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INTERNATIONAL REGULATIONS FOR THE PROTECTION  
OF MONUMENTS, GROUPS OF BUILDINGS AND SITES

Final report drawn up in accordance with Article 10.3 of the Rules of Procedure concerning Recommendations to Member States and International Conventions covered by the terms of Article IV, paragraph 4, of the Constitution.

ADDENDUM 4

In implementation of resolution 3.412 concerning international instruments for the protection of monuments, groups of buildings and sites, adopted by the General Conference of Unesco at its sixteenth session, the Director-General prepared a preliminary report containing a preliminary draft recommendation and a preliminary draft convention (document SHC/MD/17) which was forwarded on 20 July 1971 to Member States under cover of circular letter CI/2156 inviting them to submit comments and observations on these draft texts.

By 20 January 1972, the Unesco Secretariat had received 18 replies, which were reproduced in document SHC/MD/18, with an analysis of the replies, a revised draft recommendation and a revised draft convention.

The reply from the Arab Republic of Egypt was received by the Secretariat on 31 March 1972. It is reproduced in the present document which constitutes Addendum 4 of document SHC/MD/18.

12 AVRIL 1972

Arab Republic of Egypt

Preliminary observations on the Draft Recommendation concerning the protection, at national level, of monuments, groups of buildings and sites (SHC/MD/17, Annex 1)

Item 3

The term "collective wealth" used in item 3 may invite confusion, especially as the property mentioned is by no means collectively owned. It may better serve the purpose to use such general statements as "a wealth of universal interest" or "of universal value".

Item 45

This item assumes that expropriation by the public authorities of a protected building will be made "by mutual agreement". Such an assumption is not in line with the practice followed in many countries, including Egypt, where expropriation for public utility is effected by unilateral decision of the Authority concerned, subject to judicial review in case of dispute. The text should therefore avoid the requirement of concluding an agreement for this purpose, by omitting the words "by mutual agreement" in line 2, leaving the matter to be regulated by the proper instrument designated by the law of each State.

Item 47

The second sentence reading "Anyone alienating a protected building should inform the purchaser that it is under protection" may better read "Anyone disposing of his interest in a protected building should inform the purchaser that it is under protection".

Item 50

This item provides for the payment of compensation to the salvager of flotsam and jetsam if the authorities decide to deposit them in a public collection, in which case the compensation "may be determined by amicable settlement or by expert opinion". Here, again, it may suffice to provide for "offering the salvager an appropriate compensation" while leaving the mode of determining such compensation to the regulations prevailing in each State. The same applies to the compensation paid to the "finder", which is provided for in the same item.

General observation

Although Item 1 defines three specific terms covering the protected property, some other items use other words, not defined in the Recommendation, for the same purpose. Thus, Item 10 mentions "cultural or natural heritage", Item 13 (v) (cultural property), Item 28 (cultural or natural property), Item 67 (cultural heritage) and Item 69 (cultural or natural heritage). It would certainly make a better text if one terminology is used, particularly that defined in Item 1 of the Recommendation.

Arab Republic of Egypt

Preliminary observations on the Draft Convention concerning the protection of monuments, groups of buildings and sites of universal value (SHC/MD/17 Annex II)

1. Article 2.2

As a point of drafting, it may further clarify the meaning of the paragraph if the last phrase reading "as monuments, groups of buildings and sites of universal interest" is placed, instead, in the second line of the paragraph after the word "designation", where it would then suffice to use the phrase "as being of universal interest". The section would thus read:

"Such protection can be accorded only to such examples of the property defined in Article 1 as merit designation as being of universal interest, by virtue of their exceptional aesthetic or natural interest or their great importance as unique evidence of vanished civilizations or as irreplaceable architectural masterpieces typifying a particular period, an historical past or the genius of a people."

2. Article 5

It is of the utmost importance that the text of this article expresses the intention mentioned in the commentary, i.e. "that international protection should not imply the internationalization of such property or any form of extraterritorial status". We therefore suggest the following wording for Article 5:

- "1. Without prejudice to the title of the owner of the property referred to in Article 2 and to the sovereignty of the State on whose territory such property is situated, the States Parties to this Convention recognize that such property constitutes a universal heritage, which it is the duty of the international community as a whole to protect.
2. The States Parties to this Convention therefore undertake, in conformity with the following provisions, to give their scientific, technical, artistic and financial help in the international protection of such property."

