostrado su virtualidad, siguieron en buena parte en vigor.
Tras la Segunda Guerra Mundial, la protección del patrimonio cultural fue asumida en su totalidad por el Estado totalitario. En 1952 se procedió a la liquidación de todas las fundaciones y a la nacionalización de sus bienes. De hecho existía una ley que permitía la creación de asociaciones pero, debido al estricto control ideológico de cualquier actividad social, su vigencia era sólo teórica y en la práctica no se fundaron asociaciones libres. Sólo en la segunda mitad de los años ochenta asociaciones y fundaciones volvieron a la vida jurídica y civil. Hoy puede decirse que las más importantes estructuras de participación pública en la protección del patrimonio cultural en Polonia son las fundaciones y las asociaciones.
Las fundaciones fueron reinstauradas por la Ley de 6 de abril de 1984, modificada en 1991. Desde entonces se han creado 112 fundaciones que tienen por objeto principal la protección del patrimonio cultural, con ámbitos de actuación muy diversos. Las asociaciones, por su parte, deben su renacer a la Ley de Asociaciones de 1989. Es imposible aportar datos acerca del grado de utilización de esta forma legal por la ausencia de estadísticas en este ámbito, pero puede aventurarse que es amplia, debido a lo enraizado de la tradición y al consiguiente calado social de la misma.

Fundaciones

La Ley no da una definición, que habrá de extraerse de sus notas distintivas: patrimonio propio, finalidad, existencia institucional permanente, personalidad jurídica, utilidad pública, ausencia de ánimo de lucro y carácter no corporativo. Se puede distinguir entre fundaciones de Derecho público y privado; de utilidad pública y privada; que desempeñan o no actividades económicas. Si bien ha de añadirse que puede hablarse de fundaciones en sentido amplio para designar también aquellos entes sin personalidad jurídica fruto de una acto de voluntad expreso del donante o legatario. Puede decirse que el tipo característico de fundación es la descrita en la mencionada Ley de 1984, cuyos atributos diferenciales son:
- persiguen finalidades de utilidad social o económica similares a los intereses estatales, especialmente tales como protección de la salud, desarrollo económico o científico, educación, cultura y arte, ayuda social, protección del medio ambiente y de los monumentos.
- los fundadores pueden ser personas privadas o jurídicas, con independencia de su nacionalidad y domicilio, si bien la fundación ha de tener su sede en Polonia.
- adquieren personalidad jurídica desde su inscripción en el Registro de Fundaciones.
- la posibilidad de desempeño de actividades económicas está limitada a posibilitar la realización de los objetivos de la fundación, y condicionada a ciertos requisitos de fondos propios y a su previsión en los estatutos de la fundación.
- se encuentran bajo el control del ministro competente o de la administración regional pero sus decisiones sólo pueden ser revocadas por los tribunales a iniciativa de estos órganos administrativos.
- están exentas de honorarios de Registro, del impuesto sobre los beneficios y de derechos de aduanas en la realización de sus actividades propias

Asociaciones

Tienen carácter corporativo, y en ello radica su principal diferencia con las fundaciones. El patrimonio no se configura, de este modo, como el elemento principal y sí los miembros, que ejercen de este modo su derecho fundamental de asociación. Sus notas distintivas son voluntariedad, autogobierno, permanencia, ausencia de ánimo de lucro, prohibición de la condición de miembros para las personas jurídicas, control indirecto por la autoridad regional, prohibición de la forma asociativa para ciertas organizaciones – como iglesias o partidos políticos –, y goce de ciertos beneficios fiscales. Adquieren personalidad jurídica mediante su inscripción registral y necesitan de un número mínimo de quince miembros para su establecimiento. Existen asimismo asociaciones sin personalidad jurídica, pero su estatus legal es muy pobre. Nuestro balance nos lleva a concluir que, en Derecho polaco, las asociaciones tienen un estatus más favorable que las fundaciones. La condición de miembros, como hemos visto, no está limitada como respecto a las fundaciones. Pueden poseer propiedades y monumentos. Apenas hay diferencias respecto al régimen fiscal. Ambas pueden desempeñar actividades económicas y recibir donaciones y subvenciones, que son deducibles para el benefactor de sus ingresos antes de impuestos, con un límite del 10% de aquéllos.

MARÍA ROSA SUÁREZ-INCLÁN DUCASSI
Y LUIS ANGUITA VILLANUEVA

Estructuras legales de patrocinio y participación privados en la protección y conservación de los monumentos en España

La contribución privada a la protección del patrimonio cultural puede llevarse a cabo tanto por personas físicas como jurídicas, de forma directa o a través del Estado, de otras entidades públicas, fundaciones o asociaciones, y actualmente está contemplada en los textos legales que regulan las fundaciones. Antes de entrar a analizar la regulación legal del patrocinio y la participación privadas, no ha de dejar de hacerse una breve referencia a la Ley de Asociaciones de 1964, objeto recientemente de una modificación parcial. Las asociaciones son personas jurídicas con capacidad de obrar a través de personas físicas que actúan como órgano de gobierno. Adquieren personalidad jurídica desde la aprobación de sus estatutos por parte de las autoridades administrativas e inscripción en el correspondiente Registro. Igualmente, hay cuanto menos que mencionar que existen diferentes textos normativos que regulan diversas modalidades de sociedades. Todas estas entidades contribuyen y participan en la protección del patrimonio cultural, pero puesto que el objetivo de este trabajo es presentar el marco legal español de la contribución financiera privada para la conservación y restauración de los monumentos y el patrimonio histórico, nos concentraremos en los aspectos que a continuación se expondrán.
Antes de ello, mencionemos que la contribución privada arriba citada está regulada en la actualidad básicamente en tres cuerpos normativos. La Ley del Patrimonio Histórico español, de 25 de junio de 1985; el Real Decreto de 10 de enero de 1986, de desarrollo parcial de la Ley, parcialmente modificado por el Real Decreto de 21 de enero de 1994; y la Ley de 24 de noviembre de 1994, de Fundaciones y de Incentivos Fiscales a la participación privada en actividades de interés general. Junto a ello, los respectivos textos reguladores del Impuesto de la Renta de las Personas Físicas y del de Sociedades contemplan determinados beneficios fiscales en conexión con operaciones relacionadas con la materia objeto de nuestro estudio, a los que haremos mención más adelante. Por último, la Ley anual de Presupuestos Generales del Estado puede establecer una lista de actividades o de programas preferentes en relación a los cuales las aportaciones privadas se pueden beneficiar de un incremento del 5% respecto al general en el porcentaje de deducción fiscal a la que tienen derecho e, igualmente, respecto al Impuesto de Sociedades, puede modificar los porcentajes aplicables a determinadas operaciones en este ámbito. Las medidas legislativas más importantes en relación a la contribución privada a la protección y conservación del patrimonio histórico inmobiliario son:
1. Acceso preferencial al crédito oficial;
2. Aplicación a estos fines del 1% de los presupuestos de obras públicas contratadas con empresarios privados;
3. Posibilidad de pago de determinados tributos mediante la entrega de objetos pertenecientes al patrimonio histórico catalogados o inventariados;
4. Exenciones y otros beneficios fiscales;
5. Deducciones fiscales. En el Impuesto de la Renta de las Personas Físicas, del 20% de lo invertido en la adquisición de bienes registrados, con el límite del 30% de la base imponible, bajo ciertas condiciones. En el Impuesto de Sociedades, la deducción es del 15% y se extiende también a la inversión en conservación, reparación, restauración, promoción y exhibición.
6. Incentivos fiscales para las aportaciones privadas a las actividades de interés general.

Fundaciones

La Ley de Fundaciones y de Incentivos Fiscales a la participación privada en actividades de interés general, de 1994, define las fundaciones como "organizaciones constituidas sin ánimo de lucro que, por voluntad de sus creadores, tienen afectado de modo duradero su patrimonio a la realización de fines de interés general". Gozan así de las siguientes notas caracterizadoras: personalidad jurídica, que adquieren con su inscripción en el Registro de Fundaciones; ausencia de ánimo de lucro; patrimonio asignado a fines a largo plazo establecidos por el fundador; aplicación de su patrimonio en interés general, en beneficio de grupos de personas genéricos, y no en el del cónyuge o parientes hasta el cuarto grado, con la excepción de aquéllas fundaciones cuya finalidad exclusiva o principal sea la conservación y restauración de bienes del patrimonio histórico español, siempre que cumplan las exigencias de la Ley del Patrimonio Histórico Español, en particular respecto de los deberes de visita y exposición pública de dichos bienes.
Se establecen asimismo determinados requisitos de capacidad de los miembros y de forma respecto a la constitución, que puede tener lugar por actos 'inter vivos' o 'mortis causa'. En cuanto al régimen jurídico aplicable, las fundaciones se rigen por la voluntad del fundador, por sus estatutos y por la Ley de 1994, así como por otros textos normativos adicionales.
Las decisiones con efectos jurídicos son tomadas por el órgano de gobierno y representación, denominado Patronato, al que le está

encomendada la consecución de las finalidades de la Fundación. Debe estar compuesto al menos por tres miembros, de entre los cuales habrá de elegirse al Presidente, salvo que en los estatutos o en la escritura de constitución se disponga otra cosa. La figura del Secretario es potestativa. Los miembros del Patronato pueden ser tanto personas físicas – con plena capacidad de obrar y no inhabilitados para el ejercicio de cargos públicos – como jurídicas, en cuyo caso habrán de nombrar una persona natural que las represente. Han de desempeñar su labor de forma gratuita con la diligencia de un representante leal, siendo responsables frente a la Fundación por los daños debidos a actos contrarios a la Ley o a los Estatutos o los ejecutados negligentemente. Las Fundaciones han de contar con un capital fundacional, respecto al que la Ley establece determinados requisitos mínimos. En lo que se refiere a sus actividades, están obligadas a:

1. Destinar el patrimonio y sus rentas a los fines fundacionales.
2. Dar información suficiente de sus fines y actividades.
3. Actuar con criterios de imparcialidad y nó discriminación en la determinación de sus beneficiarios.

Están sometidas a un estricto control de sus cuentas, estando obligadas a someterse a auditoría externa si su patrimonio supera los 400 millones de pesetas, si el importe neto de su volumen anual de ingresos supera esa cifra o si el número medio de trabajadores empleados durante el ejercicio es superior a cincuenta. Al menos el 70% de sus ingresos han de ser asignados a los fines fundacionales, y el remanente ha de utilizarse para incrementar la dotación fundacional.

La fundación se extingue por expiración del plazo para el que fue constituida; por realización íntegra del fin fundacional; por imposibilidad de cumplimiento del mismo; cuando así resulte de la fusión; por cualquier otra causa prevista en el acto constitutivo o en sus Estatutos; o cuando concurra cualquier otra causa establecida en las Leyes.

