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**UNITED NATIONS EDUCATIONAL, SCIENTIFIC AND CULTURAL
ORGANIZATION**

**CONVENTION CONCERNING THE PROTECTION OF THE WORLD
CULTURAL AND NATURAL HERITAGE**

WORLD HERITAGE COMMITTEE

Seventh Extraordinary Session

**Paris, UNESCO Headquarters, Room II
6 – 11 December 2004**

**Item 4B of the Provisional Agenda: Working methods of the World Heritage
Committee**

SUMMARY

Annex III: Legal implications relating to the abstention from proposing nominations by
the Members of World Heritage Committee

**LEGAL OPINION ON POSSIBLE IMPLICATIONS
OF CERTAIN MEASURES PROPOSED
DURING THE 28TH SESSION OF THE WORLD HERITAGE COMMITTEE
REGARDING SUBMISSIONS OF NOMINATIONS BY ITS MEMBERS**

I. INTRODUCTION

1. At its 28th Session, the World Heritage Committee (hereinafter referred to as “the Committee”), discussed certain measures regarding possible limitations on submissions of nominations.
2. Among the measures considered by the Committee, the following proposal was put forward by the delegation of the United Kingdom:

“ [The World Heritage Committee] proposes that the Committee should consider, at its next session, whether its members refrain from proposing nominations for inscriptions during their tenure. Committee members with no sites on the World Heritage List would be exempt from this obligation. This proposal would not come into effect before the 16th General Assembly of States Parties (2007).”

3. Some Members of the Committee questioned the legality of the measures suggested in the proposal and asked the Committee to examine their implications. Consequently, the Committee adopted the following decision:

“[The World Heritage Committee] (r)equrest(ed) the Legal Advisor to study the legal implications of a rule restricting Committee members from proposing a site during their mandate whether or not an exemption is made for Committee members with no site on the World Heritage List” (28 COM 14B.57, paragraph 7).

II. Legal Consideration of the Proposed Measures

4. It should be noted at the outset that the measures proposed by the UK delegation and those referred to in the above decision of the Committee are quite different and would entail different legal consequences. Both are discussed below.

(A) VOLUNTARY ABSTENTION OF COMMITTEE MEMBERS FROM THE SUBMISSION OF NOMINATIONS

5. First, the measures suggested in the UK proposal, as formulated above, are essentially of a programmatic nature. It is proposed to the Committee to “consider” at its next session “whether its members refrain from proposing nominations for inscriptions during their tenure”. Secondly, through the use of the term “refrain”, it clearly refers to the possibility for Committee members to

abstain from submitting nominations during their tenure, thus implying voluntary or self-imposed restrictions, rather than restrictions imposed by the Committee itself. This interpretation is slightly contradicted by the reference in the second sentence of the UK text to an “*obligation*”. The use of the word “*obligation*” creates some confusion with regard to the overall intention of the proposal.

6. Nevertheless, if the proposal was intended to say that members of the Committee would **voluntarily** refrain from proposing nominations during their tenure, such a proposal would not pose any legal problem. States Parties may indeed voluntarily renounce to exercise their rights or privileges granted under the *Convention* or other relevant rules. Equally, as members of the Committee, they may refrain from submitting nominations during their tenure. If, on the other hand, it was intended to be a restriction imposed by the Committee on its members as an obligation, such a restriction would produce certain legal consequences as explained in the analysis below.