Article 6

It is important to provide in this article for the participation in the "Committee" of States with the largest acquisitions of the properties involved, the States most technologically advanced in the field of conservation of such properties, and, possibly, the States which make the largest contributions to the International Fund provided for in Article 11. This could either be made as a compulsory requirement or, at least, as a guideline. Article 6 should therefore include a second paragraph which may take one of two alternative forms:

Alternative A

- "6.2 At least eight of the members of the Committee shall be States with the largest interest among the parties in monuments, groups of buildings and sites of universal value, because of the importance of their national acquisitions or because of their technological advancement in the field of preservation and restoration of such properties."

Alternative E

"6.2 Election of members of the Committee should ensure, as far as practicable, the participation of States with the largest interest in its work, because of the importance of their acquisitions of the property referred to in Article 2, or because of their technological advancement in the field of preservation and restoration of such property, as well as the participation of States which make the largest contributions to the International Fund provided for in Article 11."

As to the present Article 6, it may be more appropriate that the election of the members of the Committee be made by the General Conference of Unesco, rather than by the States Parties to the Conventions, since the task of the Committee is of a universal value which is not confined to the said parties.

Article 7

We suggest that the term of office of States members of the Committee be fixed at five years, renewable.

Article 9

We suggest the inclusion of a new paragraph in this article, preferably under number (3) to allow the Committee to take the initiative in suggesting action, thus bringing this article in conformity with Article 19.2 of the same Convention. The suggested paragraph 9.3 may read as follows:

"3. The Committee shall on its own initiative call the attention of any State Party to this Convention, whose monuments, group of buildings or sites reach a stage where action for their preservation and restoration becomes necessary, to this situation and to the suggested remedial action."

Article 10

As a minor point of drafting the last sentence reading:

"It will see that its decisions are carried out" should read: "It will see that the decisions of the Committee are carried out", as "It" here is the Secretariat, not the Committee which issues decisions. A better wording may simply read: "It will follow up the implementation of the decisions of the Committee".

Article 13

This article does not convey the content of Item 98 of the Commentary, i.e. that contributions of States will be fixed at 2 per cent of their financial contributions to Unesco's budget.

At any rate, if the principle of compulsory contributions is maintained, we would like the following addition to be made at the end of Article 13:

"In determining the amount and currency of such contributions special consideration shall be given to the financial ability of each State."

Article 18.2

The last sentence of Section 18.2 does not seem to give a definite meaning. It may better read:

"In this case, the Committee shall decide what portion of the proceeds of these campaigns shall be (or may be) paid to the International Fund."

In substance, however, the provision does not seem to be convincing. For, if, under Article 20, all the monies of the International Fund are exclusively earmarked for property which appears in the "short list", why should this Fund benefit from campaigns made for properties not appearing in that list?

Article 19

Reference is made in Article 19.1 to Article 9.5, whereas it should be made to Article 9.4.

Provision of Article 19.2 may better open the possibility of offering the Committee's services to Parties and non-Parties to the Convention, since such services are offered only in case of grave dangers threatening properties of great importance to mankind and not only to the States concerned. The Committee is at any rate under no obligation to offer such services and it will be up to it to decide in each case whether or not it should do so.

It is noticed that both Articles 19 and 20 use the terms "cultural or natural property" which are not defined in the Convention, instead of the terms "monuments, groups of buildings and sites" which are defined in Article 1. This duplication should be avoided by using the terminology of Article 1 which is employed in other articles and defined in the Convention.

Article 20

It is not clearly understood why the protection accorded by the Committee should be limited to the property included in the "short list", particularly as the Committee's protection is extended by Article 2 to all property of universal value, and as such protection may take, under Article 22, many forms including merely the preparation of studies.

Article 24

The term "with certain exceptions" may better read "as far as practicable", to imply some special treatment to poorer countries, which is only fair.

Article 35.3

Paragraph 3 of Article 35 assumes that the only financial obligations of the denouncing State are those related to the payment of contributions and implies, therefore, that they shall be affected as of the date on which withdrawal takes place. Yet, the denouncing State may be under other financial obligations towards the Committee (such as the repayment of a loan granted to it) which cannot be affected by withdrawal. The drafting of the text may be remedied to read:

"It shall not affect the financial obligations of the denouncing State related to the payment of its contributions until the date on which withdrawal takes effect."

Or else the paragraph may remain intact, with the following addition:

"The obligation of the State for the repayment of the principal and interest of loans granted to it by the Committee, shall not be effected by the fact of the withdrawal."

General observation

Nothing in the Draft Convention refers to the provision suggested in the Preliminary Study prepared by the Director-General of Unesco in 1970 (16 C/19, Annex, p.6, Item 51) and approved by the General Conference, which gives developing countries priority in benefiting from the international protection system. Such a provision should be introduced in the final version of the Convention.