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

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5F. Follow-up to the Audit of the Working Methods of Cultural Conventions and to the Evaluation of UNESCO's Standard-Setting work of the Culture Sector

INF. 5F: Evaluation of UNESCO's Standard-setting Work of the Culture Sector (Part III - Convention of 1972 on the Protection of the World Cultural and Natural Heritage)

SUMMARY

This information document contains Part III of the Evaluation of UNESCO's Standard-setting Work of the Culture Sector which concerns the Convention of 1972 on the Protection of the World Cultural and Natural Heritage.

This information Document should be read in conjunction with Document WHC-14/38.COM/5F.



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Evaluation of UNESCO's Standard- setting Work of the Culture Sector

Part III – 1972 Convention Concerning the Protection of the World Cultural and Natural Heritage

FINAL REPORT

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The views and opinions expressed in this document are those of the authors and do not necessarily represent the views of UNESCO or of the IOS.

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Chapter 1 Introduction

1. In its almost seventy years of institutional life, UNESCO, as the UN Organization for education, science and culture, has achieved remarkable results in terms of normative action and standard setting. Thirty-five conventions have been adopted so far, either directly, by the General Conference, or by diplomatic conferences promoted by UNESCO alone or in co-operation with other international organizations. Soft law instruments adopted by the General Conference, in the form of Recommendations and Declarations have supplemented the body of binding law in a wide variety of areas ranging from culture, bioethics, science, education and sport.¹ In the specific field of culture, UNESCO has performed a pioneering “law making” function at the international level. The most visible results of this are the six main conventions – the 1954 Convention, the 1970 Convention, the 1972 Convention, the 2001 Convention, the 2003 Convention, and the 2005 Convention.²
2. A less visible and more subtle influence of the UNESCO normative action has been at the level of a progressive development of a body of general principles and customary norms of international law in the field of cultural heritage protection. These principles include the general duty to respect cultural property of great importance in time of armed conflict and in peace-time, the duty to cooperate in the fight against the illicit traffic in art and antiquities, the obligation to return cultural objects illegally removed from occupied territories, as well as the principle of common concern of humanity for the safeguarding of cultural heritage of outstanding universal value. These principles support the dynamic evolution of a new branch of general international law – cultural heritage law - and contribute to the formation of a core of substantive and procedural obligations whose common denominator is the *opinio iuris* that preservation of the great diversity of cultural heritage is part of the general interest of humanity.³
3. The wealth of diversity of normative instruments on the protection of cultural heritage has no doubt posed a considerable challenge to UNESCO’s mission of ensuring that such instruments find effective implementation in national law and policies of Member States.⁴ As an international organization, UNESCO presents advantages and shortcomings in this respect. An advantage is the unique liaison that UNESCO enjoys with the National Commissions for UNESCO and national cooperating bodies, as provided by Article VII of its Constitution. These organs are meant to represent a broad spectrum of civil society and be supported in their operations by the participation of the principal stakeholders in cultural matters. Thus, they have the potential of facilitating Member States’ action in the development of general public policies and of specific measures for the effective enforcement of applicable UNESCO normative instruments.

¹ A general overview of the UNESCO normative action was carried out on the occasion of the sixtieth anniversary of the Organisation, which resulted in the publication of the two volumes *Standard-setting in UNESCO* (A. Yusuf ed), UNESCO Publishing/Nijhff Publishers, Leiden / Boston, 2007.

² Convention for the Protection of Cultural Property in the Event of Armed Conflict (1954), Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property (1970), Convention concerning the Protection of the World Cultural and Natural Heritage (1972), Convention on the Protection of the Underwater Cultural Heritage (2001), Convention for the Safeguarding of Intangible Cultural Heritage (2003), Convention on the Protection and Promotion of the Diversity of Cultural Expressions (2005).

Remark from IOS: The author used a variety of titles when referring to the UNESCO and other Conventions. Rather than changing his writing in the text, a list of the titles used, together with the full official names of the Conventions, was included in the annex to this report.

³ See F. Francioni, “Au-delà des traités: l’émergence d’un nouveau droit coutumier pour la protection du patrimoine culturel”, *Revue Générale de droit international public*, 2007, p. 19-42.

⁴ For a comprehensive review of the challenges posed by the implementation of international standards on cultural heritage, see *Enforcing International Cultural Heritage Law* (F. Francioni, F. Francioni and J. Gordley Eds.), Oxford, OUP, 2013.

4. Another point of strength is represented by the often neglected instrument of the “Recommendations” (Article IV B 4. of the Constitution). By these instruments the General Conference submits to member states a framework of principles and general norms intended to provide guidance and legal basis for the enactment of national legislation, administrative action and policy orientation in the implementation of specific international instruments. It is noteworthy that also the World Heritage Convention, which is the object of this report, was accompanied by a simultaneous Recommendation on the protection of cultural and natural heritage *at national level*.⁵
5. The weak side of the UNESCO action in the implementation of its normative instruments has several aspects and sources. First, the Organization remains faithful to the classical model of intergovernmental institutions, so that its normative acts do not possess the quality of “direct effect” in the national system of Member States. Member States retain full sovereignty and remain arbiters of the modalities according to which international standards are translated into national law and national policies. This entails a great variety of implementation methods, ranging from the enactment of detailed implementing legislation to the mechanical reproduction of the international instrument in domestic law, with a consequent variable degree of effectiveness of international standards in the domestic legal order. Further, unlike international organizations of the more recent generation (such as the World Trade Organization) UNESCO does not have a built in mechanism for checking non-compliance by Members States with their obligation under applicable treaties and for settling disputes arising thereunder. This aspect is particularly important in relation to the complex body of “international administrative law” (operational guidelines, standards, criteria), which has developed in the context of the World Heritage Convention and which will be the object of specific analysis and recommendations in Chapter 4 and 5 of this Report.

⁵ Recommendation concerning the Protection, at National Level of the Cultural and Natural Heritage, adopted 16 November 1972 (hereinafter “1972 Recommendation”), in UNESCO, Conventions and Recommendations of UNESCO Concerning the Protection of Cultural Heritage.

Chapter 2 The 1972 World Heritage Convention and Recommendation: a Retrospective Evaluation

6. Before we move to the assessment of the relevance and effectiveness of the World Heritage Convention in national law and practice of states parties and of working methods of UNESCO, it is important to bear in mind the cross-cutting influence that the World Heritage Convention has already produced on international law in the more than forty years of its implementation.
7. If we look back at 1972 when the Convention was adopted, we can see that at that time international law on the protection of cultural and natural heritage was still in its infancy. The very concept of “cultural heritage”, understood as the inherited patrimony of human experience and knowledge, had hardly been developed at a normative level. The term “cultural property” had prevailed in legal texts. More important, cultural objects were generally deemed to fall within the exclusive control of the territorial state and thus be part of the nation. This view was reinforced by the 1970 Convention on the Means of Prohibiting and Preventing the Illicit Import Export and Transfer of Cultural Property, which postulated a national idea of cultural heritage based on sovereignty and ownership rights. With respect to “natural heritage”, until 1972 it was widely accepted that international law placed hardly any obligation upon states in the conservation and management of their natural resources, with few exceptions mainly limited to the use of international rivers and remediation of trans-boundary harm. Since then, International law applicable to the cultural and natural heritage has changed dramatically. Two distinct and coherent bodies of international cultural heritage norms and of international environmental norms have emerged as important branches of contemporary international law. The World Heritage Convention has played an important role in this process.
8. The most visible impact produced by the World Heritage Convention on the progressive development of international law stems from its adoption of a holistic approach (still controversial in 1972) to culture and nature.⁶ This has permitted the recognition of the inherent linkage between the conservation of natural resources and the safeguarding of “cultural heritage” as an essential element of the “human environment”. This innovative concept has spurred the dynamic evolution of the narrow construct of “cultural property”, understood as material objects of private rights, toward the more complex notion of “heritage”, which captures both, the cultural and the natural, the tangible and the intangible, the public and the private dimension, as well as the intergenerational values associated with the creative expressions, practices and spaces that human communities recognize as part of their cultural tradition and identity. Nowhere can the impact of this movement be more evident than in the 2003 Convention on intangible cultural heritage, in the 2005 Convention on cultural diversity and in the 2007 UN Declaration on the Rights of Indigenous Peoples. By the same token, bringing together culture and nature in the World Heritage Convention has facilitated the subsequent development of the principle of “sustainable development” and its formulation in the Rio Declaration of 1992 and in virtually all contemporary treaties dealing with environmental governance.
9. The 1972 Convention has produced another important innovation with the introduction of the “world heritage” concept, which is to be understood as that part of cultural and natural heritage, which, because of its outstanding universal value must be preserved as “part of the cultural and natural heritage of mankind as a whole”⁷. This is an important statement. It

⁶ For a detailed analysis of the factors that contributed to bringing together natural and cultural heritage in the preparatory work of the WHC, see C. Cameron and M. Rössler, *Many Voices, One Vision: the Early years of the World Heritage Convention*, Ashgate, 2013.