El *Protectorado* es una institución pública, cuyo objetivo consiste en facilitar el recto ejercicio del derecho de Fundación y asegurar la legalidad de su constitución y funcionamiento. El control se ejerce por las Administraciones estatal o autonómica, dependiendo del reparto de ámbitos competenciales, y sus funciones básicas consisten en asesorar a las fundaciones sobre aquellos asuntos que afecten a su régimen jurídico y económico; velar por el efectivo cumplimiento de los fines fundacionales de acuerdo con la voluntad del fundador y teniendo en cuenta la consecución del interés general; verificar si los recursos económicos de la Fundación han sido aplicados a los fines fundacionales; dar publicidad a la existencia y actividades de las fundaciones; ejercer provisionalmente las funciones del órgano de gobierno de la Fundación si por cualquier motivo faltasen todas las personas llamadas a integrarlo; y cuantas otras funciones se establezcan en las leyes.

El *Consejo Superior de Fundaciones* es un órgano consultivo, creado por la Ley de 1994, e integrado por representantes de la Administración estatal y autonómica y de las fundaciones. Entre sus funciones pueden destacarse las de asesoramiento y promoción de las fundaciones.

Incentivos fiscales a la participación privada en actividades de interés general

En primer lugar, hemos de hacer una breve reseña del régimen fiscal de las fundaciones inscritas en el Registro de Fundaciones y de las asociaciones declaradas de utilidad pública. El aspecto más destacable es que estas entidades se hallan exentas del Impuesto de Sociedades en lo tocante a los ingresos obtenidos en actividades propias de la finalidad a la que sirven, así como de los incrementos patrimoniales derivados de adquisiciones y transmisiones a título lucrativo, si se cumple dicho requisito. Respecto a los impuestos locales, gozan de exención del Impuesto de Bienes Inmuebles y del de Actividades Económicas.

En segundo lugar, en lo que hace al régimen tributario de las aportaciones efectuadas a entidades sin fines lucrativos, podemos señalar que, respecto de las personas físicas, generan, bajo ciertas condiciones, un derecho a deducción de la cuota del Impuesto de la Renta de un 20% del importe de las donaciones, con aplicación del límite general del 30% de la base imponible. En relación a las personas jurídicas, gozan de un derecho a deducción en la cuota del Impuesto de Sociedades , bajo esas mismas condiciones, con el límite, según los tipos de donaciones, del 10% y del 30% de la base imponible, pudiendo la sociedad optar alternativamente por acogerse a los límites del 1 por 1.000 o el 3 por mil, respectivamente de su volumen de ventas – el caso que da lugar a la mayor deducción del 30% o el 3 por mil es el de donaciones de objetos catalogados pertenecientes al Patrimonio Histórico Español y obras de arte de calidad garantizada. En el caso de donaciones para determinadas actividades y programas prioritarios a los hicimos alusión, el porcentaje puede elevarse un 5%.

Thomas Adlercreutz
El regímen legal en Suecia

La mayor parte del patrimonio arquitectónico sueco – con exclusión de los edificios religiosos – se encuentra en manos privadas. Las tendencias históricas por parte de las autoridades en orden a la adquisición pública de monumentos – en sentido amplio – parecen ya periclitadas. La pieza angular del sistema normativo de protección de los monumentos es la Ley sobre Monumentos Culturales de 1988, que distingue una serie de conceptos, como son los sitios y monumentos arqueológicos, los edificios históricos – que incluyen también parques y jardines, mediante el sistema de catálogo –, patrimonio eclesiástico y bienes muebles.

No entraremos en el régimen de protección pública y en los deberes y derechos que prescribe. Situaremos nuestro foco de atención en el examen de la contribución *voluntaria* de personas privadas y organizaciones al mantenimiento de los monumentos. Voluntariedad que no tiene por qué estar movida por el idealismo, sino que incluye también estrategias comerciales (así, el patrocinio). La legislación sueca sobre el particular es parca. Las formas de organización predominante son las asociaciones sin ánimo de lucro y las fundaciones. Otras formas, como las sociedades, raramente son utilizadas.

Asociaciones sin ánimo de lucro

Juegan un papel muy importante en la protección – y, a menudo, también en la gestión – de los monumentos. El Movimiento llamado *Hembygdsrörelsen* tiene una implantación y un grado de difusión muy fuerte en Escandinavia. Se organiza en pequeñas asociaciones a nivel de parroquia o de grupo de parroquias. Son fundamentalmente rurales, pero también existen en los núcleos urbanos. Son transmisores, mediante conferencias públicas, de las tradiciones e historias locales. Pero su papel se torna a veces 'activista'. Vigilantes ante amenazas al entorno natural existente, actúan como poderoso grupo de presión, a menudo aliados con fuerzas políticas locales. Por lo general, no se involucran por sí mismos en la gestión de monumentos, al menos no respecto a monumentos de envergadura. A veces se organizan de forma urgente asociaciones *ad hoc* sin ánimo de lucro frente a necesidades puntuales. Como requisitos legales, deben constar con unos estatutos adoptados por los miembros y estar representadas por un consejo, nombrado de acuerdo con lo previsto estatutariamente.

Fundaciones

Hasta hace poco tiempo, las fundaciones carecían de una regulación legal. Esto ha llevado a que incluso el número preciso de las existentes sea incierto – las autoridades fiscales las cifraban hace seis años en unas 16.000. En 1994 se promulgó la Ley de Fundaciones, que establece tres requisitos básicos para su creación, que, de concurrir, la dotan de personalidad jurídica: patrimonio propio, asignado de forma permanente para una finalidad determinada por escrito, y que sea suficiente para la consecución de dicha finalidad. No obstante, existen excepciones a estos requisitos, tanto respecto a las fundaciones establecidas antes de promulgarse la Ley, como a las llamadas 'fundaciones para la recolecta de fondos', exentas en buena medida del requisito de suficiencia de medios. En cuanto a la gestión, corre a cargo de los miembros del patronato, en el caso de las personas físicas, o, en el caso de personas jurídicas, de sus órganos de gestión. Sus cuentas han de ser auditadas. Han sido precisamente los requisitos en cuanto a su dotación económica los que han llevado a que las antiguas fundaciones públicas interadministrativas hayan pasado a transformarse en sociedades o en asociaciones son ánimo de lucro. Eso ha pasado, p. e., con los museos regionales, que en general se organizaban como fundaciones, y que ahora, en algunos casos, se han transformado en sociedades limitadas.

Patrocinio

El vertiginoso desarrollo de las formas de patrocinio privado – fórmula originaria del mundo de los deportes y ahora presente en el de la cultura – ha ido de la mano de la disminución de los fondos públicos destinados a la promoción cultural. La regulación es aún casi inexistente, aunque se están dando los primeros pasos. La Asociación para la Cultura y la Industria, organización sin ánimo de lucro fundada en 1988, ha sido la más activa en este frente y ha actuado como puente entre las empresas y el mundo de la cultura.

Incentivos

El sistema de subvenciones está diseñado en principio para los propietarios, pero también está abierto a las organizaciones voluntarias, y en especial a aquéllas que son a su vez propietarias y gestoras de monumentos. Los incentivos consistentes en beneficios fiscales son escasos para las personas naturales, no así para las organizaciones sin ánimo de lucro, que se encuentran en una posición más favorable. En lo que hace al impuesto sobre los ingresos, hemos de señalar que:

- Respecto a las *personas físicas*, el coste y reparación de casas privadas – tengan o no valor cultural – no es deducible, con la excepción de las mansiones construidas antes de 1930.
- Las *asociaciones sin ánimo de lucro* están exentas del impuesto, siempre que sirvan un fin de utilidad pública. Sólo se gravan en este caso los ingresos del capital o de los negocios no relacionados con su objeto.
- Las *fundaciones* están exentas del impuesto en sus 2/3 partes – con excepciones, como la Fundación Nobel, excluida por completo por ley, salvo respecto a los ingresos procedentes del capital.
- El *patrocinio* no da lugar, en principio, a exención alguna. Pero los desembolsos en que la empresa incurra pueden ser deducibles en tanto que gastos si se demuestra su viabilidad como inversión para la buena marcha de aquélla.

Otros impuestos, como el del patrimonio, el de sucesiones y donaciones o el IVA, también tienen sus reglas propias, en el caso de éste último en su mayor parte de origen comunitario y por tanto comunes para todos los países de la Unión Europea.

Nevzat İlhan
El régimen legal en Turquía

La fundación constituye la forma básica de organización privada para el patrocinio y la participación en Turquía. De acuerdo con la Ley de Fundaciones, éstas pueden recibir el estatus de 'interés público' por Decreto del Ministro de Interior, lo que conlleva exenciones fiscales y el carácter de deducibles de las donaciones a ellas efectuadas. Su capital inicial mínimo es de aproximadamente 100.000 dólares. Las asociaciones también pueden recibir dicha calificación pero hoy por hoy el régimen legal es severo y desincentivizador. Otras modelos organizativos diferentes a los anteriores son todavía desconocidos en Turquía.

Hasta hace poco, el modelo de fundación era la 'fundación familiar'. Hoy existe una clara tendencia hacia la 'fundación de empresa', dedicadas a la educación, la sanidad, y la cultura, principalmente.

Las principales fundaciones y asociaciones que patrocinan y participan en la protección y el mantenimiento de monumentos son las siguientes:

1. *Touring y Automobile Club de Turquía* (TTOK). Establecida en 1923 y con actuaciones en este sector.
2. *Fundación para la protección de los valores monumentales, naturales y turísticos de Turquía*. Establecida en 1976, conjuntamente por el Ministerio de Cultura y el de Turismo con el objetivo de "minimizar el procedimiento burocrático, las dificultades y la implementación", principalmente para la ciudad de Istambul. Fue muy activa hasta hace poco, pero la crisis económica y la falta de apoyo de los Ministerios fundadores la han conducido en la actualidad a una etapa de estancamiento.
3. *Asociación para la protección de los edificios históricos de Turquía*. Establecida en 1976, se dedica a la concienciación de la necesidad de protección de los edificios históricos de Turquía vía exposiciones fotográficas, conferencias y seminarios en cooperación con las universidades. No se ocupa propiamente de la restauración ni del mantenimiento de monumentos.
4. *Fundación para la protección del patrimonio ambiental y cultural ÇEKÜL*. Establecida en 1990 por arquitectos, historiadores del arte y expertos en medio ambiente, ha destacado hasta el momento de modo muy activo en actividades medioambientales de reforestación y formación en restauración de edificios privados, así como en la realización de campañas de concienciación y de proyectos de restauración y rehabilitación.
5. *Colegio de arquitectos de Turquía*. Se trata de una asociación profesional establecida en los años sesenta que actúa principalmente en tanto que Instituto de vigilancia contra la especulación sobre los terrenos y monumentos en el campo de la protección y de la concienciación pública. No realiza actividades materiales de restauración o conservación sino que se dedica a la supervisión y a la formación.