(B) IMPOSING RESTRICTIONS ON SUBMISSION OF NOMINATIONS BY COMMITTEE MEMBERS

7. The decision of the Committee (**28 COM 14B.57**, paragraph 7) requests the legal adviser to study the legal implications of “*a rule restricting Committee members from proposing a site during their mandate*”.
8. In order to manage a large number of nominations, the Committee has, in the past, adopted decisions, by which it limited the number of nominations submitted to the Committee by States Parties. For example, the Committee decided at its 24th session that “*no States Parties should submit more than one nomination, except those States Parties that have no sites inscribed on the World Heritage List who will have the opportunity to propose two or three nominations*”. (“The Cairns Decision”, **24 COM VI.2.3**). This limit was retained by the Committee at its 27th session (**27 COM 14.1**). At its 28th session, the Committee, further decided (**28 COM 13.1**) to “*examine up to two complete nominations per State Party, provided that at least one of such nominations concerns a natural property*”. These decisions of the Committee are based on the powers explicitly conferred upon it by the *Convention* for the establishment of its working methods and rules (*e.g.* the adoption of rules of procedures, the drafting of criteria, *etc.*) or on its inherent functions as defined in the *Convention*.
9. Should the use of the word “*restriction*” in the above decision be meant to denote a limitation of the number of nominations to be made¹, it would be the same as previous limitations of nominations by the Committee, the only difference being that, in this case, it would not apply to all States Parties to the *Convention*, but only to those who are members of the Committee, throughout the duration of their membership (see also Section C below).

¹ The word “*restriction*” is defined as “*a limiting condition or measure*” or “*the action or state of restricting or being restricted*” (Oxford English Dictionary).

10. Should it, on the other hand, be meant to denote a prohibition to submit nominations during their tenure as Committee members, the legal consequences arising from such a decision would be substantially different and are analysed below.
11. Article 11 of the *Convention* deals with the establishment by the Committee of the World Heritage List. Paragraph 1 thereof reads as follows:

*“Every State Party to this Convention shall, in so far as possible, submit to the World Heritage Committee **an inventory of property** forming part of the cultural and natural heritage, situated in its territory and suitable for inclusion for the list provided for in paragraph 2 of this Article.”* [emphasis added]
12. On the basis of such an inventory, the Committee is to establish the World Heritage List. In this regard, paragraph 2 of the same Article provides that:

“On the basis of the inventories submitted by States in accordance with paragraph 1, the Committee shall establish, keep up to date and publish, under the title of “World Heritage List” a list of properties forming part of the cultural heritage and natural heritage, as defined in Article 1 and 2 of this Convention, which it considers as having outstanding universal value in terms of such criteria as it shall have established.” [emphasis added]
13. Paragraph 3 of the same Article also provides that:

“The inclusion of a property in the World Heritage List requires the consent of the State concerned...”
14. It is clear from the above that, under Article 11, paragraph 1, States Parties have an obligation to submit an inventory (which is constituted by the “Tentative list” defined in paragraph 7 of the present *Operational Guidelines*) to the extent that it is possible and is considered suitable for inclusion in the World Heritage List.
15. It is also clear that, under Article 11, paragraph 2, the Committee has an obligation to establish, keep up to date and publish the World Heritage List on the basis of the inventories submitted by States Parties. It follows from this that, once an inventory has been submitted by States Parties in accordance with Article 11, paragraph 1 of the *Convention*, those States Parties have **a right to have the inventory examined by the Committee for possible inclusion in the World Heritage List.** In examining the properties of States Parties, the Committee must give equal and objective consideration to the properties of all States Parties, in accordance with the general principles of law.
16. The right of States Parties to have their properties considered by the Committee for possible inclusion in the World Heritage List is exercised through the act of “nominations” introduced in the *Operational Guidelines*, as one of the procedural steps to be taken between the submission of the inventory by States

Parties and the process of establishment of the World Heritage List by the Committee as defined under Article 11 of the *Convention*.

17. The *Operational Guidelines* adopted by the Committee at its first session (1977) read as follows:

“All States Parties to the Convention will be invited by the Director-General of UNESCO on behalf of the Committee to submit nominations to the World Heritage List in conformity with the decisions taken by the Committee with respect to the form and content of nominations to the World Heritage List and to the criteria in terms of which the inclusion of properties in the World Heritage List will be determined...”(Paragraph 15(a)).