⁷ Preamble of the World Heritage Convention, para. 6.

signifies that world heritage sites, though remaining subject to the sovereignty of the territorial State, are at the same time elements of the public interest of humankind for whose protection “it is the duty of the international community as a whole to cooperate”⁸. It evokes the idea of solidarity and of the new kind of obligations, i.e. *erga omnes* obligations that states owe to the international community as a whole rather than to other individual states on a reciprocal basis.⁹

10. The World Heritage Convention has also broken new ground at the level of institutional design. The establishment of a governing body composed of 21 members elected by the General Assembly of State Parties to the Convention, endowed with decision making powers, and assisted by the UNESCO secretariat and its advisory bodies – ICOMOS, IUCN and ICCROM – marked an unprecedented step in the international governance of cultural and natural heritage. Its importance can only be appreciated by comparison to the decentralized systems of the 1954 Convention and 1970 Convention, whose institutional deficit has proved to be such a debilitating factor of their effectiveness that later a similar implementing committee was formally introduced by the 1999 Second Protocol to the Hague Convention¹⁰, and, less formally, by resolution of the General Conference to assist in the implementation of the 1970 Convention¹¹.
11. This preliminary overview on the impact of the World Heritage Convention on the development of cultural heritage law would not be complete without a brief reference to the impact that the World Heritage Convention has had on the interpretation and application of international norms in areas different from cultural and natural heritage. Two areas are especially relevant: that of international investment law and arbitration, and that of international criminal law. In the first one the World Heritage Convention can play an important role as a driver of private foreign investment that can enhance the economic development of the area where the cultural or natural site is located, and at the same time add visibility to the World Heritage Convention. On the other hand, the Convention can play a role as the source of applicable law in contentious cases of termination of investment contracts, and as a legitimating factor of contested host state’s decision on competing investment projects. The first case is represented by the International Centre for Settlement of Investment Disputes (ICSID) arbitration in *SSP v Egypt* concerning a dispute that originated from the cancellation by Egypt of a large scale tourist development in the vicinity of the Pyramids, a site that was eventually inscribed (1979) in the WH (World Heritage) List. The ICSID Tribunal declared the World Heritage Convention to be the relevant applicable law, capable of trumping investors’ rights and contractual obligations arising from relevant international agreements binding upon Egypt. This was an important statement of principle concerning the pre-eminence of the World Heritage Convention among the applicable norms of international law, even though in the end Egypt was found liable to pay compensation for the damage caused by the to the foreign investor *before the critical date of the inscription of the site in the WH List*.¹² The second case, *Parker v Lithuania*, concerns an investment dispute arising from the preference given by the municipality of Vilnius, a WH site, to a Dutch bidder rather than to a Norwegian bidder (the claimant), for the execution of a contract (parking facilities) in the vicinity of the Old Town. In rejecting the claimant’s argument that the preferential treatment

⁸ Article 6, para 1.

⁹ For the first articulation of this new type of international obligations see the International Court of Justice judgment in the *Barcelona Traction* case, ICJ Reports, 1970 p. 3 ff. See also ICJ Advisory Opinion on the *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territories*, 2004.

¹⁰ Articles 24-28. The Protocol was adopted by a Diplomatic Conference convened by UNESCO at The Hague, 26 March 1999. Text reproduced in *Standard Setting in UNESCO*, Vol. II, 2007, p. 262 ff.

¹¹ Resolution 4/7.6/S, Twentieth Session of the General Conference 24 October-28 November 1978, establishing the Intergovernmental Committee for Promoting the Return of Cultural Property to its Country of Origin or its Restitution in Case of Illicit Appropriation.

¹² *Southern Pacific Properties Ltd v Egypt*, ICSID Case No ARB/84/3, 20 May 1992, para 78 of the Award.

given by local authorities to the Dutch competitor amounted to a breach of applicable investment agreement, the arbitral tribunal relied on the legitimating effect of the World heritage status of the Old Town of Vilnius on the decision to give preference to the Dutch project – less impacting on the historical and archaeological area – and concluded that “the City of Vilnius did have legitimate grounds to distinguish between the two projects”.¹³

12. No less important is the influence that the World Heritage Convention has had on the development of international criminal law. In this field, the World Heritage Convention has provided the standard of reference for the determination of the international public interest in the protection of cultural sites attacked during armed conflicts and for the consequent criminalization of the perpetrators of the attack under international law. This has happened in the case of the deliberate bombing of the world heritage city of Dubrovnik during the Yugoslav conflict, resulting in the affirmation of the individual criminal responsibility of the attackers under Article 3 (d) of the Statute of the International Criminal Tribunal for Former Yugoslavia (ICTY)¹⁴. More recently, the wanton destruction of World Heritage shrines of Muslim saints in the city of Timbuktu during the 2012 conflict in Mali has resulted in the commencement of preliminary proceedings in view of assessing the international criminal responsibility of the attackers.
13. In other cases the World Heritage Convention has played an *ex post* role in the sense of conferring the “seal” of outstanding universal significance to cultural sites that had been previously destroyed by criminal acts of barbarity which had raised the indignation and protests of the international community. Memorable cases of this kind are the Buddhas of Bamiyan, intentionally destroyed by the Taliban in 2001, and the Mostar Bridge intentionally destroyed during the Yugoslav war. Both sites have been inscribed *ex post* in the World Heritage List¹⁵.

¹³ *Parkerings Compagniet AS v Republic of Lithuania*, ICSID Case No ARB/05/08, 11 September 2007, para 396.

¹⁴ *Prosecutor v Strugar*, ICTY Case IT-01-42T, Trial Chamber II, Judgment of 31 January 2005, esp. Para 301.

¹⁵ In 2003 The *Bamiyan* site was inscribed in the World Heritage List, and placed in the List of WH in Danger, as a cultural landscape and archaeological remains bearing witness to the tragic events of the destruction of the great Buddhas. The *Mostar Bridge* was rebuilt and inscribed in the World Heritage with the *Old Town of Mostar* as an outstanding example of multicultural urban planning and architecture. The person found responsible for ordering the destruction of the bridge, the Croatian general Slobodan Praljak, was convicted by a recent judgment of the ICTY and sentenced to 20 years imprisonment.. See *Prosecutor v Prlic, Stojic, Praljak et al.* Case IT-04-74, Judgment of 29 May 2013 . He has appealed the judgment. For analysis of the international law implications of the intentional destruction of the great Buddhas of Bamiyan, see F. Francioni and F. Lenzerini “The Destruction of the Buddhas of Bamiyan in International Law”, 14 *European Journal Int L.* 2003, p. 619 ff.

Chapter 3 Implementation of the 1972 World Heritage Convention and Recommendation in Domestic Law and Policies of State Parties

14. This part of the report will provide a country-by-country analysis of the way in which the World Heritage Convention and the Recommendation Concerning the Protection, at the National Level, of the Cultural and Natural Heritage have been implemented in domestic law and policy. The choice of the countries examined reflects the criteria indicated by UNESCO, which include the customary geographical representation, the combination of countries having a long history of implementation of the World Heritage Convention with countries that are latecomers to the system, countries with a large number of properties inscribed in the List and others with still a small number of inscriptions. The format followed, with a varying degree of specificity, entails a brief introduction with the identification of the basic legal framework for the protection of cultural and natural heritage; analysis of the specific implementation of the World Heritage Convention; identification of specific critical aspects related to the state of conservation of specific properties; and a general assessment, at the policy level, of the effectiveness of the World Heritage Convention in the domestic legal system, and, in light of periodic reports and response to demands of the WH Committee, the level of cooperation with the Committee. The country analyses also provide a brief assessment of the country's compliance with the 1972 Recommendation.