Como conclusión, podemos afirmar que Turquía se encuentra, al igual que otros tantos países, en un período de cambios económicos y sociales trepidantes, que deberán afectar también al ámbito de la protección del patrimonio histórico, mediante la introducción de nuevas formas de organización y colaboración con el sector privado. Para ello, sin duda, se beneficiará de la experiencia de otros países en este terreno.

David Pullen
La constitución del National Trust

El *National Trust Act* de 1907 creó el *National Trust* con el objetivo de promover la preservación permanente en interés de la nación de los sitios y edificios de belleza o interés histórico y para la preservación de los sitios – en la medida de lo posible – en su aspecto natural y con su fauna y flora autóctonas. Estos propósitos se extendieron mediante el *National Act* de 1937 para incluir:

1. la promoción de edificios de interés nacional o arquitectónico, histórico o artístico y sitios de interés natural o belleza y la protección y ampliación de las instalaciones de estos edificios y sitios y sus alrededores.
2. La preservación de mobiliario y cuadros y demás bienes muebles de cualquier género que presenten un interés artístico, histórico o nacional.
3. El acceso y disfrute de estos edificios, sitios y bienes por el público.

El objetivo de "promoción" le permite la realización de sus actividades a través de múltiples líneas de actuación. Sin embargo, se ha concentrado siempre en la adquisición y gestión de los terrenos, edificios y bienes muebles, y no en la realización de campañas públicas.

Se trata de una 'charity trust' registrada, ya que se encuadra en el supuesto de los "otros propósitos en beneficio de la comunidad", con una serie de peculiaridades. A los miembros del Consejo rector de la gestión y control les está encomendada la gestión y control, y son responsables personalmente hasta un cierto límite. A pesar de haber sido creada por el Parlamento, su Informe anual, y, por ende, su responsabilidad externa, ha de ser presentado ante la *Charity Commission* y la Asamblea General de sus miembros. De forma ligeramente más detallada, conviene también hacer mención de los siguientes aspectos de la constitución del *National Trust*:

1. El Consejo rector (*ruling Council*) está facultado para ejercer todas aquellas funciones no encomendadas expresamente a la Asamblea General.
2. El Consejo rector actúa en la mayoría de las ocasiones a través del Comité Ejecutivo, que, a su vez, puede delegar funciones en órganos inferiores (subcomités, comités regionales, etc.).
3. La mitad de los miembros del Consejo son nombrados por organizaciones con fines de interés general y la otra mitad por los miembros del *National Trust* en Asamblea General.
4. Los miembros del *National Trust* gozan de una serie de derechos, articulados a través del voto en las Asambleas Generales (nominación de candidatos para el Consejo, de auditores, aprobación del Informe y las cuentas anuales y propuestas de resoluciones, que, en caso de ser adoptadas, carecen en todo caso de eficacia imperativa).
5. Pueden adoptarse acuerdos, de carácter oficioso, por los que se permite, en especial, la continuación por parte del donante o sus herederos, de ciertos usos sobre las propiedades donadas.
6. El *National Trust* no recibe financiación directa por parte del Gobierno. Sus fuentes de financiación son variadas, basándose en las propias cuotas de los miembros, los ingresos por acceso e incluso alquiler de su patrimonio, inversiones, legados, etc.

No hay aquí espacio para tratar sobre las ventajas y las desventajas de los 'charity trusts' registrados, pero si al menos de decir unas palabras sobre las propias del *National Trust*. En su caso, la primera y más importante es el poder que le confirió el Parlamento en 1907 de declarar la propiedad inalienable, de modo que no pueda venderse libremente y sólo puede ser objeto de adquisición forzosa mediante el llamado 'procedimiento parlamentario especial'. En segundo lugar, y es un punto importante por cuanto nos hallamos ante una institución destinada a la preservación permanente de la propiedad, no es vulnerable a los cambios en la amplitud de sus facultades y en sus formas de actuación, como consecuencia de una eventual decisión de su Asamblea General o de su Consejo, por cuanto éstos se hallan reglados, salvo algunas excepciones muy limitadas, en el Acta, que sólo puede ser modificada por otro acto legislativo parlamentario. La contrapartida consiste en que este mismo hecho data a la constitución del *National Trust* de un alto grado de inflexibilidad. Una de las carencias más señaladas es el escaso poder de la Asamblea General y, con ello, de sus dos millones cuatrocientos mil miembros.

BONNIE BURNHAM

La conservación del patrimonio histórico en los Estados Unidos: el derecho como incentivo de la iniciativa privada

Como es bien sabido, muchos países están reconsiderando las bases que la normativa estatal y municipal provee para la protección del patrimonio histórico. Se trata en muchos casos de normativas que datan de hace décadas, y por tanto, que encuentran su fundamento en un contexto histórico y político diferente. Por esa misma razón, no están diseñadas de forma que resulten efectivas, confrontadas a nuevos desafíos como el rápido crecimiento urbano, la explosión demográfica, el desarrollo que siguió a la Segunda Guerra Mundial, la polución atmosférica y el turismo en masa. A la vista de estos nuevos fenómenos, y de las prioridades políticas que arrastran, no resulta sorprendente que los gobiernos se estén volviendo de forma gradual, pero significativa, hacia el sector privado, en busca de un apoyo para la solución de demandas sociales y para la provisión de servicios que se consideraban tradicionalmente de responsabilidad del gobierno. Entre estas responsabilidades está la protección y conservación del patrimonio histórico.

En Estados Unidos, y en este ámbito, el papel del Gobierno ha sido siempre muy limitado. Pocos edificios se hallan bajo su jurisdicción directa. Igualmente, las subvenciones públicas son escasas. En contrapartida, existe un vigoroso sistema de incentivos para impulsar al sector privado a que tome la iniciativa allá donde no alcanza el sector público, por carecer de los medios o de la competencia necesaria. En las dos décadas que han seguido al bicentenario de la fundación de los Estados Unidos, celebrado en 1976, y como resultado directo de la concienciación histórica que el mismo supuso, se ha desarrollado en nuestro país una sofisticada red de organizaciones a nivel nacional y local dedicadas a la preservación del patrimonio. Estas organizaciones han asumido efectivamente el liderazgo en el terreno de la conservación arquitectónica mediante el desarrollo de ingeniosas estrategias y mecanismos que a su vez ha tenido el efecto de impulsar cambios legislativos en apoyo de las inversiones privadas efectuadas en tales fines.

En cuanto a los incentivos fiscales previstos por la normativa aplicable, hemos de señalar que ésta permite una deducción en el impuesto de la renta de hasta el 50% del importe de las donaciones efectuadas a las organizaciones con fines caritativos. Todo el dinero donado a organizaciones sin ánimo de lucro registradas está fiscalmente exento. Este régimen ha llevado al vigoroso crecimiento de este tipo de organizaciones en los últimos cincuenta años. A su vez, ha llevado a las autoridades públicas a reducir su intervención protectora en aquellos sectores en que estas organizaciones son más activas, como el sanitario, social, cultural o educativo. Estas organizaciones han desarrollado todo tipo de acciones para la preservación del patrimonio, en su mayor parte a nivel local, de las que no podemos aquí dar cuenta, y que en algunos casos incluyen la adquisición, renovación y venta de las propiedades a los objetos de garantizar su preservación.

Un aspecto básico es el de la instrumentación de la colaboración entre el sector público y el privado. Cuando existen importantes edificios públicos necesitados de restauración y que no entran en los moldes de los que pueden ser objeto de inversión privada, los organizaciones privadas locales consagradas a fines de protección monumental a menudo han optado por consensuar con las autoridades publicas programas de inversión conjunta pública y privada. Estos programas han sido el marco de muchos de los programas de construcción y restauración de mayor envergadura de los últimos años. En estos casos, que a menudo requieren grandes inversiones económicas que se esperan sean recuperables al cabo del tiempo, a veces se ha optado por la emisión de bonos, con la garantía del Estado, con vencimiento a plazo fijo. En otras ocasiones, la colaboración público-privada se ha plasmado en el lanzamiento conjunto de campañas para recaudar fondos en beneficio de importantes sitios y monumentos históricos.

Para garantizar que no existen abusos y optimizar los resultados de estos mecanismos de colaboración, se reveló como necesario el establecimiento de mecanismos de supervisión, a través de agencias estatales, que establecen estándares y ejercen funciones de aprobación de proyectos. Finalmente, y en lugar destacado en esta colaboración entre lo público y lo privado, se encuentran las fundaciones privadas, sujetas a una intensa regulación. Están obligadas a destinar una proporción de sus gastos a sus fines públicos y, en contrapartida, gozan de exenciones fiscales.

Quisiera dedicar unas palabras a exponer brevemente la perspectiva del *World Monuments Fund*, del que soy presidente, sobre la protección a escala internacional. En tanto que organización privada sin ánimo de lucro responsable de proyectos de conservación en el campo internacional, WMF se ha involucrado en múltiples proyectos en diversos países: Italia, Francia, Reino Unido, Europa Central y del Este, Rusia, etc. En algunos casos, como en los países de la Europa del Este o en Méjico, se han establecido entidades afiliadas, que han adoptado una forma comparable a las organizaciones sin ánimo de lucro estadounidenses, personificadas como asociación civil, en algunos países, como fundación o *trust*, en otros, y como *charity* registrada, en el Reino Unido, siguiendo las legislaciones nacionales. Están regidas por un pequeño comité ejecutivo cuya función consiste en la selección de proyectos y la recolecta de fondos a escala nacional, bajo la supervisión profesional y administrativa de personal de la central newyorkina. Esta red ha permitido multiplicar la capacidad de WMF de constituirse en el líder en el sector privado dentro del campo de la conservación arquitectónica. La presencia de estas organizaciones afiliadas nos permite reforzar las relaciones con los gobiernos, una evaluación más efectiva de las prioridades de conservación en un país determinado, y, lo que es más importante, atraer a donantes nacionales.

A medida que sus operaciones comenzaron a expandirse a escala internacional, WMF advirtió la necesidad de priorizar y seleccionar proyectos en sitios y monumentos internacionalmente significativos y con una necesidad real de intervención. De este modo, en su treinta aniversario, en 1995, en cooperación con *American Express*, se estableció el *World Monument Watch*, una relación internacional de sitios y monumentos en estado de deterioro Bienalmente expertos independientes eligen los cien cuyo estado es más precario, para cuya restauración, en cooperación con los gobiernos, se destina un millón de dolares anuales aportados por *American Express*, a lo que se unen otros fondos y los aportados por los propios gobiernos. Esta acción sirve de banco de información privilegiado que, esperamos, pueda contribuir al desarrollo de medios eficaces para la protección del patrimonio universal.

STEPHEN N. DENNIS

Muchos actores y muchos métodos

Hemos de empezar por apuntar que la legislación relativa a la preservación del patrimonio histórico y las medidas económicas para su consecución se han desarrollado en Estados Unidos lentamente, a lo largo de muchos años, a menudo a través de un proceso de experimentación y a veces casi accidentalmente. Una gran parte de las medidas no se basan en la regulación directa, sino principalmente en los incentivos fiscales.

