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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

Thirty-fourth Session

Brasilia, Brazil
25 July – 3 August 2010

Item 5E of the Provisional Agenda: *The World Heritage Convention* and the other UNESCO Conventions in the field of culture

SUMMARY

By its Decision **33 COM 5**, the World Heritage Committee requested the World Heritage Centre to prepare a document on the relationships between the 1972 *Convention* and the other UNESCO conventions in the field of culture. This document concerns the relationships with UNESCO's standard-setting instruments specifically devoted to heritage protection.

Draft Decision: 34 COM 5E, see item VI

I. Context

1. By its Decision **33 COM 5**, the World Heritage Committee requested the World Heritage Centre to prepare a document on the relationships between the *1972 Convention* and the other UNESCO conventions in the field of culture.
2. UNESCO is the only organization of the United Nations system with a specific mandate in the field of culture, and, in that capacity, **eight conventions, thirteen recommendations and three declarations** have been adopted.
3. This document concerns the relationships with UNESCO's Conventions specifically devoted to heritage protection:

**Convention for the Protection of Cultural Property in the Event of Armed Conflict (hereafter called The Hague Convention), The Hague, 14 May 1954.
Protocol, The Hague, 14 May 1954
Second Protocol, 26 March 1999**

Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property, Paris, 14 November 1970

Convention on the Protection of the Underwater Cultural Heritage, Paris, 2 November 2001

Convention for the Safeguarding of the Intangible Cultural Heritage, Paris, 17 October 2003

4. All of these conventions have several elements in common, notably:
 - ✓ They concern cultural heritage, either tangible or intangible, the different manifestations of which they protect;
 - ✓ They promote co-operation between States;
 - ✓ The working methods and implementation procedures of the different standard-setting instruments are similar and can draw on each others' experiences to improve implementation.
5. The *1972 Convention*, the Second Protocol to The Hague Convention and the 2003 Convention create intergovernmental committees responsible for the implementation of these instruments, as well as a system of lists protecting certain categories of cultural property. The 2001 Convention provides for a Scientific and Technical Advisory Body composed of experts representing the States.
6. Only the relevant relationships and commonalities are mentioned; the exhaustive details of their differences have intentionally been omitted.

**II. The Convention for the Protection of Cultural Property in the Event of Armed Conflict (hereafter called “The Hague Convention”), The Hague, 14 May 1954.
Second Protocol, 26 March 1999**

7. The Hague Convention of 1954, the main objective of which is essentially to protect both moveable and immoveable cultural properties in the event of armed conflict and in occupied territory, and its Second Protocol of 1999 aiming essentially to enhance the administrative, legal, military and technical aspects of protection of these properties in peacetime as well as in times of armed conflict, comprise two instruments with a direct relationship to the *1972 Convention* with regard to their objective and means of protection.
8. The 1954 Protocol, which prevents the exportation of cultural properties from occupied territories and requires the return of these properties to the territory of the State from where they were exported, was not retained for this study.
 - A. Protection objective
 9. The Hague Convention of 1954 and the Second Protocol have in common with the *1972 Convention* the protection of immoveable cultural properties such as architectural, artistic or historical monuments, monumental centres and archaeological sites. It should be noted that The Hague Convention has a greater scope of application than the *1972 Convention*, since it also protects moveable cultural properties such as works of art, manuscripts, books and other objects of artistic, historical and archaeological interest, all types of scientific collections, and by extension the buildings that house them such as museums, large libraries, archives, etc.
 - B. Protection measures
 10. The protection means of the *1972 Convention* and those of the Second Protocol have obvious similarities and interactions. In particular, the two instruments set up intergovernmental committees as well as lists for certain categories of cultural properties.
 11. The Second Protocol establishes a regime of enhanced protection for cultural property of the highest importance to humankind, protected by adequate internal, administrative and legal measures, acknowledging their exceptional cultural and historical value and ensuring the highest level of protection. Moreover, these properties should not be used for military purposes or to shield military sites. Enhanced protection is granted by the Committee for the Protection of Cultural Property in the Event of Armed Conflict, an intergovernmental body established by the Second Protocol and composed of twelve Parties to the Second Protocol, for a cultural property inscribed on the List of Cultural Property under Enhanced Protection.
 12. The condition for the cultural property in question to be of greatest importance for humanity is obviously similar to that of Outstanding Universal Value. Therefore the Guidelines for the Implementation of

the Second Protocol establish this relationship between the two lists in paragraph 36: “It is presumed that the Committee, subject to other relevant considerations, will consider that immovable cultural property inscribed on the World Heritage List satisfies the condition of greatest importance for humanity.”