3.1 Europe

3.1.1 Portugal

15. Portugal ratified the World Heritage Convention on September 30, 1980. The Portuguese Constitution reflects the idea, also included in the World Heritage Convention, that cultural heritage is a common good of the nation as a whole, and that there is a shared responsibility to preserve, protect and extend this heritage, also for future generations. It states that besides the duty of the State to protect and enhance the cultural heritage and to protect nature and the environment, '[a]ll have the right to cultural enjoyment and creativity, and the duty to preserve, protect and extend the cultural heritage,'¹⁶ and that '[i]t is incumbent on the State [...], [t]o promote the protection and increased respect for the cultural heritage, making it a vital element of the common cultural identity.'¹⁷
16. The Portuguese national legislation for the protection of the cultural and natural heritage includes cultural heritage and environmental laws and specific decrees for classified monuments or protected areas.¹⁸ It should be noted, however, that there are separate legal regimes for the protection of cultural heritage on the one hand, and for natural heritage (as part of the protection of the environment) on the other. The international conventions to which Portugal is a Party have been integrated into national laws and policies.¹⁹ At the regional

¹⁶ Constitution of the Portuguese Republic, Sixth Revision 2004, Article 78(1).

¹⁷ *Idem*, Article 78 (2)c. Other relevant provisions are Articles 2, 9(e), 42, 70, and 73-77, 79.

¹⁸ Law 270/1999 on Archeological Works, Law 107/2001 Heritage Protection Law, Law 47/2004 Framework Law on National Museums, Law 309/2009 on the Protection of Immovable Cultural Heritage, Law 140/2009 creating the legal regime for Heritage Protection, Law 138/2009 for the establishment of a Fund for the Safeguarding of Cultural Heritage, Decree 19/2006 on Classification of Goods of National Interest and Listing the Property of the Portuguese Institute of Museums, Decree 69/2000 implementing Directive on Environmental Impact Assessment; Law n. 11/87 The Environmental Main Law, and numerous specific statutes in the environmental field.

¹⁹ Hague Convention (1954), London Convention (1969), UNESCO Convention (1970), Granada Convention (1985), Valetta Convention (1992), UNIDROIT (1995), Ramsar Convention (1971), CITES (1973), CMS (1979), Bern Convention (1979), Basel Convention (1989), Convention on Biological Diversity (1992), Convention of Climate Change (1992), Convention to Combat Desertification (1994), IUCN Convention, Florence Convention (2000).

level (Azores, Madeira) there is also specific legislation concerning protected areas and cultural landscapes. The responsible agencies at the national level are the Portuguese Institute for Architectural Heritage within the Ministry of Culture, and the Institute for the Conservation of Nature, at the Ministry of the Environment. Moreover, local departments have been created for the management and monitoring of World Heritage sites and the implementation of specific management plans is legally required. National inventories are used as a basis for selection of World Heritage sites. The central government is responsible for nominations of these sites, while regional authorities and site managers are involved in their preparation.

17. Portugal has 15 properties inscribed on the WH List, of which 14 have a cultural, and one a natural character.²⁰ The cultural sites are extremely varied, and feature a combination of cultural landscape, including viticulture (*Alto Douro Wine Region, Landscape of the Pico Island Vineyard Culture*), and gardens with Romantic architecture (*Cultural Landscape of Sintra*); urban landscapes (*Historic Centre of Oporto, Historic Centre of Guimarães, University of Coimbra-Alta and Sofia*). They also include monuments of Cistercian Gothic, and of Manueline art, and one property, jointly nominated with Spain, is of Palaeolithic origin (*Prehistoric Rock Art Sites in the Côa Valley and Siega Verde*). The natural WH site features a laurel forest with a unique suite of plants and animals (*Laurisilva of Madeira*). In addition, 11 properties are included on the Tentative List.
18. Regarding the general implementation of the World Heritage Convention, the World Heritage Committee concluded during the First Reporting Cycle, that the protection and conservation efforts have led to increased diffusion, visibility and prestige of World Heritage, and to partnerships with the private sector. It also noted that training and international exchange for a technical and scientific research have been successful. However, the Committee also expressed its concern about visitor pressure and the insufficiency of financial resources. It recommended, in particular, the reinforcement of management mechanisms; development of university level research on World Heritage issues; establishment of a national World Heritage monitoring and management control organization; and the development of media diffusion and information material on a national and local level.²¹
19. With respect to the protection and conservation of individual properties, the Committee identified specific threats to the Outstanding Universal Value (OUV) for two WH sites: (1) the planned construction of a hydro-electric dam in the *Alto Douro Wine Region* (Foz Tua Hydro-Electric Dam project),²² and (2) plans for a cable car project in and around the natural WH site *Laurisilva of Madeira*.²³ In the latter case, this threat was reported to the World Heritage Committee by a local NGO. However, in both situations, the Portuguese government and responsible authorities have effectively cooperated with the World Heritage Committee to address the concerns that were raised.
20. It may be concluded that Portugal is actively participating in the international cooperation provided through the WH Convention. While the WH Committee considers the Portuguese legislative and institutional framework for the protection and conservation the cultural and natural heritage generally adequate, certain improvements are desirable. In particular, the lack of financial and human resources, as well as of adequate management tools at several sites,

²⁰ The cultural sites are *Alto Douro Wine Region* (2001), *Central Zone of the Town of Angra do Heroísmo in the Azores* (1983), *Convent of Christ in Tomar* (1983), *Cultural Landscape of Sintra* (1995), *Garrison Border Town of Elvas and its Fortifications* (2012), *Historic Centre of Évora* (1986), *Historic Centre of Guimarães* (2001), *Historic Centre of Oporto* (1996), *Landscape of the Pico Island Vineyard Culture* (2004), *Monastery of Alcobaça* (1989), *Monastery of Batalha* (1983), *Monastery of the Hieronymites and Tower of Belém in Lisbon* (1983), *Prehistoric Rock Art Sites in the Côa Valley and Siega Verde* (1998), *University of Coimbra – Alta and Sofia* (2013). The natural site is *Laurisilva of Madeira* (1999).

²¹ <http://whc.unesco.org/archive/periodicreporting/EUR/cycle01/section1/pt-summary-en.pdf>

²² Decision 7COM7 B.79

²³ 33COM7B.25

need to be addressed. The adequate response to requests from the WH Committee and the effective cooperation of the government demonstrate a significant commitment to the World Heritage Convention. The legislation on cultural heritage generally addresses the main elements included in the 1972 Recommendation, providing for the conservation and protection of all national cultural heritage, also beyond the designated WH sites. At the environmental level, the high number of legal statutes complicates the implementation of a comprehensive environmental policy. Nevertheless, the relevant laws adequately provide for the conservation and protection of all natural heritage within the Portuguese territory.

3.1.2 Sweden

21. Sweden ratified the World Heritage Convention on January 22, 1985. The Swedish Constitution which is composed of four fundamental Acts, does not provide a specific basis for national law on cultural heritage. The national laws in this field, in particular the Heritage Conservation Act, do not explicitly state that their purpose is to implement the World Heritage Convention. A new bill, *Diversity of the Historic Environment*, adopted in 2013, sets out the national objectives for historic environment initiatives, and clarifies the responsibilities of the authorities involved in the management of cultural heritage protection and conservation.
22. Inventories for cultural and natural heritage are established at local, regional and national level, and are used as a basis for selecting World Heritage sites. A Tentative List was prepared in coordination with the other Nordic countries. Sweden has the highest number of sites on the WH List in the sub-region: 15 properties are inscribed on this list, 13 of which 11 are of a cultural nature, one natural, and one of a mixed nature.²⁴ The cultural sites cover Bronze Age rock carvings; agricultural landscapes; archaeological remains of Viking-Age Europe; architectural and artistic traditions from the 17th-through 19th centuries, historic evidence of scientific excellence, such as 19th century survey triangulations for topographic measurements (*Struve Geodetic Arc*). The natural heritage site, *High Coast / Kvarken Archipelago*, features exceptional natural phenomena such as rising islands caused by continuous glacial movements in the sea. Finally, the mixed site (*Laponian Area*) in the Arctic Circle region is the world's largest area with a way of life based on the seasonal movement of livestock (reindeers). Moreover, one property has been submitted on the Tentative List: the Rise of Systematic Biology (2009). To date, no Swedish properties are included in the List of World Heritage in Danger.
23. Sweden has adopted national legislation for the protection of the cultural and natural heritage.²⁵ However, there is no specific planning legislation to protect World Heritage sites. Management plans are required for cultural and natural heritage, and specific management plans exist for the different sites.²⁶ The national legislation and policy documents on cultural and natural heritage have taken into account the requirements of the international conventions ratified by the State Party.²⁷ Sweden has a participatory system of responsibilities in the field of heritage protection. The National Heritage Board and the Environmental

²⁴ The cultural sites are the Agricultural Landscape of Southern Öland (2000), Birka and Hovgården (1993), the Church Village of Gammelstad, Luleå (1996), Decorated Farmhouses of Hälsingland (2012), Engelsberg Ironworks (1993), the Hanseatic Town of Visby (1995), the Mining Area of the Great Copper Mountain in Falun (2001), the Naval Port of Karlskrona (1998), the Rock Carvings in Tanum (1994), the Royal Domain of Drottningholm (1991), Skogskyrkogården (1994), Struve Geodetic Arc (2005), and the Varberg Radio Station (2004). The natural site is High Coast / Kvarken Archipelago (2000), and the mixed property is the Laponian Area (1996).