Para la puesta en marcha de organizaciones caritativas sin ánimo de lucro, es necesaria la obtención del reconocimiento federal del derecho a exención de impuestos si aspiran a recolectar fondos a través de aportaciones privadas. Aportaciones de ciudadanos que, en caso contrario, no gozarían de beneficios fiscales, siendo así, que éstos constituyen quizá el mayor atractivo de dichas aportaciones. Máxime cuando el valor a deducir normalmente es el valor real actual y no el de adquisición, cuestión ésta controvertida, pero que, hoy por hoy, supone una posibilidad fiscalmente beneficiosa.

Es difícil de predecir qué medidas públicas para la preservación del patrimonio están encaminadas al éxito y cuales avocadas al fracaso, ya que es determinante el grado de sintonía y el acogimiento que encuentren entre los propietarios privados afectados y las organizaciones sin ánimo de lucro orientadas a tales fines. Éstas organizaciones gozan generalmente de financiación pública, y funcionan, en lo que se refiere a las propuestas de adopción de medidas legislativas, como un *lobby*, función que no está prohibida legalmente pero para la que la ley limita los fondos que pueden asignarse. Los esfuerzos de estas organizaciones tratan de coordinarse a través de foros como el Historic Preservation Coordinating Council, que tiene su sede en Washington. En los Estados Unidos se dieron dos programas gubernamentales particularmente destructivos: un nuevo sistema de carreteras interestatales en los años cincuenta, y el extenso programa de renovación urbana destinado a la demolición de casas modestas en muchas áreas del interior de las ciudades. El primero hizo que muchas autopistas y carreteras pasaran por los barrios antiguos de las ciudades más importantes y el segundo acabó con zonas históricas con el pretexto de la precariedad de su estado. En 1966 se creó el Registro Nacional de Sitios Históricos (*National Register of Historic Places*) y un Consejo Asesor para la preservación del patrimonio histórico (*Advisory Council on Historic Preservation*). La teoría era que las agencias federales someterían al Consejo aquellos proyectos susceptibles de afectar a las propiedades incluidas en dicho Registro o aquellas que fueran susceptibles de pasar a serlo. Este Consejo ha expandido sus poderes de forma que ahora las agencias pueden negociar *ex ante* con el propio Consejo un Memorandum que les evita tener que pasar por el dictamen del Consejo y los retrasos que ello puede conllevar.

El propio concepto de propiedad histórica ha pasado por entendimientos diversos, que han ido desde el primitivo que radicaba el criterio en las moradas individuales de líderes coloniales o militares, al actual que incluye asímismo barrios, distritos y paisajes. Pero, en comparación con otros países, hay que reconocer que el foco de protección más común sigue estando casi exclusivamente en las fachadas y exteriores, y ofrece poca protección en lo que a los interiores de los edificios se refiere.

Paulatinamente, la atención de los especialistas está centrandose en los problemas de protección de sitios a nivel regional más que en los problemas meramente locales, lo que hace necesaria la coordinación de medidas de diferentes autoridades locales.

El Derecho fiscal estadounidense hace una importante distinción entre organizaciones con o sin ánimo de lucro. Algunas de estas últimas tienen por objeto la protección del patrimonio histórico, y actúan adquiriendo estas propiedades con algunos de estos objetivos: propiedad permanente; restauración y reventa; o reventa con restricciones en orden a su protección que serán de aplicación a todos los futuros propietarios. Cabe también la posibilidad de que las propiedades sean puestas a disposición de la organización por el propio propietario a través de un acuerdo voluntario. De esta manera, el propietario puede imponer condiciones en cuanto a su conservación integral, aparte de obtener beneficios fiscales significativos. En cuanto a la distribución en la titularidad de los edificios de valor histórico, es de destacar que son pocos los ostentados por el gobierno federal y más los que son propiedad de los gobiernos estatales o las organizaciones sin ánimo de lucro. No obstante, la gran mayoría sigue estando en manos privadas y destinados a usos residenciales o comerciales.

La normativa y la acción atinente a la protección del patrimonio histórico se encuentra dispersa en un plano vertical, dado que los diferentes niveles de poder público (federales, estatales, locales...) gozan todos ellos de competencias al respecto, siendo las más vigorosas las obstentadas por las autoridades municipales. Dentro de ellas existen dos signos distintivos: en primer lugar, que cada municipio aprueba sus propias ordenanzas sobre la materia, y, en segundo lugar, que en la toma de decisiones sobre los programas para la preservación del patrimonio, éstas se toman por comités administrativos de residentes locales, integrados por entre cinco y nueve personas, entre las cuales a veces se requiere que alguna sea arquitecto o historiador. Son estos comités los encargados de estudiar mensualmente las solicitudes de los propietarios de licencias para realizar modificaciones en sus viviendas. En el caso de los edificios por pisos, las comunidades de propietarios – bajo la forma de condóminos o de cooperativistas – tienen un papel destacado en cuanto a las decisiones sobre el tráfico jurídico sobre las viviendas, su aspecto exterior y su mantenimiento. Otra de sus características intrínsecas es que esta forma de propiedad hace casi imposible la demolición del edificio en el futuro, si bien sí existe el riesgo de que estas comunidades de propietarios decidan llevar a cabo alteraciones en el edificio que dañen su valor arquitectónico. La principal fuente de ingresos de los municipios en Estados Unidos la constituye el impuesto sobre la propiedad. La segunda puede localizarse en el impuesto sobre transmisiones de ciertos bienes y servicios. Por ello mismo, los gobiernos municipales están muy interesados en que no se devalúe el valor de las propiedades, lo que conllevaría una reducción de sus ingresos. El valor de la vivienda es actualizado periódicamente, pero se permite su congelación durante cinco o más años como beneficio para el propietario en contrapartida por la rehabilitación de su vivienda, así como otras medidas fiscales.

Como conclusión, existen en Estados Unidos una serie de programas para la preservación del patrimonio histórico que operan en cada uno de los diferentes niveles de gobierno. Pocos de entre ellos se traducen directamente en una puesta a disposición del propietario de fondos públicos (programas que eran mucho más abundantes hace veinte años). Aunque muchos monumentos históricos son propiedad de organizaciones sin ánimo de lucro, estas organizaciones tienen constantes problemas monetarios que tratan de paliar a través del alquiler de las propiedades históricas para recepciones, conferencias o incluso para el rodaje de películas. Los programas gubernamentales de preservación del patrimonio histórico consisten en medidas normativas y en incentivos económicos atractivos, si bien sólo los comités locales para la preservación del patrimonio histórico tienen el poder de rechazar un proyecto del propietario de uno de estos inmuebles.Poder cuya legalidad ha sido ratificada reiteradamente por los tribunales.

CHRISTINE STEINER

El J. Paul Getty Trust

El *J. Paul Getty Trust* es una fundación privada dedicada a las artes visuales y las humanidades. A través de un museo, cinco institutos y un programa de ayudas, el *Getty* fomenta el avance del conoci-

miento, valoración y preservación del patrimonio artístico y cultural universal. Fue establecido en 1953, fecha en la que J. Paul Getty fundó en su mansión de Malibú un pequeño museo de antiguedades griegas y romanas, mobiliario francés del siglo XVIII y pintura europea y lo puso en manos del *Trust*. Veinte años más tarde se construyó una Villa de estilo romano, siguiendo el modelo de la Villa dei Papiri en Herculaneum, que continúa siendo la sede del museo. Posteriormente fue extendiendo sus actividades a través de los instrumentos antes mencionados. Actualmente se ultima un nuevo complejo, a finalizar en diciembre de 1997 que integrara todos los centros con la Villa como edificio central.

Las fundaciones privadas estadounidenses, por lo general, se limitan a conceder ayudas y becas a otras personas u organizaciones. El *Getty* no se encuadra dentro de esta tónica general. Dentro del sistema legal de fundaciones, se configura como una fundación operativa (*operating foundation*), que, según la normativa, es aquella que invierte al menos un 4,25 % de sus ingresos en sus propios programas de actividades, y que cumple una determinada distribución de ingresos y asignación de gastos. Como señalamos el Getty se compone de un museo, cinco institutos y un programa de becas:

-El *Museo J. Paul Getty* tiene una misión difusora y educativa mediante la adquisición, conservación, estudio, exhibición y difusión de selectas obras de arte. Sus fondos incluyen antiguedades clásicas, pinturas europeas, dibujos, escultura, manuscritos iluminados, artes decorativas y fotografía. Ofrece un amplio abanico de programas públicos, que incluyen conferencias, clases, películas y representaciones.

-El *Instituto de Conservación Getty* se dedica a la preservación del patrimonio cultural universal. Lleva a cabo investigaciones sobre restauración – divulgadas mediante cursos de adiestramiento, conferencias, publicaciones, etc. – y proyectos de conservación, complementados por una labor de concienciación de la opinión pública.

-El *Instituto de Información Getty* aplica la tecnología digital a la información sobre arte y humanidades, mediante la creación de tesauros y bases de datos, en pos de la formación de las bibliotecas virtuales del futuro.

-El *Instituto de Investigación Getty para la Historia del Arte y las Humanidades* se basa en el convencimiento de que una cabal comprensión del arte exige el conocimiento del contexto histórico y cultural amplio en el que se originó. Posee una colección de más de 750.000 volúmenes sobre historia del arte, arquitectura, religión, historia, etnografía e historia de la ciencia, manuscritos inéditos y correspondencia entre artistas, críticos, mecenas y empresarios, catálogos, archivos, fotografías, etc. Lleva a cabo seminarios, exposiciones, publicaciones y otras actividades para su difusión y acoge a investigadores de todos los países.

-El *Instituto Educativo Getty para las Artes* tienen por objeto la mejora de la formación artística en el nivel elemental y secundario del sistema educativo estadounidense. Se basa en una comprensión contextualizada de la historia del arte. Confecciona programas educativos, proporciona recursos educativos a los docentes e igualmente lleva a cabo publicaciones y otros servicios.

-El *Instituto de Dirección Getty para la Gestión de Museos* asiste a los directores de museos y sus colaboradores en la adquisición de conocimientos de gestión y administración. El principal programa es el Instituto de Gestión de Museos, consistente en un curso intensivo de verano de tres semanas de duración, impartido en la Universidad de California, Berkeley, por docentes de las más importantes escuelas de negocios.

-El *Programa de Ayudas Getty* dota de un apoyo crucial a proyectos en las áreas de la historia del arte, práctica museística y conservación. En los últimos diez años, se han invertido unos 60 millones de dólares en apoyo de 1.500 proyectos en 135 países diferentes.

Por último, no podemos dejar de expresar nuestra enorme satisfacción por la apertura del *Getty Center*, en Los Angeles Oeste, prevista como dijimos para diciembre de 1997, que, en un marco incomparable y dotado de las instalaciones más modernas y acordes con el medioambiente, constituirá un emplazamiento de excepción que agrupará a todos los centros y servirá de punto de encuentro para todos los visitantes, estudiantes, investigadores y expertos en arte venidos de todos los puntos del planeta.