13. To date, there is no cultural property inscribed on the List of Cultural Property under Enhanced Protection. However, several Parties have submitted to the Secretariat applications for enhanced protection. The Secretariat is currently working to determine whether those applications are complete before sending them to the Bureau of the Committee for the Protection of Cultural Property in the Event of Armed Conflict for evaluation.
14. However, for information, the Vatican City (Holy See), which is also inscribed on the World Heritage List since 1984, was entered in the International Register of Cultural Property under Special Protection established under the Hague Convention.
15. In terms of protection, the preparatory measures foreseen by the Second Protocol in peacetime for safeguarding cultural property are quite similar to those promoted by the *World Heritage Convention*, notably with regard to risk preparedness (drawing up inventories, planning emergency measures...). In this regard, it should be noted that paragraph 98 of *Guidelines for the implementation of the World Heritage Convention* foresees the full implementation and effective legislative and regulatory measures at national and local levels to ensure survival of the property and its protection against development and changes that could have a negative impact on the Outstanding Universal Value, integrity and/or authenticity of the property.
16. Because of these similarities, the Third Meeting of the Parties to the Second Protocol (UNESCO Headquarters, 23-24 November 2009), requested the Committee for the Protection of Cultural Property in the Event of Armed Conflict to contact the World Heritage Committee in order to explore opportunities for collaboration.

III. Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property, Paris, 14 November 1970

A. Protection objective

The 1970 Convention aims to protect moveable cultural property which, on religious or secular grounds, is designated by each State as being of importance for archaeology, prehistory, history, literature, art or science, against the effects of illicit traffic of these properties. The objective of protection of the 1970 Convention is thus different from that of the *1972 Convention* (moveable cultural properties versus immovable cultural properties). However the issue of illicit traffic of cultural property from World Heritage sites should be stressed. This was the case, notably, at

the Butrint site in Albania in the 1990s, the Angkor site in Cambodia, or the Jiroft site in Iran.

17. In the framework of the 1970 Convention, cultural properties are considered to be those which, on religious or secular grounds, are designated by each State as being of importance for archaeology, prehistory, history, literature, art but also science. In addition to the products of archaeological excavations (authorized or clandestine) and the elements of dismembered artistic or historic monuments and archaeological sites, it is interesting to note that the 1970 Convention contains in Article 1 a): “Rare collections and specimens of fauna, flora, minerals and anatomy, and objects of paleontological interest”. *De facto*, the natural WH sites can benefit from the provisions of the 1970 Convention.
18. The looting of a cultural or natural site has a direct impact on its preservation, and *de facto*, on the Outstanding Universal Value of the site that justified its inscription.

B. Protection measures

19. The States Parties¹ to the 1970 Convention are required to act at the request of another State Party to seize any stolen cultural property and to cooperate to prevent major crises that may arise regarding the protection of cultural heritage. This was the case recently in Afghanistan and Iraq where the crises were directly related to the endangerment of international heritage sites. States also undertake to take all necessary measures to prevent the acquisition by museums within their territory of goods exported illegally, to prohibit the importation of stolen cultural property – in a museum or public institution – and recover and return, at the request of the State of origin, any cultural property stolen and imported.
20. The 1970 Convention requires its States Parties to take preventive measures such as inventories, export licenses, controls and licensing of dealers in cultural property, criminal penalties or administrative sanctions, information campaigns, etc..
21. The 1970 Convention was a pioneer, especially in light of the uncertainties that existed previously on restitution of cultural properties which were subject to the regime of private international law and some national laws which assimilated cultural property to moveable personal property, thus favoring its circulation and acquisition by an owner “in good faith”. Article 7 now provides a restitution mechanism for certain categories of cultural property following diplomatic petition and the payment of a just compensation to the good faith purchaser or to the lawful owner. Like most international conventions, notably that of 1972, the 1970 Convention has no retroactive effect. It applies only to cultural objects stolen or illicitly exported from a State Party to another

¹ In 2010, the 1970 Convention numbers 119 States Parties. See www.unesco.org/culture/en/illicittrafficking.
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State Party after the date of its entry into force for the two States concerned.