²⁵ The Heritage Conservation Act (or: *Act concerning Ancient Monuments and Finds*, 1988:950, as amended in 2002), SFS (1996:529), Heritage Conservation Ordinance (1988:1188, as amended in 2002), The Environmental Code (1997/98:45), Riksdag Akt 1973 as amended in 2002, Art 2; Planning and Building Act (1987:10, as amended in 2003), The Planning and Building Ordinance (1987:383).

²⁶ <http://whc.unesco.org/archive/periodicreporting/EUR/cycle01/section1/se-summary-en.pdf>

²⁷ Hague Convention (1954), UNESCO Convention (1970), Granada Convention (1985), Valetta Convention (1992), Paris Convention (2001), Florence Convention (2000), Ramsar Convention (1971), CITES Convention (1973), Bonn Convention (1979), Bern Convention (1979), Basel Convention (1989), Convention Alpine (1991), the Convention on Biological Diversity (1992), Signed: Protocol to the Hague Convention (1954).

Protection Agency are responsible for the organization of conservation and protection services. Local stakeholders manage the area of WH sites, and several actions to educate and help financing development of management strategies are initiated by the state or regional and local authorities. NGOs organize seminars and workshops on heritage issues, and are represented in management groups at some sites.²⁸

24. With regard to the general implementation of the World Heritage Convention, the World Heritage Committee concluded, during the First Reporting Cycle, that the Swedish legislation and administration at national and regional level strongly supports the goals of the World Heritage Convention, and that there is active participation and consultation of the local authorities and communities in the nomination process. It also found that there is good cooperation for preservation at all levels, as well as international and bi-lateral cooperation in support of other regions. The Committee also positively evaluated the active awareness raising and site presentation, and the systematic communication with local communities. Sweden participates in UNESCO Special Project “Young People’s Participation in World Heritage Preservation and Promotion” which has been integrated in school programs.²⁹ On the other hand, the Committee considered that management and monitoring systems needed to be improved.³⁰
25. With respect to individual WH sites, the Committee considered that as a result of the inscription of various sites on the WH List, the citizens are now well aware of the unique values of these properties,³¹ that there are increasing numbers of visitors,³² and that there is a good cooperation between authorities and associations.³³ On the other hand, it concluded that at several sites, the insufficiency of site personnel,³⁴ inadequacy of an organizational and management plan,³⁵ and the lack of coordination between the actors and authorities involved required improvements at the managerial level.
26. Two recent developments are worth mentioning. *Firstly*, through the *Boost for Cultural Heritage* jobs initiative, launched in 2012, the Government is combining the need to preserve cultural heritage and the cultural environment with providing people who have been absent from the labour market because of ill health with the opportunity to engage in meaningful employment.³⁶ *Secondly*, in June 2013, the Swedish Parliament approved the bill *Diversity of the Historic Environment (2012/13:96)*. The Bill contains new national objectives for historic environment initiatives: a sustainable society with a great variety of historic environments that are preserved, used and developed; public participation in historic environment initiatives and opportunities to understand and take responsibility for the historic environment; an inclusive society where the historic environment is a common source of knowledge, education and experiences; a holistic approach to landscape management where the historic environment is harnessed in the development of society. The new bill also includes amendments to the *Heritage Conservation Act (1988:950)*. In particular, the title of this Act will be changed to *Historic Environment Act*; the aim of the Act will be 'to ensure that present and future generations have access to a great variety of historic environments'; the role of the Swedish

²⁸ <http://whc.unesco.org/archive/periodicreporting/EUR/cycle01/section1/se-summary-en.pdf>

²⁹ *Idem*, p.2

³⁰ *Idem*

³¹ <http://whc.unesco.org/archive/periodicreporting/EUR/cycle01/section2/555-summary.pdf>

³² <http://whc.unesco.org/archive/periodicreporting/EUR/cycle01/section2/556-summary.pdf>

³³ <http://whc.unesco.org/archive/periodicreporting/EUR/cycle01/section2/762-summary.pdf>

³⁴ <http://whc.unesco.org/archive/periodicreporting/EUR/cycle01/section2/558-summary.pdf>

³⁵ <http://whc.unesco.org/archive/periodicreporting/EUR/cycle01/section2/774-summary.pdf>

³⁶ <http://www.government.se/sb/d/14471/a/198213>

National Heritage Board will be expanded; and the responsibilities of the county administrative boards will be made more explicit.³⁷

27. Finally, the *Struve Geodetic Arc*, nominated by a group of ten countries including Sweden, should be mentioned as a significant example of international cooperation in the field of cultural heritage.³⁸
28. In conclusion, the Swedish legislative framework for the protection and conservation of cultural and natural heritage is adequate, and has been further improved by the 2013 bill *Diversity of the Historic Environment*. The WH Committee considered that there is good cooperation for preservation at all levels, as well as international and bi-lateral cooperation. Since the ratification of the World Heritage Convention, there has been a clear improvement in protection and conservation of cultural and natural heritage, in terms of increased public knowledge, numbers of visitors, and improvement of the conservation. The Committee also noted, however, that the management of several sites needed to be strengthened. The abovementioned new bill specifically aims to address this issue.
29. The Swedish legislation and policies in the field of heritage protection and conservation have adequately incorporated many of the elements included in the 1972 Recommendation, in particular as regards public participation in the management and awareness raising about the national heritage, also beyond the designated WH sites, and the integration of heritage conservation into other policy areas.

3.1.3 Bulgaria

30. Bulgaria acceded to the World Heritage Convention on March 7, 1974. The Bulgarian Constitution stipulates that 'The state creates conditions for the free development of science, education, and arts and supports them. It is concerned with the preservation of national historical and cultural heritage.'³⁹ The State Party has adopted several laws that protect cultural and natural heritage, in particular the Act on Protection and Development of Culture (2013), and the earlier Cultural Heritage Act (2009).⁴⁰ The national legislation and policy documents on cultural and natural heritage protection have taken into account the requirements of the international conventions ratified by Bulgaria.⁴¹
31. Inventories established at national and local levels have been used as a basis for selecting World Heritage sites. Bulgaria has nine properties inscribed on the World Heritage List, of which seven are all of a cultural nature, and two have a natural character.⁴² Moreover, thirteen properties have been submitted on the Tentative List.⁴³ To date, no Bulgarian properties are

³⁷ <http://www.government.se/content/1/c6/21/46/32/c3707502.pdf>

³⁸ Belarus, Lithuania, Latvia, Estonia, Russian Federation, Republic of Moldova, Ukraine, Finland, Norway

³⁹ The Constitution of the Republic of Bulgaria (1991, as amended in 2003), Article 23. Other relevant provisions are Articles 3, 13, 18, 36, 39, 40, and 54.

⁴⁰ Cultural Heritage Act (2009), Cultural Monuments and Museums Act (1969, as amended in 2006), Protection and Development of Culture Act (1990, as amended in 2007), Territorial Structural Act, Protected Areas Act, all for the delimitation, utilization and protection of heritage, and decrees and regulations on concrete groups of cultural properties.

⁴¹ Hague Convention (1954), Hague Protocol (1954), UNESCO Convention (1970), Granada Convention (1985), Paris Convention (2003) (in progress), Malta Convention (1992), Second Protocol to the Hague Convention of 1954 (1999), Paris Convention (2001), Florence Convention (2000), Ramsar Convention (1971), CITES (1973), Bonn Convention or CMS (1979), Bern Convention (1979), Basel Convention (1989), Convention on Biological Diversity (1992), Framework Convention on the Value of Cultural Heritage for Society (signatory, 2005).

⁴² The cultural sites are: the *Ancient City of Nessebar* (1983), *Boyana Church* (1979), *Madara Rider* (1979), *Rila Monastery* (1983), the *Rock-Hewn Churches of Ivanovo* (1979), the *Thracian Tomb of Kazanlak* (1979), and the *Thracian Tomb of Sveshtari* (1985). The natural sites are *Pirin National Park* (1983), and *Srebarna Nature Reserve* (1983).