Statutes

of the International ICOMOS Committee on Legal, Administrative and Financial Issues
(approved by the Executive Committee at its meeting from July 30 to August 2, 1997)

Article 1 – Establishment
The International ICOMOS Committee on Legal, Administrative and Financial Issues (hereafter referred to as "the Committee") is established in accordance with article 14 of the ICOMOS Statutes (adopted by the 5th General Assembly) and the Eger Principles for International Scientific Committees (adopted by the 10th General Assembly).

Article 2 – Objective
The objective of the Committee is to promote, consistent with the aims of ICOMOS, international cooperation in the identification, study and solution of legal, administrative and financial issues in connection with the protection, maintenance and conservation of monuments, groups of buildings and sites.

Article 3 – Activities
The activities to accomplish its objective shall be conducted in accordance with a triennial programme and shall include in particular but not be limited to
- scientific conferences and workshops in conjunction with the meetings of the Committee,
- study visits,
- publications.

Article 4 – Members
1. The membership is open to ICOMOS members graduated in law, to members with substantial experience in administration and to members with established expertise in economic and tax matters.
2. Voting members are proposed by their National Committees or by members of the Bureau of the Committee and are admitted to the Committee by decision of the Committee subject to the ratification of the Executive Committee of ICOMOS according to article 14 (b) of the ICOMOS Statutes. The approval may not be refused without justification.
3. There shall be normally only one voting member per country admitted to the Committee.
4. Membership in the Committee is limited to a term of three years. A voting member of the Committee may normally not serve more than three consecutive terms.
5. Should a voting member not attend three consecutive meetings of the Committee without due cause, the Bureau may ask the relevant National Committee to nominate a new voting member.
6. Persons engaged in activities relevant to the object of the Committee may become associate members of the Committee on proposal of a member of the Bureau approved by decision of the Committee. Associate membership is also open to non-members of ICOMOS and to persons not meeting the criteria set out in article 4 (1).
7. Honorary members of the Committee may be appointed by decision of the Committee in recognition of the services they have rendered to the Committee and of their activities in favour of its objective.

Article 5 – Administration
1. The Committee takes its decisions by majority vote of the voting members present at its meeting. Present at the meeting are also absent voting members who have given a proxy to voting members present. A voting member shall not represent more than two absent voting members. In case less than the majority of voting members is present at the meeting, a voting member can request that basic decisions be taken by postal vote.
2. Meetings of the Committee shall be held annually. A written invitation by the Bureau should reach all members at least two months in advance of the meeting.
3. Out of the voting members the Committee elects a President, three Vice-Presidents and a Secretary who form the Bureau for a term of office of three years. The Bureau shall represent in an equitable manner the different regions of the world. If there are candidatures proposed by the voting members the election is held by postal vote at least three months prior to the meeting of the Committee in the election year under the supervision of a member appointed by the Bureau. Normally, postal vote is carried out by letter but if a voting member so decides a vote may also be sent by fax. If no candidatures are submitted in time the election is held by secret ballot during the meeting of the Committee in that election year. The members of the Bureau may normally not serve more than three consecutive periods of office. Those terms shall be considered independently from any terms as a member of the Committee. The Bureau shall meet at least once a year. The Bureau is responsible for the preparation of the Committee's meetings, the implementation of the Committee's decisions, the preparations of the election process and the annual report (article 5 (7)).
4. The seat of the Committee shall be located in the country of which one of the members of the Bureau is a resident.
5. English, French, Spanish and Russian are the official working languages of the Committee.
6. In the year of the ICOMOS General Assembly the Committee shall draw up a triennial programme of activities which should include clear and precise objectives, a work programme and a budget with a financial plan. This dossier shall be forwarded to the Executive Committee of ICOMOS at least three months prior to the date of the General Assembly.
7. The Bureau shall draw up an annual report and submit it to the Committee and to the Executive Committee each year by March 31. This report shall include a list of members, the minutes of meetings of the Committee and of the Bureau, reports of symposia conducted by the Committee and progress made in respect of the objectives of the three year programme.

Article 6 – Financing
1. The activities of the Committee shall be financed by funds allocated by ICOMOS from its annual budget, by funds obtained by the Committee on its own initiative from international and national organizations including National Committees and by funds from any other source provid-

ed by way of gift, bequest, donation or sponsorship towards the achievement of the objective of the Committee.
2. The members of the Committee obtain themselves the funds necessary to ensure their own participation in the activities of the Committee, especially their presence at meetings.
3. The Committee shall draw up a budget and financial plan and shall maintain an appropriate record of all financial transactions. Each year it shall arrange for an audit statement of those transactions.

Article 7 – Miscellaneous
1. The Committee shall conform to the laws of the country in which its seat is located.
2. The Statutes may only be amended by 2/3 majority vote of the members of the Committee voting in a postal ballot subject to the approval of the Executive Committee of ICOMOS.
3. Nothing in these Statutes shall be interpreted in a way which is inconsistent with the realization of the objective of the Committee. Any interpretation of these Statutes should be made in accordance with the Statutes of ICOMOS. Any disputes over the interpretation of the Statutes shall be arbitrated by the Executive Committee of ICOMOS.
4. The Statutes enter into force with the approval by the Executive Committee of ICOMOS.

Estatutos

del Comité Internacional ICOMOS de Asuntos Legales, Administrativos y Financieros

Artículo 1 – Establecimiento
El Comité Internacional ICOMOS de asuntos legales, administrativos y financieros (en adelante, referido como 'el Comité') se establece de acuerdo con el artículo 14 de los Estatutos de ICOMOS (adoptados en la quinta Asamblea General) y los principios 'Eger' para los comités científicos internacionales (adoptados en la décima Asamblea).

Artículo 2 – Objetivo
El objetivo del Comité es la promoción, de acuerdo con los objetivos de ICOMOS, de la cooperación internacional en la identificación, estudio y solución de asuntos legales, administrativos y financieros relativos a la protección, mantenimiento y conservación de monumentos, grupos de edificios y sitios.

Artículo 3 – Actividades
Las actividades para la consecución de su objetivo se desarrollarán de acuerdo con un programa trienal e incluirán, sin estar limitadas a ellas, en particular:
– conferencias científicas y talleres en coordinación con los encuentros del Comité,
– visitas de estudio,
– publicaciones.

Artículo 4 – Miembros
1. La condición de miembro está abierta a miembros de ICOMOS licenciados en Derecho, a miembros con experiencia relevante en administración y a miembros con acreditada experiencia en asuntos económicos y fiscales.
2. Los miembros con derecho a voto son propuestos por los Comités nacionales o por miembros del Bureau del Comité y admitidos al Comité por decisión del Comité, sujeta a la ratificación del Comité Ejecutivo ICOMOS de acuerdo con el artículo 14 (b) de los Estatutos de ICOMOS. La aprobación no puede ser denegada sin justificación.
3. Se admitirá al Comité como norma general un solo miembro con derecho a voto por país.
4. La condición de miembro del Comité está limitada a un período de tres años. Un miembro del Comité con derecho a voto no puede como norma general permanecer más de tres períodos consecutivos.
5. Si un miembro con derecho a voto no asiste a tres reuniones consecutivas del Comité sin causa justificada, el Bureau puede instar al Comité nacional en cuestión a que designe a un nuevo miembro con derecho a voto.
6. Aquellas personas dedicadas a actividades relacionadas con el objeto del Comité pueden adquirir la condición de miembros asociados del Comité a propuesta de un miembro del Bureau mediante aprobación por decisión del Comité. La condición de miembro asociado está también abierta a personas que no sean miembros de ICOMOS y aquellas que no reúnan los criterios establecidos en el artículo 4.
7. Puede procederse al nombramiento de miembros honorarios del Comité mediante decisión del Comité en reconocimiento a los servicios prestados al Comité y a sus actividades en favor de su objetivo.

Artículo 5 – Administración
1. El Comité toma sus decisiones por voto mayoritario de los miembros con derecho a voto presentes en la reunión. Se considerarán presentes en la reunión también a aquellos miembros con derecho a voto que hayan apoderado a miembros con derecho a voto presentes.
2. Las reuniones del Comité tendrán lugar con periodicidad anual. El Bureau deberá hacer llegar a todos los miembros una invitación escrita con al menos dos meses de antelación a la fecha de la reunión.
3. El Comité elige un Presidente, tres Vicepresidentes y un Secretario General, de entre los miembros con derecho a voto, que componen el Bureau, con un mandato de tres años de duración. El Bureau representará de forma equitativa las diferentes regiones del mundo. Si existen candidaturas propuestas por los miembros con derecho a voto la elección tendrá lugar mediante voto por correo con al menos tres meses de antelación a la reunión del Comité correspondiente al año de la elección, bajo la supervisión de un miembro elegido por el Bureau. Como regla general, el voto por correo se llevará a cabo mediante carta pero si así lo decide un miembro con derecho a voto podrá también hacerlo llegar por fax. Si no se presenta en plazo ninguna candidatura, la elección tendrá lugar mediante votación secreta durante la reunión del Comité correspondiente al año de la elección. Los miembros del Bureau no podrán, como regla general, sobrepasar los tres períodos consecutivos de mandato. Estos plazos se tomarán en consideración con independencia de cualquier plazo como miembro del Comité. El Bureau se reunirá al menos una vez al año. El Bureau es responsable de la preparación de las reuniones del Comité, de la ejecución de las decisiones del Comité, de la preparación del proceso electoral y del informe anual (artículo 5, 7).
4. La sede del Comité se emplazará en el país de residencia de uno de los miembros del Bureau.
5. El inglés, el francés, el español y el ruso son las lenguas de trabajo oficiales del Comité.
6. Durante el año de la Asamblea General de ICOMOS, el Comité elaborará un programa trienal de actividades que incluirá objetivos claros y precisos, un programa de trabajo y un presupuesto con un plan financiero. Este programa será remitido al Comité Ejecutivo de ICOMOS con al menos tres meses de antelación a la fecha de la Asamblea General.
7. El Bureau redactará un informe anual y lo someterá al Comité y al Comité Ejecutivo anualmente antes del 31 de marzo. Este informe incluirá una lista de los miembros, las actas de las reuniones del Comité y del Bureau, informes de los simposia organizados por el Comité y progresos realizados con respecto a los objetivos del programa trianual.

Artículo 6 – Financiación
1. Las actividades del Comité serán financiadas por fondos procedentes del presupuesto anual de ICOMOS, por fondos obtenidos por el Comité por su propia iniciativa, de organizaciones internacionales y nacionales incluyendo los Comités nacionales de ICOMOS y por fondos de cualquier otra fuente proveniente de aportación, legado, donación o patrocinio para el cumplimiento del objetivo del Comité.
2. Los miembros del Comité obtienen por sí mismos los fondos necesarios para asegurar su propia participación en las actividades del Comité, en especial su presencia en las reuuniones.
3. El Comité elaborará un presupuesto y un plan financiero y mantendrá un registro apropiado de todas las transacciones financieras. Cada año acordará una auditoría de estas transacciones.