22. It appears that the inclusion of a site on the World Heritage List may make it more vulnerable to looting because the inscription can contribute to:
- promotion of the site to a wide audience;
 - facilitation of its accessibility due to its tourism development;
 - enhancement of the commercial value of the objects found there because of their new popularity.

These pitfalls had already been mentioned in the document presented to the World Heritage Committee at its 21st session (Naples, 1997) (Document *WHC-97/CONF.208/15*).

23. It was then recommended, in addition to encouragement to become party to the 1970 Convention, that an estimate of the vulnerability of the site to illicit traffic and the adequacy of measures taken to ensure its protection be made by the Advisory Bodies at the time of inscription and "that a paragraph calling attention to the need to protect the sites against illicit trafficking through administrative and security measures and existing legal means at national and international level should be included". (See decision of the Committee at its 21st session (Naples 1997) in Annex 1 to this document).

IV. Convention on the Protection of the Underwater Cultural Heritage Paris 2 November 2001

A. Protection objective

24. The 2001 Convention protects all traces of human existence having a cultural, historical or archaeological character that have been submerged, partially or totally, periodically or continuously, for at least 100 years, and which are often targets of looting. These can be objects as well as cultural sites. It is therefore possible to envisage in the future an underwater archaeological site identified as Outstanding Universal Value.
25. To date, a dozen of the most important submerged archaeological sites are included in the Tentative List (eg. Alexandria Bay and the remains of the lighthouse, Egypt; the submerged city of Port Royal, Jamaica; the hydroglyphs of Baiheliang, protected by the first underwater museum in the world, China, etc.).
26. To date, the interaction between the two conventions is limited to the existence of underwater heritage within the perimeter of a World Heritage Marine Site (eg. Mahabalipuram, India). The World Heritage Marine Programme, which is currently limited to natural sites of marine biodiversity, could however enlarge its scope to submerged archaeological sites.

It should be noted that under the 2001 Convention, protection is ensured regardless of where the heritage is located, and therefore the cooperation mechanism of the Convention also provides protection beyond territorial waters – which is a much

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larger scope than that of the *1972 Convention*. This may facilitate the case of sites proposed by several countries, and which are located partly in international waters.

B. Protection measures

27. The 2001 Convention sets out basic principles for the protection of underwater cultural heritage, provides a system of cooperation between States and proposes in Annex practical directives for the treatment and research of such heritage. It does not however regulate the ownership of the vestiges.
28. Thanks to the 2001 Convention, the underwater cultural heritage is brought to the same level of protection as terrestrial sites. The modalities are *de facto* quite similar: priority is given to the preservation *in situ* and allowing recovery of objects only for protection, research or public education, and when proper conservation of the object is guaranteed.
29. As with the *1972 Convention*, any use of the underwater cultural heritage for commercial purposes is prohibited. Both conventions encourage the same methods for training, technology transfer, information sharing and responsible access to the public.
30. The cooperation mechanism of the States provides for international waters a system including notification and consultation between States in the event of discovery of a site or a planned activity in this respect. It facilitates the collaboration of States in the operational protection and research.
31. The interaction between the two Conventions in the implementation of the Annex to the 2001 Convention is of the utmost importance. The Annex provides significant guidance for underwater archaeologists. In fact, it contains practical and detailed "Rules concerning activities directed at underwater cultural heritage". They include, notably, project design, guidelines related to skills and qualifications required in this framework, the methodology for conservation and management of the sites. Thus, the 2001 Convention is the first global reference for underwater archaeology.