⁴³ Two neolithic dwellings with their interior and household furnishings and utensils completely preserved (1984), the *Magoura cave with drawings from the bronze age* (1984), the *ancient town of Nicopolis ad Istrum* (1984), the *late ancient tomb of Silistra* (1984), the *Bachkovo Monastery* (1984), the *town of Melnik and the Rozhen Monastery* (1984), the *Roussensky Lom National Park* (1984), the *Ancient Plovdiv* (2004), *Thracian Tomb with Wall Paintings beside Alexandrovo village* (2004), *Vratsa Karst Nature Reserve* (2011), *Rocks of Belogradchik* (2011), *Central Balkan National Park* (2011), and *Pobiti Kamani Natural Monument* (2011).

included in the List of World Heritage in Danger. The sites included in the WH List cover the remains of Greek temples, Byzantine churches (*Ancient City of Nessebar*), Thracien tombs (at *Kazanlak* and *Sveshtari*), medieval religious art (*Boyana Church*), 9th century sculptures and carvings (*Madara Rider*), 18-19th century Bulgarian Renaissance buildings (*Rila Monastery*), 12th century religious architecture (*Rock-hewn Churches of Ivanova*), as well as a mountainous national park (*Pirin National Park*) and a freshwater lake, home to rare bird species (*Srebarna Nature Reserve*).

32. Concerning the general implementation of the Convention, the WH Committee concluded during the First Reporting Cycle (2005/6), that the Bulgarian legislation provides sufficient protection for existing World Heritage, and it highlighted the following strengths: the development of ecotourism, the revival of local crafts and traditional productions, and the establishment of data base for monitoring biological diversity in protected areas. It also found that there is an increased role of private sector and NGOs in preservation and promotion, which has contributed to an increasing public awareness. Education of World Heritage protection in Bulgaria covers nature conservation courses at primary, secondary and tertiary levels, higher education studies on the preservation of cultural monuments, postgraduate qualification programs for architects, and participation in UNESCO's Special Project, Young People's Participation in World Heritage Preservation and Promotion.⁴⁴
33. However, the Committee also identified some weaknesses. It found that the lack of appropriate legal provisions is the primary reason that so few new nominations to the World Heritage List have been made in recent years; that funding for monitoring cultural sites and training conservation practitioners is inadequate; no management plans and general planning for the protection of inscribed sites is in existence, and research and international cooperation on issues of heritage are limited. Moreover, state subsidies for the promotion of heritage are inadequate, and cooperation between the Ministries of Culture and Education needs to be strengthened.⁴⁵
34. With respect to the preservation and conservation of the individual sites, the conclusions of the WH Centre and the Advisory Bodies, as well as the assessments of the WH Committee, include both positive and negative points. On the positive side, they found that conservation of the sites had improved since their inscription on the WH List (*Boyana Church*,⁴⁶ *Madara Rider*⁴⁷), and that public awareness of the properties had increased significantly (*Thracien Tomb of Sveshtari*,⁴⁸ *Rock-hewn Churches of Ivanovo*⁴⁹). Moreover, the recognition of the sites as world heritage also led to further research and technical studies (*Rila Monastery*,⁵⁰ *Rock-hewn Churches of Ivanovo*), and to the discovery of important additional archaeological findings (*Thracien Tombs of Kazanlak*⁵¹ and *Sveshtari*). Regarding the *Thracian Tomb of Kazanlak*, the Committee concluded that as a result of the inscription, the scientific interest for the Thracian heritage in the region increased multifold. As a result, 12 Thracian tombs were discovered, some of them with frescoes, and new methods for their protection were sought and offered.⁵² On the other hand, with respect to a natural site, *Pirin National Park*, the Committee highlighted significant risks to the property as a result of planned infrastructure

⁴⁴ <http://whc.unesco.org/archive/periodicreporting/EUR/cycle01/section1/bg-summary-en.pdf>, p.2.

⁴⁵ *Idem*

⁴⁶ <http://whc.unesco.org/archive/periodicreporting/EUR/cycle01/section2/42-summary.pdf>

⁴⁷ <http://whc.unesco.org/archive/periodicreporting/EUR/cycle01/section2/43-summary.pdf>

⁴⁸ <http://whc.unesco.org/archive/periodicreporting/EUR/cycle01/section2/359-summary.pdf>

⁴⁹ <http://whc.unesco.org/archive/periodicreporting/EUR/cycle01/section2/216-summary.pdf>

⁵⁰ <http://whc.unesco.org/archive/periodicreporting/EUR/cycle01/section2/44-summary.pdf>

⁵¹ <http://whc.unesco.org/archive/periodicreporting/EUR/cycle01/section2/44-summary.pdf>

⁵² *Idem*

development. Following a World Heritage Centre reactive monitoring mission undertaken in 2011,⁵³ the Committee recalled its position that '*if any additional development of ski facilities, ski runs, or associated infrastructure within the property are undertaken, the conditions for inscription of the property on the List of World Heritage in Danger will be fulfilled.*'⁵⁴

35. It can be concluded that Bulgaria's accession to the World Heritage Convention has led to improved protection and conservation of several sites included in the WH List. The WH Committee has observed that some of the Bulgarian properties inscribed in the WH List are adequately managed, and have produced significant positive effects. In particular, after the opening of the Thracian Tomb of Sveshtari, active research activity led to the designation of the Archaeological Reserve "Sboryanovo", as well as to the discovery of additional archaeological treasures. Also the inscription of the Tomb of Kazanlak has resulted in the discovery of many more Thracian tombs and other objects. However, the Committee also highlighted some points that require further improvement, in particular the insufficient funding for monitoring cultural sites and training conservation practitioners; the lack of management plans and general planning for the protection of inscribed sites, and the insufficient cooperation between the Ministries of Culture and Education. Moreover, since significant threats to some of the properties have been identified, including for the *Pirin National Park*, which may even risk being included in the List of World Heritage in Danger, compliance with recommendations made by the WH Committee need to be closely monitored.
36. As regards the general conservation and protection of cultural and natural heritage in Bulgaria, beyond the sites included in the WH List, several of the abovementioned weaknesses identified by the WH Committee equally apply to the broader context of heritage protection. While the national legislation incorporates the main points included in the 1972 Recommendation, certain improvements would be required, including increased funding for training of conservation personnel; a more active involvement of civil society; and a more systematic planning of heritage conservation measures.

3.1.4 Lithuania

37. Lithuania ratified the World Heritage Convention on 31 March 1992. The Lithuanian Constitution stipulates that "The State shall support culture and science, and shall take care of the protection of Lithuanian historical, artistic and cultural monuments and other culturally valuable objects."⁵⁵ The State Party has adopted several laws that protect cultural and natural heritage, in particular the Law on Protection of Immovable Cultural Heritage (2004, as amended in 2008).⁵⁶ While this law does refer to treaties in the field of cultural heritage, it does not explicitly state that its purpose is to implement the World Heritage Convention. The national legislation and strategic policy documents on cultural and natural heritage protection have taken into account the requirements of the international conventions ratified by

⁵³ WHC-13/37.COM/7B.Add

⁵⁴ WHC-13/37.COM/20, 5 July 2013 (emphasis added)

⁵⁵ Constitution of the Republic of Lithuania (1992), Article 42. Other relevant Articles are Art 29, 37 and 45.

⁵⁶ Law on Protection of Immovable Cultural Heritage (2004, as amended in 2008), Law on (delete?:Protection of Movable Cultural Properties (1995, amended in 2004, 2008), Law on Protected Areas (1993, as amended in 2001), Law on Environmental Protection (2010), Law on Territorial Planning (1995), Law on Coastal Strip (2002), and local level Management Plans and Regulations of Protected Areas.