Artículo 7 – Miscelánea
1. El Comité se atendrá a las leyes del país en el que se emplace su sede.
2. Los Estatutos sólo podrán ser modificados por el voto mayoritario de los 2/3 de los miembros del Comité emitido mediante votación postal sujeta a la aprobación del Comité ejecutivo de ICOMOS.
3. Nada en estos Estatutos podrá ser interpretado en un sentido incompatible con la realización del objetivo del Comité. Cualquier interpretación de estos Estatutos habrá de llevarse a cabo de acuerdo con los Estatutos de ICOMOS. Cualquier controversia sobre la interpretación de los Estatutos se someterá al arbitraje del Comité Ejecutivo de ICOMOS.
4. Los Estatutos entrarán en vigor mediante su aprobación por el Comité Ejecutivo de ICOMOS

Statuts

du Comité International de l'ICOMOS pour les Questions de Droit, d'Administration et de Finances

(approuvé par le Comité Exécutif lors de sa réunion du 30 juillet au 2 août 1997)

Article 1 – Fondation
Le Comité National de l'ICOMOS pour les Questions de Droit, d'Administration et de Finances (appelé ci-après «le Comité») est fondé en accord avec l'article 14 du règlement de l'ICOMOS (approuvé par la V^ième^ Assemblée Générale) et les Principes de Eger pour les comités internationaux spécialisés (approuvés par la X^ième^ Assemblée Générale).

Article 2 – Objectif
L'objectif du Comité est de promouvoir, en accord avec les buts de l'ICOMOS, la coopération internationale dans la reconnaissance, l'étude et la solution de problèmes légaux, administratifs et financiers en relation avec la protection, le maintien et la conservation de monuments, d'ensembles et de sites.

Article 3 – Activités
Les activités visant à l'accomplissement de cet objectif devront être conduites en accord avec un programme triennal qui comprendra, sans se limiter à cela:
– des colloques scientifiques et des séminaires en rapport avec les réunions du Comité,
– des visites d'étude,
– des publications.

Article 4 – Membres
1. L'affiliation est ouverte aux membres de l'ICOMOS diplomés en droit, aux membres disposant d'une expérience substantielle en matière d'administration publique ainsi qu'aux membres disposant de connaissances établies en affaires économiques et fiscales.
2. Les membres votants seront proposés par leurs Comités Nationaux respectifs ou par des membres du Bureau du Comité et seront admis au Comité après une décison positive de celui-ci, ratifiée par le Comité Exécutif en accord avec l'article 14 (b) du Statut de l'ICOMOS. L'approbation ne pourra être refusée sans justification.
3. Normalement, il ne sera admis qu'un membre votant par pays au Comité.
4. L'affiliation au Comité est limitée à une période de trois ans. Normalement, un membre votant ne peut pas rester en service plus de trois périodes successives.
5. Si un membre votant manque trois séances successives sans raison justifiée, le Bureau peut prier le Comité National compétent de désigner un nouveau membre votant.
6. Sur proposition d'un membre du Bureau, approuvée par une décision du Comité, des personnes engagées dans des activités relevant de l'objectif du Comité pourront devenir

membres associés du Comité. L'affiliation associée est également ouverte à des personnes qui ne sont pas membres de l'ICOMOS ou ne correspondent pas aux critères de l'article 4 (1).
7. Des membres honoraires du Comité peuvent être nommés par décision du Comité, en reconnaissance de services qu'ils ont rendus au Comité et d'activités en faveur de l'objectif du Comité.

Article 5 – Administration
1. Lors de ses réunions, le Comité prend ses décisions par vote majoritaire des membres votants présents à la réunion. La présence s'étend également aux membres votants absents qui ont donné pleins pouvoirs à des membres votants présents. Un membre votant ne pourra représenter plus de deux membres absents. En cas d'absence de plus de la majorité des membres votants, un membre votant peut demander que les désicions d'importance soient prises par vote postal.
2. Les réunions du Comité auront lieu une fois par an. Chaque membre recevra une invitation écrite du Bureau au moins deux mois avant la réunion.
3. Parmi ses membres votants le Comité choisit un Président, trois Vice-Présidents et un Secrétaire qui forment le Bureau pour une période de trois ans. Le Bureau représente de manière équitable les différentes parties du monde. Si des candicatures sont proposées par des membres votants, l'élection se déroule par vote postal au moins trois mois avant la réunion du Comité dans l'année de l'élection, sous la surveillance d'un membre choisi par le Bureau. Normalement, l'élection par vote postal se fait par courrier, mais si un membre le veut, il peut également envoyer un fax. En cas d'absence de candidatures en temps utile, l'élection se déroule par scrutin secret lors de la réunion du Comité dans l'année de l'élection. Les membres du Bureau ne resteront normalement en fonction pas plus de trois périodes successives. Ces périodes sont indépendantes de toute autre fonction d'un membre au service du Comité. Le Bureau se réunit au moins une fois par an. Le Bureau est responsable de la préparation des séances du Comité, de la réalisation de ses décisions, de la préparation des élections et du rapport annuel (article 5(7)).
4. Le siège du Comité se trouvera dans le pays de résidence d'un membre du Bureau.
5. L'anglais, le français, l'espagnol et le russe sont les langues de travail officielles du Comité.
6. Dans l'année de l'Assemblée Générale de l'ICOMOS, le Comité dressera un programme triennal d'activités qui comportera des objectifs clairs et précis, un programme de travail et un budget avec un plan de financement. Ce dossier sera présenté au Comité Exécutif de l'ICOMOS au moins trois mois avant la date de l'Assemblée Générale.
7. Le Bureau dressera un rapport annuel qu'il présentera au Comité et au Comité Exécutif chaque année avant le 31 mars. Ce rapport comprendra une liste des membres, le procès-verbal de la réunion du Comité et du Bureau, des comptes rendus des colloques organisés par le Comité et des progrès du programme triennal.

Article 6 – Financement
1. Les activités du Comité seront financées par des fonds provenant du budget annuel de l'ICOMOS, par des ressources obtenues grâce à ses propres initiatives, d'organisations internationales ou nationales, y compris les Comités Nationaux de l'ICOMOS, ou par des fonds provenant d'autres sources, cadeaux, legs, donations ou production, voués à l'accomplissement des objectifs du Comité.
2. Les membres du Comité se procurent eux-mêmes les moyens nécessaires à leur participation aux activités du Comité, notament à leur présence aux réunions.
3. Le Comité dressera un budget et un plan de financement et documentera toutes ses transactions financières. Chaque année il rendra compte oralement de ces transactions.

Article 7 – Sujets variés
1. Le Comité agit en accord avec les lois du pays où son siège est établi.
2. Le règlement ne peut être modifié qu'à majorité de deux tiers des membres du Comité obtenue lors d'un vote secret par correspondance, dont le résultat devra être approuvé par le Comité Exécutif de l'ICOMOS.
3. Aucune interprétation du règlement ne sera valable qui ne correspondra pas à la réalisation des objetifs du Comité. Toute interprétation de ce règlement devra être en accord avec le statut de l'ICOMOS. Le Comité Exécutif arbitrera en toute controverse sur l'interprétation des statuts.
4. Le règlement entre en vigueur avec son approbation par le Comité Exécutif de l'ICOMOS.

Statuten

des Internationalen ICOMOS-Komitees für Rechts-, Verwaltungs- und Finanzfragen
(bestätigt durch das Exekutiv-Komitee auf seiner Sitzung vom 30. Juli bis 2. August 1997)

Artikel 1 – Aufbau
Das Internationale ICOMOS-Komitee für Rechts-, Verwaltungs- und Finanzfragen (im folgenden als „Komitee" bezeichnet) entspricht Artikel 14 der ICOMOS-Statuten (rechtskräftig durch die V. Generalversammlung) und den Eger-Prinzipien für Internationale Spezialkomitees von ICOMOS (rechtskräftig durch die X. Generalversammlung).
Artikel 2 – Zielsetzung
Ziel des Komitees ist es, ganz allgemein im Sinne der Bestrebungen von ICOMOS die internationale Zusammenarbeit in der Denkmalpflege zu fördern und speziell, die rechtlichen, verwaltungs- und finanztechnischen Fragestellungen zu untersuchen und zu Lösungen zu führen.
Artikel 3 – Tätigkeit
Zum Erreichen seiner Ziele soll das Komitee die in seinen Dreijahresplänen angekündigten Tätigkeiten durchführen, die sich auf folgende Aufgabenfelder konzentrieren, aber nicht beschränken:
– wissenschaftliche Konferenzen und praktische Seminare in Verbindung mit den Komiteesitzungen,