V. Convention for the Safeguarding of the Intangible Heritage Paris, 17 October 2003

A. Protection objective

32. The respective definitions of heritage in the two Conventions indicate very different protection or safeguarding objectives but which are essentially complementary. The built heritage is often animated by intangible values or manifestations²; nevertheless the reverse is not always true.

² « So intangible heritage has made a vigorous comeback onto the World Heritage List. The 1972 Convention made only passing mention of intangible heritage and tied it to the existence of material evidence. But after long neglect it now seems that intangible heritage is the key safeguard to humanity's The World Heritage Convention and the other UNESCO conventions
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33. It is interesting to note, also, that the evolution of thinking of the international community vis-à-vis the concept of « communities » constitutes a conceptual progress common to both Conventions. It is nevertheless appreciated a little differently in the two Conventions.
34. The 1972 Convention encourages its States Parties to involve local communities in all World Heritage processes (preparation of tentative lists, nominations, management systems...). In 2005, this led to the addition of a fifth “C” for “Communities” to the four Strategic Objectives of the World Heritage Committee.
35. In the framework of the 2003 Convention, intangible heritage is grounded in the communities and only heritage recognized as such by the communities, the groups and individuals who create, maintain and transmit it, can be considered as heritage. Without the opinion of the communities, no one can decide for them if an expression or a particular practice is part of their heritage. The communities therefore have a key role in the international recognition of intangible heritage in the context of the 2003 Convention.
36. Moreover, there are different interactions between the Lists of the 2003 Convention (the Urgent Safeguarding List (USL), the Representative List (RL) and those of the World Heritage (WHL).
37. Both Lists concern physical spaces, built or not, called cultural spaces. The cultural spaces are inextricably linked or closely associated with the cultural practices of a specific place. To date, four cultural spaces are inscribed on the Lists of both Conventions:
- Petra, Jordan (inscribed on the WHL in 1985) / The Cultural Space of the Bedu in Petra and Wadi Rum, Jordan (inscribed on the RL in 2008): The Bedu Communities living in this region (the Bdul, the Ammarin and the Sa'idyyin) perpetuate a traditional pastoral culture and associated know-how. Although these communities have no apparent cultural link with the site of Petra, they use the catchment tanks and the grottos of the ancient Nabataeans.
 - Medina of Marrakesh, Morocco inscribed in 1985 / Cultural space of Jemaa el-Fna, Morocco (inscribed on the RL in 2008).
 - The Sacred Mijikenda Forests, Kenya, inscribed in 2008 / The traditions and practices associated to the Kayas in the Sacred Mijikenda Forests, Kenya (inscribed on the USL in 2009).

collective memory, precisely because of its very vulnerability. What would happen to Marrakesh—whose city walls, mosques and palaces are preserved like museum pieces—if the Jemâa-el-Fna Square was no longer a vibrant and colourful meeting place of cultures, filled with music and hubbub and the aromas of several worlds that we are lucky to know? What would the Sri Lankan city of Kandy be like without its annual pilgrimage that draws thousands of the faithful to venerate the remarkable relic that is the Buddha's tooth? And what would become of the World Heritage site of Sukur, in Nigeria, if the highly structured society living there suddenly lost all its centuries-old traditions?» Léon Pressouyre, The Courier of UNESCO, 2000.

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- The Rice Terraces of the Phillippine Cordilleras (inscribed in 1995) / The Hudhud Chants of the Ifugao, Phillippines (inscribed on the RL in 2008): the Ifugao rice terraces are the result of know-how handed down from generation to generation, sacred traditions and a delicate social balance. The Hudhud is a narrative song tradition of the Ifugao community, known for its system of rice terraces. This tradition is practiced at the time of rice planting and harvesting, and at funeral vigils and rituals.
- The Old Town of Dubrovnik, Croatia (inscribed on the WHL in 1979) / Feast of St. Blaise, patron Saint of Dubrovnik (inscribed on the RL in 2009); The Feast of St. Blaise (patron of Dubrovnik, Sv. Vlaha) is the most popular feast of the town.