Lithuania.⁵⁷ Specific legislation is also in force for two of the properties inscribed on the WH List.⁵⁸

38. State authorities are responsible for implementing the legislation, in particular the Ministry of Culture (Department of Cultural Heritage Protection), the Ministry of Environment (State Protected Areas Service), the Centre of Cultural Heritage, municipalities, and the Administrations of National Park Reserves. Services are provided at national and local levels. The protection and conservation of heritage also involves the private sector, local communities and NGOs.⁵⁹
39. Inventories for cultural and natural heritage are established at local and national level, and are used as a basis for selecting World Heritage sites. Lithuania has four properties inscribed on the World Heritage List, which are all of a cultural nature. These are the *Curonian Spit* (2000), *Kernavė Archaeological Site* (2004), *Struve Geodetic Arc* (2005), and *Vilnius Historic Centre* (1994). In 2011 the Kernavė Archaeological site has been granted “enhanced protection” under the Second Protocol to the 1954 Hague Convention on the protection of cultural property in the event of armed conflict. Moreover, one property has been submitted on the Tentative List: Trakai Historical National Park (2003). To date, no Lithuanian properties are included in the List of World Heritage in Danger. The WH Committee considered including the *Curonian Spit* on this list, because of the risks from both natural forces and human intervention. However, after the conclusion of an agreement between Lithuania and Russian Federation in 2005, the WH Committee decided that the property did not require special protection as heritage in danger.⁶⁰
40. As for the general implementation of the World Heritage Convention, during the First Reporting Cycle (2005/6), the WH Committee identified the following strengths and weaknesses. The Committee positively evaluated the fact that laws, legal acts and institutions are updated to live up to the Convention’s and EU Directives on natural and cultural heritage; that World Heritage management institutions are established; and that Lithuania has developed strong expertise in heritage protection and participates in relevant forums to share this knowledge. The Committee also considered that the presentation and general awareness of World Heritage sites is adequate.⁶¹ Education programs in the field of World Heritage protection are the UNDP pilot project “Community Education in Heritage Protection” and the planned “World Heritage in Young Hands.” On the other hand, the Committee mentioned that there was insufficient cooperation with municipalities in the nomination process of heritage sites, and the lack of specific laws on the protection of World Heritage sites. The Committee also found that the activities on natural and cultural heritage were not sufficiently harmonized.
41. As for the protection and conservation of the individual WH sites, the threats to the *Curonian Spit* have been closely monitored by the World Heritage Committee. This site is formed by a peninsula separating the Baltic Sea from the Curonian Lagoon that belongs to the national territories of both Lithuania and the Russian Federation, and it is an outstanding example of a landscape of sand dunes that is under constant threat from natural forces (wind and tide). In

⁵⁷ Hague Convention (1954), Protocol to the Hague Convention (1954), UNESCO Convention (1970), Granada Convention (1985), Valetta Convention (European Convention for the Protection of the Architectural Heritage (1992), Rome Convention (1995), Second Protocol to the Hague Convention of 1954 (1999), Paris Convention (2003), Florence Convention (2000), CITES Convention (1973), Bonn Convention (1979), Bern Convention (1979), Basel Convention (1989) and the Convention on Biological Diversity (1992). Ramsar Convention (1971), Intangible Heritage Convention (2003), Diversity of Cultural Expressions Convention (2005), European Cultural Convention (1954), European Landscape Convention (2000).

⁵⁸ (1) the Vilnius Old Town Revitalisation Strategy and the General Plan of Vilnius City, and (2) Legal Provisions of the Kursiu Nerija (Curonian Spit)

⁵⁹ <http://whc.unesco.org/archive/periodicreporting/EUR/cycle01/section1/lt-summary-en.pdf>, p.1

⁶⁰ Further details will be provided below.

⁶¹ *Supra*, note 59, p. 2

2003, the World Heritage Committee expressed its concern over potential oil pollution and damage to the *Curonian Spit's* fragile ecological system from a project by a Russian company, which set up an oil platform in the Baltic Sea, 22 kilometres from the World Heritage site. The Committee strongly advised that the project should not commence before a joint Lithuanian-Russian Environmental Impact Assessment (EIA) had been carried out, and a work plan developed for measures to ensure conservation of the property. In 2004, the Committee set a deadline of February 1, 2005 for the two states parties to present a written agreement to undertake an EIA. In the absence of such an agreement, the *Curonian Spit* would be automatically inscribed on the List of World Heritage in Danger. Lithuania and the Russian Federation held several bilateral talks to discuss how to comply with the World Heritage Committee's decision, and a few days before the set date, they announced their agreement for a post-project environmental assessment. This is a good example of a situation in which the List of World Heritage in Danger has proven to be an effective tool for strengthening conservation and international cooperation.⁶²

42. Lithuania also represents an interesting example of how international cultural heritage norms may influence the outcome of international dispute settlements. This has been the case in the *Parking* arbitration by the ICSID tribunal.⁶³ As already mentioned in Section II of this report, the case concerned a dispute between Lithuania and a Norwegian company on a public tender for the construction of a modern parking lot in the historic centre of Vilnius. The claimant, Parkerings Compagniet AS, complained that the Lithuanian authorities had breached the most-favoured nation clause contained in the applicable Bilateral Investment Treaty by awarding the contract to a Dutch company. The arbitral tribunal rejected the claim, giving considerable weight to the cultural heritage impact of the claimants project as compared to the less intrusive project of the Dutch bidder and concluded that the two investors were not in 'like circumstances' for the purpose of the investment treaty.⁶⁴ The ICSID arbitral tribunal held that:

The difference in size of [the] ... project, as well as the significant extension of the [claimants project] ... into the Old Town near the Cathedral area, are important enough to determine that the two investors were not in *like circumstances*. Furthermore, the Municipality of Vilnius was faced with numerous and solid oppositions from various bodies that relied on archaeological and environmental concerns. In the record, nothing convincing would show that such concerns were not determinant or were built upon to reject [the claimant's project]. Thus, the city of Vilnius did have legitimate ground to distinguish between the two projects.⁶⁵

43. This award breaks new ground in introducing cultural heritage concerns as legitimate aims that the host state may pursue in adopting regulation or taking measures that have an impact on the economic interests of an investor and may constitute a *prima facie* violation of its obligations under international investment law.⁶⁶ In this way, it clearly demonstrates the potential for cross-fertilization between cultural heritage norms and other branches of international law.
44. It can be concluded that there have been significant improvements in the protection and conservation of cultural and natural heritage in Lithuania since its ratification of the World Heritage Convention. The State Party has adequately complied with requests and recommendations from the WH Committee, the WH Centre and the Advisory Bodies. This is particularly evidenced by the measures taken with regard to two of the four properties

⁶² WHC-13/37.COM/7B.Add, p. 200

⁶³ ICSID Arbitration Case No. ARB/05/8, *supra* note 13

⁶⁴ Francioni, Franceso and James Gordley, *Enforcing International Cultural Heritage Law*, Oxford, OUP, 2013, p. 18-19 -

⁶⁵ *Supra*, note 63 at para 396, cited by Francioni *supra* note 64, p. 18.

⁶⁶ Francioni, *supra* note 64, p. 19

inscribed on the WH List: the Curonian Spit and Vilnius Historic Centre. Even though further improvements are still required, especially in terms of cooperation with municipalities in the nomination process, and the need for specific laws on the protection of World Heritage sites, Lithuania's participation in the World Heritage Convention has clearly been beneficial, not only for strengthening the legal framework, but also for the actual protection and conservation of its cultural heritage.

45. The Lithuanian legislation and policies on heritage protection comply with the principal elements of the 1972 Recommendation, and the strengths identified by the WH Committee (i.e. the adequate legal and institutional context; appropriate practice, knowledge sharing and education) also apply to the overall implementation of international norms on cultural and natural heritage at the national level.

3.2 Americas

3.2.1 Mexico

46. Mexico ratified the World Heritage Convention on 23 February 1984. Even though the Mexican Constitution does not explicitly refer to the protection of cultural and natural *heritage*, it does recognize that Mexico is

'a pluricultural nation, based originally on its indigenous tribes which are those that are descendants of the people that lived in the current territory of the country at the beginning of the colonization and that preserve their own social, economic, cultural, political institutions.'⁶⁷

47. This recognition of the cultural rights of indigenous people was introduced through an amendment of the Constitution after the uprising of indigenous minorities in the South Eastern areas of the country.⁶⁸ Therefore, the current Constitution provides a clear mandate for the States, who 'must recognize the indigenous people and their communities in their respective constitutions and internal laws in coherence with ethno-linguistic criteria and physical settlements.'⁶⁹ Since the Mexican legal system is predominantly based on the civil law tradition, no secondary legislation is required to implement international treaties that the State has ratified. The national laws on cultural and natural heritage do not specifically refer to the World Heritage Convention. However, a Declaration on its ratification was published in the Mexican Official Journal, reproducing the full text of the Convention.⁷⁰
48. The relevant national legislation comprises several acts.⁷¹ The most important legal instrument for the protection and conservation of tangible cultural heritage is the 1972 Federal law on archaeological, artistic and historic monuments and zones. The State Party

⁶⁷ Constitution of the Republic of Mexico, 1917, last amended in 2001. Article 2. This provision further states: 'The awareness of their indigenous identity should be fundamental criteria to determine to whom the dispositions over indigenous tribes are applied. They are integral communities of an indigenous tribe that form a social, economic and cultural organization.'