– Studienreisen,
– Publikationen.
Artikel 4 – Mitglieder
1. Die Mitgliedschaft ist offen für alle ICOMOS-Mitglieder, die ein abgeschlossenes Jurastudium oder vertiefte Kenntnisse in Verwaltungs-, Wirtschafts- und Steuerfragen vorweisen können.
2. Durch das zuständige Nationalkomitee oder durch das Büro des Komitees können stimmberechtigte Mitglieder zunächst vorgeschlagen und dann durch Mitgliederbeschluß in das Komitee aufgenommen werden, vorausgesetzt, das Exekutiv-Komitee von ICOMOS ratifiziert dies gemäß Artikel 14 (b) der ICOMOS-Statuten. Diese Aufnahmebestätigung kann jedoch nicht ohne Begründung abgelehnt werden.
3. Jedes Land soll im Regelfall durch nicht mehr als ein stimmberechtigtes Mitglied im Komitee vertreten sein.
4. Die Mitgliedschaft im Komitee ist auf die Dauer einer Legislaturperiode von drei Jahren beschränkt. Ein stimmberechtigtes Mitglied des Komitees soll im Regelfall nicht mehr als drei aufeinanderfolgende Legislaturperioden im Amt sein.
5. Sollte ein stimmberechtigtes Mitglied drei aufeinanderfolgende Sitzungen des Komitees ohne stichhaltigen Grund versäumen, dann darf das Büro das entsprechende Nationalkomitee darum bitten, ein neues stimmberechtigtes Mitglied zu ernennen.
6. Auf Vorschlag eines Mitglieds des Büros können Persönlichkeiten, die sich für die Ziele des Komitees einsetzen, durch Mitgliederbeschluß zu assoziierten Mitgliedern ernannt werden. Diese Form der Mitgliedschaft steht auch dem offen, der weder ICOMOS-Mitglied ist noch die unter Artikel 4 (1) genannten Kriterien erfüllt.
7. Ehrenmitglieder des Komitees können durch Komiteebeschluß ernannt werden, und zwar in Anerkennung ihrer Dienste für das Komitee und der Leistungen zum Wohle der Ziele des Komitees.
Artikel 5 – Verwaltung
1. Das Komitee trifft seine Entscheidungen durch Mehrheitsbeschluß der bei einer Sitzung anwesenden stimmberechtigten Mitglieder. Als anwesend gelten auch stimmberechtigte Mitglieder, die nicht persönlich auftreten, aber einem persönlich anwesenden stimmberechtigten Mitglied eine Vollmacht gegeben haben, wobei ein stimmberechtigtes Mitglied nicht mehr als zwei abwesende stimmberechtigte Mitglieder vertreten darf. Falls weniger als die Hälfte aller stimmberechtigen Mitglieder bei einer Sitzung zugegen ist, kann ein stimmberechtigtes Mitglied anregen, gewichtige Entscheidungen per Post zu treffen.
2. Die Sitzungen des Komitees erfolgen jährlich. Eine schriftliche Einladung sollte allen Mitgliedern mindestens zwei Monate zuvor durch das Büro des Komitees zugegangen sein.
3. Aus dem Kreis der stimmberechtigten Mitglieder wählte das Komitee einen Präsidenten, drei Vizepräsidenten und einen Sekretär, die für eine Legislaturperiode von drei Jahren das Büro bilden. Das Büro soll in angemessener Form die verschiedenen Regionen der Welt repräsentieren. Falls die stimmberechtigten Mitglieder Kandidaten vorschlagen, wird die Wahl per Post mindestens drei Monate vor der Sitzung des Komitees unter der Aufsicht eines vom Büro ernannten Mitglieds durchgeführt. Dazu ist die Briefwahl die Regel, aber wenn sich ein stimmberechtigtes Mitglied für eine Faxübertragung entscheidet, so ist auch diese Stimmabgabe gültig. Falls Kandidaten nicht termingerecht vorgeschlagen werden, dann geschieht die Wahl in dem betreffenden Wahljahr in geheimer Abstimmung während der Sitzung des Komitees. Die Mitglieder des Büros dürfen im Regelfall nicht mehr als drei aufeinanderfolgende Legislaturperioden im Amt sein. Die Legislaturperioden der Mitglieder des Büros werden gesondert von den Legislaturperioden der Komitee-Mitglieder gezählt. Sitzungen des Büros finden mindestens einmal pro Jahr statt. Das Büro ist verantwortlich für die Vorbereitung der Komitee-Sitzungen, für die Ausführung der Komitee-Entscheidungen, die Vorbereitung des Wahlvorgangs und für den Jahresbericht (Artikel 5 (7)).
4. Der Sitz des Komitees ist dort, wo einer der Mitglieder des Büros lebt.
5. Offizielle Arbeitssprachen des Komitees sind Englisch, Französisch, Spanisch und Russisch.
6. Für die ICOMOS-Generalversammlung soll das Komitee einen mit konkreten Zielen und präzisen Angaben ausgestatteten Dreijahresplan aufstellen, dazu ein Arbeitsprogramm und einen Haushalts- und Finanzierungsplan. Diese Informationen sollen dem Exekutiv-Komitee von ICOMOS mindestens drei Monate vor der Generalversammlung zugehen.
7. Das Büro soll einen Jahresbericht verfassen und ihn dem Komitee und dem Exekutiv-Komitee bis spätestens zum 31. März jeden Jahres vorlegen. Dieser Bericht soll ein Mitgliederverzeichnis, die Protokolle der Komitee- und Büro-Sitzungen und die Tagungsberichte des Komitees enthalten sowie die Fortschritte bei der Durchsetzung der im Dreijahresprogramm formulierten Zielsetzungen bekanntgeben.
Artikel 6 – Finanzierung
1. Das Komitee finanziert seine Aktivitäten aus Mitteln, die ihm ICOMOS von seinem Jahresbudget zur Verfügung stellt, von eigeninitiativ erworbenen Geldern von internationaler oder staatlicher Seite (einschließlich Mitteln aus der Kasse der Nationalkomitees) oder durch sonstige Zuwendungen, seien es Schenkung, Vermächtnis, Donation oder andere Formen des Mäzenatentums, im Dienste der Zielvorgaben des Komitees.
2. Die Mitglieder des Komitees beschaffen sich selbst die nötigen Mittel, um an den Tätigkeiten und speziell an den Sitzungen des Komitees teilnehmen zu können.
3. Das Komitee stellt einen Haushalts- und Finanzierungsplan auf und bewahrt alle Nachweise seiner getätigten Geldbewegungen.
Artikel 7 – Verschiedenes
1. Das Komitee verhält sich konform zu den Landesgesetzen, in dem es seinen Sitz hat.
2. Diese Statuten können in Briefwahl durch eine Zweidrittelmehrheit der Komitee-Mitglieder erweitert werden, vorausgesetzt, das Exekutiv-Komitee bestätigt dann den Nachtrag.
3. Diese Statuten dürfen nur im Einklang mit der Komitee-Zielsetzung ausgelegt werden. Jegliche Auslegung dieser Statuten soll im Einvernehmen mit den Statuten von ICOMOS vorgenommen werden. Über strittige Punkte der Interpretation dieser Statuten entscheidet das Exekutiv-Komitee von ICOMOS als Schiedsrichter.
4. Die Statuten treten in Kraft durch die Bestätigung des Exekutiv-Komitees von ICOMOS.

Work Programme

of the International Committee on Legal, Administrative and Financial Issues:
Topics and problems to be discussed on a comparative international level

- Listing of monuments and historic buildings (constitutive versus declaratory nature of listing)
- Definition of monument and historic building (scope of protection)
- Integrality of a monument or historic building (protection of fixtures and fittings)
- Protection through planning; public participation in planning and listing processes
- Regulation of threats to monuments and historic buildings (Differences between private and governmental threats? Differences between private and government-owned monuments or historic buildings?)
- Protection of the surroundings of monuments
- Enforcement measures in the protection of monuments and historic buildings
- Impact of international legislation and domestic legislation
- Effectiveness of the UNESCO recommendations on cultural heritage (1958-1966)
- Independence of conservators within administrative structures
- Economic impact of financing conservation and restoration (grants, tax incentives, others)
- Teaching of law and administration in training conservators

Programa de trabajo

del Comité Internacional ICOMOS de Asuntos Legales, Administrativos y Financieros
Temas y problemas a discutir a nivel internacional comparado

- Catálogo de monumentos y edificios históricos (naturaleza constitutiva o declarativa de la inclusión en el catálogo);
- Definición de monumento y edificio histórico (ámbito de la protección);
- Protección integral de monumentos o edificios históricos (protección de mobiliario e instalaciones);
- Protección a través del planeamiento;
- Participación pública en los procesos de planeamiento y catalogación;
- Regulación de las amenazas a monumentos y edificios históricos (¿diferencias entre amenazas por la actividad de los agentes privados y públicos? ¿diferencias entre monumentos y edificios históricos de titularidad privada y pública?);
- Protección del entorno de los monumentos;
- Medidas ejecutivas para la protección de los monumentos y edificios históricos;
- Impacto de la legislación internacional y nacional;
- Efectividad de las recomendaciones de la UNESCO sobre el patrimonio cultural (1958-1966);
- Independencia de los especialistas en conservación dentro de las estructuras administrativas;
- Impacto económico de la financiación de la conservación y restauración (ayudas, incentivos fiscales, otros);
- Estudio de materias legales y administrativas dentro de la formación de los expertos en conservación.

Programme de travail

du Comité International de l'ICOMOS pour les Questions de Droit, d'Administration et de Finance:
Thèmes et problèmes à discuter sur un niveau comparatif international

- Classement des monuments et des bâtiments historiques (système constitutif contre système déclaratoire);
- Définition légale du monument et du bâtiment historique (portée de la protection);
- Intégralité du monument ou bâtiment historique (protection de l'aménagement intérieur fixe et meuble);
- Protection par planification; coopération publique à la planification et à l'inventaire;
- Régulation des dangers auxquels le monument et le bâtiment historique sont exposés (différences entre périls privés et publics? Différences entre monuments et bâtiments de propriété privé ou publique?);
- Protection de l'environnement du monument;
- Mesures de renforcement dans la protection des monuments et bâtiments historiques;
- Influence du droit international et national;
- Efficacité des recommendations de l'UNIESCO sur l'héritage culturel (1958 - 1966);
- Indépendance des conservateurs à l'intérieur des structures administratives;
- Influence économique du mode de financement sur la conservation et la restauration (subventions, déductions d'impôts et autre);
- Enseignement de droit et d'administration dans la formation des conservateurs.

Arbeitsprogramm

des Internationalen ICOMOS-Komitees für Rechts-, Verwaltungs- und Finanzfragen:
Diskussionspunkte auf der Ebene internationaler rechtsvergleichender Themen und Problemstellungen

- Unterschutzstellung von Denkmälern und historischen Gebäuden (konstitutive versus deklaratorische Unterschutzstellungsart);
- Legaldefinition des Denkmalbegriffs (Schutzbereich);
- Denkmäler und historische Bauten als Ganzes (Schutz der Ausstattung);
- Schutz durch Planung; Teilhaben der Öffentlichkeit am Planungs- und Inventarisationsprozeß;
- Gefahrenabwendung von Denkmälern und historischen Gebäuden (Unterschiede zwischen der Gefährdung durch private oder staatliche Bedrohung? Unterschiede zwischen Denkmälern und historischen Gebäuden in privater oder öffentlicher Hand?);
- Schutzzonen um Denkmäler;
- Zwangsmaßnahmen im Zusammenhang mit den Denkmalschutzgesetzen;
- Folgen für internationale und nationale Gesetze;
- Effektivität der UNESCO-Empfehlungen zum Kulturerbe (1958 – 1966);
- Unabhängigkeit des Konservators innerhalb der Verwaltungshierarchie;
- wirtschaftliche Folgen für die Finanzierung von konservatorischen und restauratorischen Maßnahmen (Schenkung, Steuerbegünstigungen und anderes mehr);
- Rechts- und Verwaltungskurse für Konservatoren in der Ausbildung.

Resolution

of the International ICOMOS Committee on Legal, Administrative and Financial Issues
Seminar in Weimar/Germany, April 18, 1997

After an exhaustive, comprehensive and comparative discussion of both the real issues and the legal framework of public participation in the protection of heritage, seminar delegates unanimously approved the following:

1. The importance of efforts already undertaken by various governments is recognized. In addition, the seminar urges interested parties, in particular national and regional governments, to foster and encourage private sponsorship and participation in the protection of cultural heritage and to seek ways in which the private sector could be persuaded to offer more help and assistance.
2. It was generally recognized that there is a need to revise the tax treatment of heritage organizations, projects and beneficiaries under national laws and to make it more favourable and, if possible, more compatible and harmonized.
3. Having regard to the universal character of cultural heritage which belongs in the last instance to entire humanity, participants express themselves strongly in favour of transborder giving, receiving and cooperation and appeal to governments to create the friendly legal and fiscal environment for such acts of solidarity.
4. Having in mind that many heritage organizations conduct economic activities directly related to and in support of their work, participants express the unanimous wish that national laws on such activity and on tax should favour it as an integral part of heritage management and conservation.
5. Participants suggest that the Committee should undertake the establishment of an international comparative glossary of legal terms in the field of the protection of cultural heritage.