38. In these cases, it appears that the local communities benefit from a double acknowledgement that of their practices in a site inscribed as World Heritage.

39. Reciprocally, there are elements of the Lists of the 2003 Convention which have an indirect link but which are relevant to built heritage and even some World Heritage Sites because they involve the transfer of know-how required for the maintenance of a place and/or maintenance of the buildings :

- Chinese traditional architectural craftsmanship for timber-framed structures, China, inscribed on the RL in 2009;
- The scribing tradition in French timber framing, France, inscribed on the RL in 2009;
- Traditional design and practices for building Chinese wooden arch bridges, China, inscribed on the USL in 2009.

40. In the same spirit, there is know-how such as water management -- the Water Tribunal of the Plain of Valencia, Spain, responsible for ensuring an equitable irrigation system (inscribed on the RL in 2009) which could be compared to the Affaj Irrigation Systems of Oman (inscribed on the WHL in 2006).

41. Other forms of know-how acknowledged under criterion (v)³ in the framework of the 1972 *Convention* such as the construction and maintenance of Takienta mud tower houses of the Batammariba (Koutammakou Landscape inscribed on the WHL in 2004), and which have become a symbol of Togo and the Mosques of Timbuktu, could benefit from a recognition by the 2003 Convention.

³ « Criterion (v) : "Be an outstanding example of a traditional human settlement, land-use, or sea-use which is representative of a culture (or cultures), or human interaction with the environment especially when it has become vulnerable under the impact of irreversible change" paragraph 77, *Operational Guidelines for the Implementation of the World Heritage Convention, 2008* ;

42. Finally, there are World Heritage Properties that share a common territory or a place with elements of the Lists of the 2003 Convention, but often without mutual recognition or interaction, because they do not belong to the same cultural tradition and are not considered as a cultural space. Of the 166 elements inscribed on the Representative List, three elements coexist on the same territory with World Heritage properties:

- The Old City of Sana'a, Yemen (inscribed in 1986) / The Song of Sana'a, Yemen (inscribed on the RL in 2008)
- The Mausoleum of the First Qin Emperor (X'ian) (inscribed on the WHL in 1987), China / X'ian wind and percussion ensemble (inscribed on the RL in 2009).
- Syracuse and the Rocky Necropolis of Pantalica, Italy (inscribed in 2005) / The Sicilian Puppet Theatre Opera dei Pupi, Italy (inscribed on the RL in 2008).

43. There is also a persistent confusion which directly associates criterion (vi) of the World Heritage List with the objective of the 2003 Convention. World Heritage criterion (vi) associates with cultural or natural heritage "directly or tangibly, events, living traditions, ideas, beliefs, or artistic and literary works of outstanding universal significance". The living traditions, ideas, beliefs and artistic works can correspond to the scope of the 2003 Convention, but they will not be selected for their Outstanding Universal Value as this concept does not belong to the 2003 Convention.

44. It should be noted that, to date, with the exception of the site of [Aapravasi Ghat](#), Mauritius, none of the eleven properties inscribed on the WHL according to criterion (vi) alone⁴ appear on the Lists of the 2003 Convention or particularly illustrate an intangible heritage.

B. Safeguarding measures

45. Both Conventions also have in common, through different approaches and methods, the establishment of lists such as the List of WH in Danger (1972 *Convention*) and the Urgent Safeguarding List (2003 Convention), because they both have at heart to raise awareness amongst all stakeholders and the entire international community of the need to urgently intervene to save the heritage concerned.