⁶⁸ Sánchez Cordero, Jorge, 'Mexico', in Kono, Toshiyuki, *The Impact of Uniform Laws on the Protection of Cultural Heritage and the Preservation of Cultural Heritage in the 21st Century*, Martinus Nijhoff Publishers, 2010, 497-559, at 504.

⁶⁹ *Idem*, at 505.

⁷⁰ Decreto de promulgacion del convenio para la proteccion del patrimonio mmundial, cultural e natural http://www.unesco.org/culture/natlaws/media/pdf/mexico/mexique_decree_23_11_1972_esp_orof.pdf

⁷¹ Federal Law on national properties (2001), Federal Law on monuments and archaeological, artistic, and historical Zones (1986), Law of religious associations (establishes the patrimonial system of the churches) (1992), Organic law of the National Institute of Anthropology and History (1939), Acuerdo que establece la claisficacion y codificacion de los bienes considerados monumentos historicos o artisticos (2000), General Law for Ecological Balance and Environmental Protection (1992, amended in 2011), Regulation of the Law on Natural Protected Areas (2000), General Law for Wildlife (2000, amended in 2011), NOM-059-SEMARNAT-2010 Mexican Norm for Environmental Protection-Native Species of Wild Fauna and Flora of Mexico - Risk Categories (2010), NOM-131-SEMARNAT-2010 That establishes specifications and guidelines for whales observation (2010).

considers that its legal framework is adequate for the identification, conservation and protection of cultural and natural heritage.⁷² The national institutions responsible for the implementation of the policies on cultural and natural heritage are the National Commission of Protected Natural Areas and the National Institute for Anthropology and History (INAH).

49. Although Mexico is a Party to various international conventions, the State Party considers that there is limited integration of these international instruments into national legislation and policies.⁷³ However, following a recommendation of the Protected Areas Work Programme of the Convention on Biological Diversity, in 2007 Mexico concluded its Marine and Terrestrial GAP Analysis, with very useful information for natural heritage protection and management.⁷⁴
50. Inventories are established at the national, regional and local levels and they are used as a basis for the selection of World Heritage sites. Mexico has 32 properties inscribed on the WH List, 27 of which are cultural, and 5 are of a natural character.⁷⁵ Moreover, 25 additional properties are included in a Tentative List.⁷⁶ No sites are included in the List of World Heritage in Danger. While the Mexican sites are mostly of a cultural character, they also include some natural properties. They represent a combination of *inter alia*, archaeological remains of Mayan culture; cultural landscapes; 16th century monasteries; colonial urban architecture; pre-historic caves, as well as natural beauty, including desert landscape, a butterfly reserve and a whale sanctuary.
51. Mexico has adopted a national strategy for capacity development in the field of heritage conservation, protection and presentation but, as mentioned in the Periodic Reporting, there are some deficiencies in its implementation. The same is true for a strategy on awareness building on the national heritage, and for the integration of heritage in general planning policies and at the community level.⁷⁷
52. Concerning the protection and conservation of the individual properties, the WH Committee's assessments have identified both positive results, and some required improvements. For instance, following the 2013 State of Conservation (SOC) Reports for *Camino Real de Tierra Adentro*, and the *Historic Centre of Mexico City and Xochimilco*, the Committee expressed its satisfaction about the measures taken by the States Party to address its previous requests to mitigate threats to the Outstanding Universal Value of these properties.⁷⁸ With respect to the *Whale Sanctuary of El Vizcaino*, in 2000 the Committee commended the Mexican Government for its actions to ensure the conservation of the World Heritage values of the property and to implement the World Heritage Convention, by putting a halt to proposed salt works in this WH site.⁷⁹
53. Mexico has also participated in a joint program of various funding agencies, involving six WH sites in four different countries. In 2001 the UNESCO World Heritage Centre, the United Nations Environment Programme (UNEP) and the United Nations Foundation (UNF) partnered with Rare to develop a replicable approach for enhancing the ability of World Heritage sites - and ultimately the people working and living in these sites - to preserve biodiversity through the use of integrated ecotourism and awareness strategies that draw on methods in threat

⁷² Periodic Reporting, Mexico, Second Reporting Cycle, at par 5.4.

⁷³ *Idem*, at par 5.7. These conventions are: Convention on Wetlands of International Importance (Ramsar, adhered in 1986), Convention on Biological Diversity (1992, signed in 1993), United Nations Framework Convention on Climate Change (1992, signed in 1992), Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES, adhered in 1991),

⁷⁴ *Idem*, at par 2.7.

⁷⁵ See <http://whc.unesco.org/en/statesparties/mx>

⁷⁶ *Idem*

⁷⁷ *Idem*, at paras 5.8 and 5.9.

⁷⁸ Decision 37COM7 B.103

⁷⁹ Decision 24COMVIII.23

reduction, participatory planning, partnership building, and policy awareness. An amount of USD \$3,5 million was made available to link the conservation of biodiversity with sustainable tourism at six World Heritage sites: El Vizcaíno (Mexico), Komodo (Indonesia), Río Plátano (Honduras), Sian Ka'an (Mexico), Tikal (Guatemala), and Ujung Kulon (Indonesia). This project, which was implemented between 2001 and 2005, is a good example of international cooperation, both in terms of cooperation between several funding organizations - including a private company -, and in terms of cooperation with countries with comparable interests of natural heritage.

54. Considering the large number of sites included in the WH List and the equally high number of new properties on the Tentative List, Mexico is actively participating in, and benefitting from the protection and conservation modalities offered by the World Heritage Convention. Twenty-two requests for assistance from the WH Fund were awarded over the years, amounting to almost USD 509 000 USD. Besides Mexico's participation in the joint program linking the protection of cultural heritage with biodiversity, the parallel nomination of one of its natural heritage sites for both the WH List and the UNESCO Biosphere Reserve (*El Pinacate and Gran Desierto de Altar Biosphere Reserve*) is an interesting example of coordinating international support from different sources. The active attitude of the government to implement the World Heritage Convention, and to counter threats to the Outstanding Universal Value of the properties such as in the case of the *Whale Sanctuary of El Vizcaino*, demonstrate a significant commitment to the protection and conservation of its invaluable heritage.
55. The Mexican laws and policies for the conservation and protection of cultural and natural heritage at the national level have integrated the main elements of the 1972 Recommendation, even though further improvements are necessary. In particular, the integration of heritage conservation in general planning policies and at the community level needs to be strengthened; as well as capacity development in the field of heritage conservation, protection and presentation, and awareness building. On the whole, the Mexican implementation of the World Heritage Convention, the 1972 Recommendation and other international standards has clearly contributed to an improvement of the conservation and protection of its cultural and natural heritage.

3.2.2 Cuba

56. Cuba ratified the World Heritage Convention on March 24, 1981. The Cuban Constitution stipulates that, as part of its educational and cultural policy,
 - '(i) the state defends Cuban culture's identity and sees to the conservation of the nation's cultural heritage and artistic and historic wealth. The state protects national monuments and places known for their natural beauty or their artistic or historic values.⁸⁰
57. The Cuban national laws in the field of cultural heritage⁸¹ do not explicitly state that their purpose is to implement the World Heritage Convention. The main Acts, Law No.1 on the Protection of Cultural Heritage, and Law No.2 on National and Local Monuments were adopted prior to the entry into force of this Convention (1977), and the subsequent Decrees regulating

⁸⁰ Constitution of the Republic of Cuba, 1992, Article 39(i).