18. The reference to the invitation by the Director-General was deleted as part of the amendments to the *Operational Guidelines* at the 2nd session of the Committee (Washington D.C., 1978). Under the present *Operational Guidelines*, in order for the Committee to establish the World Heritage List on the basis of the inventories submitted by States, as defined under Article 11 of the *Convention*, States Parties are requested to nominate properties from among the properties included in the inventory, which are first evaluated by Advisory Bodies, and then are examined by the Bureau of the Committee and finally by the Committee itself. Unless each of these procedural steps established by the *Operational Guidelines* is taken, the Committee would not be able to include new properties in the World Heritage List.
19. Thus, the submission of nominations by States Parties constitutes the exercise of the right to have their inventory considered by the Committee, a right which stems from the terms of Article 11, paragraph 2. It is also the means by which States Parties express their consent, which is required for the inclusion of the properties under Article 11, paragraph 3 of the *Convention*.
20. In the light of the above, it should be concluded that if members of the Committee were to be **prohibited** from proposing a property during their tenure, they would not be able to fully exercise their rights as foreseen under the *Convention*. A prohibition to submit nominations applicable only to the members of the Committee would therefore contravene the provisions of the *Convention*, in particular, their right to have their properties considered by the Committee for inclusion in the World Heritage List.

(C) IMPOSITION OF RESTRICTIONS ON THE COMMITTEE ITSELF REGARDING THE EXAMINATION OF NOMINATIONS SUBMITTED BY ITS MEMBERS

21. While it would be legally problematic to attempt to prohibit members of the Committee from submitting nominations, it does however appear to be possible that the Committee imposes on itself certain restrictions in examining nominations. The Committee is empowered to lay down rules, by which it imposes on itself a limit or a priority in the number or in the categories of nominations it examines during a session.

22. For instance, the Committee, at its 24th session, decided to set at 30 the number of nominations examined by it at its 27th session (“The Cairns Decision”, **24 COM VI.2.3**). Later, at its 27th session, it also set the limit at 40 (**27 COM 14.4**). At its 28th session, it further decided to “*set at 45 the annual limit on the number of nominations it will review, inclusive of nominations deferred and referred by previous sessions of the Committee, extensions (except simple modifications of limits of the property), transboundary nominations, serial nominations and nominations submitted on an emergency basis*”(**28 COM 13.1**, paragraph 16).
23. It would be legally possible that when examining nominations submitted by States Parties, the Committee decides to set a low priority to the nominations submitted by its members or not to examine them during the session, with a view to rationalizing its activities and methods of work and to avoiding that membership of the Committee be used to obtain priority consideration for nominations submitted by members of the Committee. Such limitations would not impinge on the basic right of members to have their properties considered for inclusion in the World Heritage List.

III. CONCLUSIONS

24. From the analysis made in the preceding paragraphs, the following conclusions can be drawn both with regard to the measures proposed during the 28th session of the Committee by the United Kingdom, and the decision of the Committee requesting the present legal opinion:
 - a) If it were intended, under the UK proposal, that members of the Committee **voluntarily** refrain from submitting nominations during their tenure, such voluntary abstention would not contravene the provisions of the *Convention*, nor of any other rules established under it. It would therefore be possible for all Committee members or for some of them to renounce their right to submit nominations to the Committee during their tenure.
 - b) On the other hand, should the Committee decide to **prohibit** its members from submitting nominations during their mandate, such an action would be contrary to the provisions of the *Convention*, in particular, the right of States Parties to submit the inventory of property and to have such property considered for inclusion in the World Heritage List as foreseen under Article 11 of the *Convention*.
 - c) Nevertheless, it would be legally possible that, when examining nominations submitted by States Parties, the Committee decides to set a low priority to the nominations submitted by its own members or not to examine them during the session for the purpose of rationalizing its work and avoiding a situation where membership of the Committee might be used to obtain priority consideration for nominations submitted by members of the Committee.