46. In addition to the know-how that can benefit from the maintenance of the built heritage (see paragraph 41 above), the measures used to preserve the physical heritage differ from those for the safeguarding of intangible heritage. Care must be taken to ensure that a conservation

⁴ *Bosnia and Herzegovina: Old Bridge Area of the Old City of Mostar; Bulgaria: Rila Monastery; Canada: Head-Smashed-In Buffalo Jump; L'Anse aux Meadows National Historic Site; Ghana: Forts and Castles, Volta, Greater Accra, Central and Western Regions; Japan: Hiroshima Peace Memorial (Genbaku Dome); Mauritius: Aapravasi Ghat; Poland: Auschwitz Birkenau Camp, German Nazi Concentration and Extermination Camp 1940-1945; Senegal: Island of Gorée; United States of America: Independence Hall, La Fortaleza and San Juan National Historic Site in Porto Rico.*

action for a WH property is not detrimental to the preservation of an element of the 2003 Convention. One can indeed imagine that a restoration project of an urban centre could lead to the gentrification of the place which would be emptied of its traditional inhabitants. This would render tenuous the continued presence of some practitioners in the place and *de facto* their traditions, know-how and/or events. The contrary, although less likely, is also to be avoided.

47. Besides the existing interactions between the Lists, it is interesting to note that during the implementation of both Conventions, (request for international assistance), interactions may occur. Thus, during the fourth session of the Intergovernmental Committee for the Safeguarding of the Intangible Cultural Heritage (28 September – 2 October 2009, Abu Dhabi), out of the three requests for international assistance, two were found to converge with the decisions of the World Heritage Committee:

a) In the case of the “Sacred Mijikenda Kaya Forests” of Kenya inscribed on the WHL in 2008 (Decision **32 COM 8B50**), the request for international assistance made in the framework of the 2003 Convention complements the WH Committee’s request to modify the management plan to take into consideration the needs of the Kayas, notably by integrating the conservation of the cultural and natural resources and the traditional and non-traditional management practices.

b) In the case of Aapravasi Ghat, Mauritius, inscribed in 2006 (Decision **30 COM 8B33**), the request for international assistance made under the 2003 Convention converges with the WH Committee’s request that research be undertaken on contractual work, to take into account the extent and impact of the diaspora of contract workers throughout the world.

48. In addition to the existing interactions among the Culture Conventions, UNESCO and the Secretariat of the Convention on Biological Diversity (CBD) have joined forces to review issues related to cultural and biological diversity. A joint work programme is the outcome of the Conference on “Biological and Cultural Diversity for Development” in Montreal (Canada) 8–10 June 2010, which brought together researchers, representatives of indigenous and local communities, politicians, NGOs, intergovernmental bodies, and development agencies. The work programme can be accessed at:

http://portal.unesco.org/science/en/ev.php-URL_ID=8318&URL_DO=DO_TOPIC&URL_SECTION=201.html. – if it is adopted by the Conference of the Parties to the CBD in Nagoya (Japan) in October, UNESCO and the CBD Secretariat will begin by elaborating a set of guiding principles for future research, management, practice and policy work at the interface between biological and cultural diversity.

49. The work programme will also advance knowledge on the ways in which cultures have shaped and continue to shape biodiversity in a sustainable way. It will collect on-the-ground case studies of the links between cultural and biological diversity in Biosphere Reserves, World Heritage sites and other areas. It will further strengthen collaboration and coordination among relevant international agreements, in particular the Convention on

Biological Diversity (1992) and UNESCO's culture-related conventions, including the World Heritage Convention (1972), the Convention for the Safeguarding of Intangible Cultural Heritage (2003) and the Convention on the Protection and Promotion of the Diversity of Cultural Expressions (2005).

VI. Draft Decision

Draft Decision: 34 COM 5E

The World Heritage Committee,

1. Having examined document WHC-10/34.COM/5E,
2. Notes with interest the above-mentioned document;
3. Invites all States Parties to the 1972 Convention to become party to other standard-setting instruments of UNESCO in the field of Culture;
4. Recalls its Decisions **28 COM 12** (Suzhou, 2004) and **7 EXT.COM 9** (Paris, 2004) requesting an enhanced collaboration between the World Heritage Centre and the other Convention secretariats;
5. Acknowledges the information exchanges and participation at Committee sessions by the different Convention secretariats, notably those of 1972 and 2003;
6. Further notes the outcome of the "International Conference on Cultural and Biological Diversity for Development" which took place in Montreal (Canada) from 8 to 10 June 2010 with the participation of the 1972, 2003 and 2005 Conventions as well as the Convention on Biological Diversity (1992).