Resolución

del Comité Internacional ICOMOS de Asuntos Legales, Administrativos y Financieros

Después de una puesta en común exhaustiva, comprensiva y comparada sobre la situación real y el marco legal de la participación privada en la protección del patrimonio histórico, los delegados al seminario aprobaron unanimemente las siguientes resoluciones:

1. Es de reconocer la importancia de los esfuerzos ya realizados por diversos gobiernos. A pesar de ello, el seminario insta a las partes interesadas, en particular a los gobiernos nacionales y regionales, a fomentar y promover el patrocinio y participación privados en la protección del patrimonio cultural y a buscar caminos a través de los cuales se persuada al sector privado a incrementar su ayuda y asistencia.
2. Ha quedado reconocido de forma general que existe la necesidad de estudiar el tratamiento fiscal que brindan los Derechos nacionales a las organizaciones consagradas a la protección del patrimonio cultural, a los proyectos y a los beneficiarios y de llegar a un régimen más favorable y, en la medida de lo posible, más compatible y armonizado.
3. En relación con el carácter universal del patrimonio cultural que pertenece en última instancia a la humanidad en su conjunto, los participantes expresan su firme posicionamiento a favor de la cooperación transfronteriza, y de las donaciones en uno y otro sentido de las fronteras nacionales, e instan a los gobiernos a la creación de un ent-

orno legal y fiscal armónico para tales actos de solidaridad.
4. Teniendo presente que muchas organizaciones para la defensa del patrimonio cultural desempeñan actividades económicas relacionadas y en apoyo de su labor, los participantes expresan el deseo unánime de que las leyes nacionales que regulan tal actividad y su fiscalidad les otorguen un tratamiento favorable en tanto que parte integral de la gestión y conservación del patrimonio histórico.
5. Los participantes sugieren que el Comité debería emprender el establecimiento de un glosario internacional comparado de términos legales en materia de protección del patrimonio cultural.

Résolution

du Comité International de l'ICOMOS pour les Questions de Droit, d'Administration et de Finance

Après une discussion exhaustive, étendue et comparative aussi bien des questions pratiques que du cadre juridique concernant la coopération publique à la protection du patrimoine culturel, les délegués du séminaire ont approuvé de façon unanime la résolution suivante:

1. L'importance des efforts entrepris par les différents gouvernements est reconnue. En outre, le séminaire sollicite les partis intéressés, en particulier les gouvernements nationaux et régionaux, à favoriser et à encourager le patronage et le soutien privés pour la protection de l'héritage culturel ainsi que de trouver moyen d'inciter le secteur privé à offrir plus d'aide et d'assistance.

2. Tout le monde est d'accord sur le besoin d'étudier le traitement fiscal d'organisations, de projets et de bénéficiaires du patrimoine sous les différentes lois nationales et de chercher à rendre ces traitements plus favorables et, si possible, plus accommodants et plus conciliants.
3. En respect du caractère universel de l'héritage culturel qui appartient finalement à l'humanité entière, les participants s'expriment vivement en faveur d'une interaction et coopération à travers les frontières. Ils engagent les gouvernements à créer un milieu juridique et fiscal encourageant de tels actes de solidarité.
4. Tenant compte du fait que plusieurs oranisations du patrimoine exercent une activité économique directement liée à l'appui de leur travail culturel, les participants expriment le vœu unanime que les lois et les impôts nationaux réglant de telles activités favorisent celles-ci comme faisant partie intégrale de la gestion du patrimoine et sa conservation.
5. Les participants suggèrent au Comité l'établissement d'un glossaire de termes juridiques international et comparatif pour le domaine de la protection de l'héritage culturel.

Resolution

des Internationalen ICOMOS-Komitees für Rechts-, Verwaltungs- und Finanzfragen

Nach einer ausführlichen, alle Probleme behandelnden rechtsvergleichenden Diskussion über die staatliche Beteiligung am Kulturerbeschutz, sowohl hinsichtlich der konkreten Tatbestände als auch der rechtlichen Rahmenbedingungen, beschlossen die Teilnehmer dieses Seminars einstimmig folgende Resolution:

1. Die bedeutenden Anstrengungen, die verschiedene Regierungen bereits unternommen haben, werden mit Anerkennung zur Kenntnis genommen. Darüber hinaus bitten wir alle Beteiligten, vor allem die Staatsregierungen und Landesbehörden, Sponsorship zu ermutigen und Privatinitiativen zu fördern, um so die Wege für verstärkte Hilfeleistungen des privaten Sektors zu ebnen.
2. Allgemeiner Konsens bestand darüber, daß der Gesetzgeber die steuerliche Situation von Organisationen, Projekten und Zuwendungsempfängern des kulturellen Bereichs überprüfen sollte, um sie einerseits zu entlasten, und andererseits möglichst die unterschiedlichen nationalen Steuerrechte aufeinander abzustimmen und miteinander zu harmonisieren.
3. Im Hinblick auf den universellen Charakter des Kulturerbes, das letztlich der gesamten Menschheit gehört, befürworten die Delegierten eine grenzüberschreitende Zusammenarbeit des Gebens und Nehmens und appellieren an die Regierungen, das für derartige Solidaritätsakte erforderliche juristische und fiskalische Umfeld in wohlwollender Weise zu schaffen.
4. Da zahlreiche kulturelle Organisationen ihre wirtschaftlichen Aktivitäten nicht nur in direktem Bezug, sondern vor allem zur Unterstützung ihrer kulturellen Aufgaben ausüben, drücken die Delegierten den einhelligen Wunsch aus, daß die staatlichen Gesetzgeber diese wirtschaftlichen Aktivitäten als Bestandteil des Kulturmanagements anerkennen und steuerlich begünstigen.
5. Die Delegierten regen das Komitee dazu an, ein internationales komparatistisches Glossar juristischer Fachbegriffe aus dem Bereich des Kulturerbeschutzes zu erarbeiten.

Programme of the International Seminar on Legal Structures of Private Sponsorship and Participation in the Protection and Maintenance of Monuments

Weimar/Germany, April 17 to 19, 1997

Organized by the German National Committee of ICOMOS in collaboration with the Department of Intellectual and Cultural Property Law of the Faculty of Law and Administration of the University of Katowice/Poland with the support of the German Federal Ministry of the Interior and the Deutsche Stiftung Denkmalschutz (German Foundation for the Protection of Monuments)

Thursday, April 17, 1997

9.00 Welcome
- Prof. Dr. Zimmermann, Rector of Bauhaus-University, Weimar
- Prof. Rudolf Zießler, State Conservator of Thuringia
- Prof. Dr. Michael Petzet, President of German ICOMOS

9.15 Introduction
- Dr. Werner von Trützschler, Secretary General of German ICOMOS
- Prof. Dr. Wojciech Kowalski, Department of Intellectual and Cultural Property Law, Faculty of Law and Administration, University of Katowice/Poland

1st Session: **Legal forms in general**

9.30 **Trust** – Dr. Paul Kearns, lecturer in law, Faculty of Law, University of Leicester

10.00 **Foundation** – Frits Hondius, Strasbourg

10.30 Coffee break

11.00 **Association** – Judith Hill, Farrer & Company, London

11.30 **Company** – Prof. Norman Palmer, Faculty of Law, University College London

12.00 Lunch break

2nd Session: **Legal forms – national approaches**

13.30
- Canada – Marc Denhez, barrister-solicitor, chairman of ICOMOS Canada Legislation Committee, Ottawa
- United Kingdom – David Pullen, head of the Legal Department, The National Trust, London
- USA – Mrs. Bonnie Burnham, Executive Director, World Monument Fund, New York
- USA – Stephen Neal Dennis, chairman of US/ICOMOS Legislation Committee, Washington, D.C.
- France – Mrs. Sophie Moussette, legal advisor, Ministry of Culture, Paris
- Netherlands – Diederik van Asbeck, senior advisor, Department for Conservation, Zeist
- Bulgaria – Dimitar Kostov, architect, Sofia
- Latvia – Andis Cinis, architect, Riga
- Germany – Dr. Hugbert Flitner, member of the board of the Alfred Toepfer Foundation F.V.S., Hamburg
- Germany – Dr. Karl Wilhelm Pohl, member of the board of the German Foundation for the Protection of Monuments, Cologne
- Turkey – Dr. Nevzat İlhan, President of ICOMOS Turkey, Istanbul

18.15 Departure for Tiefengruben by bus
Classical guitar music, played by Dr. Karl Wilhelm Pohl, at the church in the protected historical village of Tiefengruben, reception given by Dr. Werner von Trützschler

Friday, April 18, 1997

Continuation of 2nd Session: **Legal forms – national approaches**

9.00
- USA – Mrs. Christine Steiner, Secretary and General Counsel, The J. Paul Getty Trust, Los Angeles
- Poland – Prof. Dr. Wojciech Kowalski, Department of Intellectual and Cultural Property Law, Faculty of Law and Administration, University of Katowice
- Hungary – Dr. András Petravich, architect, senior research worker, Museum of Architecture, Budapest
- Spain – Mrs. María Rosa Suárez-Inclán, President of ICOMOS Spain, Madrid
- Mexico – Lic. Roberto Nuñez Arratia, Director of the Legal Commissioin of ICOMOS Mexico, Mexico D.F.
- Costa Rica – Mrs. Sara Castillo, legal advisor, Costa Rica ICOMOS, Costa Rica
- Sweden – Thomas Adlercreutz, Central Board of National Antiquities, Stockholm
- Benin – Léonard Ahonon, conservator, Cotonou
- Zimbabwe – Dr. Godfrey Mahachi, National Museums and Monuments, Harare
- Japan – Prof. Toshiyuki Kono, Faculty of Law, Kyushu University
- Israel – Adv. Gideon Koren, chairman of ICOMOS Israel Legislation Committee, legal adviser to the Israeli Council for the Preservation and Protection of Monuments, Jerusalem

13.00 Lunch break

14.30 Summing up and conclusions
Prof. Dr. Wojciech Kowalski
Dr. Werner von Trützschler

15.00 **Foundation of an International ICOMOS Committee on Legal, Administrative and Financial Issues**
- Statutes
- Election of a board

16.00 Coffee break
- Further procedure
- Date and place of next meeting

17.15 Departure for Weißensee by bus, Medieval dinner at Castle Ronneburg in Weißensee/Thuringia

Saturday, April 19, 1997

9.30 Departure for Buchenwald by bus

10.30 Visit to Buchenwald Memorial

14.00 Visit to Goethe's house and the Bauhaus sites (World Heritage Monument) in Weimar

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