⁸¹ Law No.1 on the Protection of Cultural Heritage (1977), Law No. 2 on National and Local Monuments (1977), Decree 55 (1979), Decree 118 (1983).

the implementation of these laws do not refer to the World Heritage Convention either.⁸² Cuba has also adopted specific legislation for the protection of individual heritage sites.⁸³

58. Inventories for cultural and natural heritage are established through a computerized inventory system.⁸⁴ Cuba considers that its inventories should be improved to integrate new categories as referenced in the Operational Guidelines of the Convention (July 2012), such as cultural landscapes, and modern architecture.⁸⁵ Cuba has 9 properties inscribed on the World Heritage List, of which 7 are of a cultural, and 2 of a natural character.⁸⁶ In addition, three properties are inscribed on the Tentative List.⁸⁷ The Cuban cultural and natural heritage covers urban architecture in various styles including Baroque, neoclassical and Art Deco; cultural landscapes; and exceptional natural beauty. As it reported during the Second Reporting Cycle, Cuba considers that its policies in relation to the integration of the conservation of cultural and natural heritage into comprehensive and larger planning programs are effectively being implemented.⁸⁸ There are several institutions and universities that carry out research programs related to natural heritage.⁸⁹ Moreover, initiatives have been started to raise the standard of professional and technical workers.⁹⁰ Cuba reports that it has a national training and educational strategy for capacity development in the field of heritage conservation, protection and presentation that is being effectively implemented.⁹¹
59. It is one of the countries in the region that effectively use already existing structures to organize the promotion of activities and media products. Cuba uses the Associated Schools Network to organize projects in education, and more than 40 schools work with the World Heritage Kit in Young Hands. Cuba also implements the program “Classroom museum”. Initiated in Havana’s historic centre, this project has been exported to several municipalities in the country.⁹² By establishing classrooms within museums, children are familiarized with art and monuments, thereby transmitting to them a better understanding and appreciation of the cultural heritage of their country. This is an interesting way to fulfil the objective of the World Heritage Convention to transmit such heritage also to future generations.⁹³
60. As noted by International Council on Monuments and Sites (ICOMOS), the National Council of Cultural Heritage and local entities with heritage protection authority have achieved countrywide advances with regard to legal protection, research and inventories of cultural properties. However, the heritage sites are at risk from the very aggressive, tropical and humid climate (complicated by heavy rainfall and hurricane activity), omnipresent salinity problems, and the severe economic conditions of a trade embargo imposed over more than 40 years.⁹⁴

⁸² Decree 55 on the Rules and Regulation to Implement the National and Local Monuments Act (1979), Decree 118 on the Regulations for the Enforcement of the Act on the Protection of Cultural Heritage (1983).

⁸³ For example, the specific legislative acts concerning the site *Old Havana and its Fortifications* are: Ruling Nº 3 of the National Commission of Monuments (1978), Decree Nº 143 (1993), Council of Ministers Agreement Nº 2951(1995), Decree Nº 283 (2011).

⁸⁴ WHC-13/37.COM/10A, 17 May 2013, p. 16.

⁸⁵ *Idem*

⁸⁶ The cultural sites are the Archaeological Landscape of the First Coffee Plantations in the South-East of Cuba (2000); the Historic Center of Camagüey (2008); Old Havana and its Fortification System (1982); San Pedro de la Roca Castle, Santiago de Cuba (1997); Trinidad and the Valley de los Ingenios (1988); Urban Historic Centre of Cienfuegos (2005); and Viñales Valley (1999). The natural sites are Alejandro de Humboldt National Park (2001), and Desembarco del Granma National Park (1999).

⁸⁷ National Schools of Art, Cubanacán (2003), Ciénaga de Zapata National Park (2003), Reef System in the Cuban Caribbean (2003)

⁸⁸ *Supra*, note 84, p.20

⁸⁹ *Supra*, note 84, p. 21

⁹⁰ *Supra*, note 84, p. 24

⁹¹ *Supra*, note 84, p. 25

⁹² *Supra*, note 84, p.26

⁹³ See Suárez García, María Margerita, 'Cultural Heritage Legislation: The Historic Centre of Old Havana', in Hoffmann, Barbara (ed), *Art and Cultural Heritage: Law, Policy and Practice*, pp. 239-241, at 241.

⁹⁴ ICOMOS, Report on World Heritage at Risk, <http://www.icomos.org/risk/2001/cuba2001.htm>

61. The World Heritage Committee has expressed specific concerns about one of Cuba's natural heritage sites, the *Alejandro de Humboldt National Park*. In this national park, complex geology and varied topography have given rise to a remarkable diversity of ecosystems and to the development of many new species. According to the Committee, a state of conservation report submitted in 2010 does not address its repeated requests to close down the mining concessions granted within the boundaries of the property that could seriously and irreversibly affect the property's Outstanding Universal Value and integrity if activated.⁹⁵ Therefore, it reiterated its request to the State Party to make a clear and unequivocal commitment to eliminate these existing mining concessions.⁹⁶
62. Following a 2011 Decision of the WH Committee,⁹⁷ states parties to the World Heritage Convention were invited to propose World Heritage properties in their country that they regard as an example of successful management and sustainable development, with a view to establishing 'best practices'. In response to this invitation, Cuba has presented the management of *the integral refurbishment of Old Havana Historical Centre* as such an example. In 1993, Old Havana was named 'Priority Zone for Preservation', and a local authority, the Office of the Historian of Havana City (OHCH), was granted the legal rights to carry out an integral development plan with a self-financing character. Beyond the aspect of heritage conservation, the project included the economic dimension relating to tourism, and it focused its attention on the human development, considering culture the engine and main economic asset for the development of the territory.⁹⁸ The site management also covers numerous communication and education initiatives. The success of the model has served as an example for other areas of the city (the *Traditional Malecón* and the *China Town of Havana*) and the creation of similar Offices in other Cuban cities (Trinidad, Camagüey, Cienfuegos and Santiago de Cuba), even implementing projects of collaboration with various cities of Venezuela.⁹⁹ This is a good example of comprehensive management, integrating also social and economic factors, which is also in line with the 1972 Recommendation.
63. In sum, the Cuban legislative framework provides a sufficient basis for the protection and conservation of cultural heritage, and its implementation is entrusted to national and local authorities. The example of the historic city of Havana demonstrates an effective management, integrating besides heritage conservation and protection, also social and economic objectives. On the other hand, the WH Committee has expressed concerns about existing mining concessions within the boundaries of the *Alejandro de Humboldt National Park*. Considering the continuous risks from harsh climate conditions (including tropical humidity, heavy rainfall and hurricanes), as well as the negative effects of the decennia-long economic embargo on the state's financial resources.
64. It may be concluded that the regular monitoring by the WH Committee, and the assistance provided through the WH Fund (exceeding 600 000 USD), are clearly contributing to strengthening the conservation and protection of the Cuban cultural and natural heritage. Despite some required improvements as mentioned above, the Cuban legislation and policies have incorporated the main elements of both the World Heritage Convention and the 1972 Recommendation, thereby ensuring a generally adequate implementation of the international norms on cultural and natural heritage at the national level.

⁹⁵ SOC Report (2010), <http://whc.unesco.org/en/soc/494>

⁹⁶ 34COM7B.33, WHC-10/34.COM/20, 3 September 2010

⁹⁷ Decision 35COM12D.7

⁹⁸ <http://whc.unesco.org/en/list/204/bestpractice/>

⁹⁹ *Idem*

3.2.3 Chile

65. Chile ratified the World Heritage Convention on 20 February 1980. The Chilean Constitution determines that 'it is the duty of the State to promote (...) the protection and increase of the cultural patrimony of the Nation.'¹⁰⁰ This duty is included in the provision entitled 'Right to Education'. Moreover, the Constitution states that '[o]nly the law may establish the manner to acquire property and to use, enjoy and dispose of it, and the limitations and obligations derived from its social function. Said function includes (...) the *conservation of the environmental patrimony*.'¹⁰¹
66. The Chilean national legislation for the protection of the cultural and natural heritage is composed of several acts.¹⁰² Whereas Chile is a Party to various international conventions, the State Party reports that their integration into national laws and policies is limited.¹⁰³ Several legislative initiatives are underway to improve the legal framework. The Chilean Congress is currently discussing a bill that intends to establish a Biodiversity and Protected Wildlife Areas Service under the Ministry of Environment, as well as bills that envisage to reform the Law of National Monuments and to establish a Ministry of Culture and Heritage. Another bill is being drafted with the intention of providing funding for World Heritage Sites.¹⁰⁴ These initiatives aim to address the current deficiencies in human and financial resources, and to improve the institutional structure responsible for the protection and conservation of cultural and natural heritage. At present, the National Monuments Council (CMN) is responsible for cultural heritage and for paleontological properties, and has custody over Nature Sanctuaries, a category of natural heritage protection. The National Forest Service (CONAF) manages wildlife areas that are protected by the central government. Whereas regional and local bodies also have some responsibilities, the current institutional structure is heavily centralized at the national level.
67. Inventories are established at the national, regional and local levels and they are used as a basis for selection of World Heritage sites. The situation of inventories is different for cultural and natural heritage. With respect to natural heritage, all sites that are a biodiversity priority have been integrated into an inventory, and most of the sites already have official protection. On the other hand, although there is an inventory of national monuments, there is still no complete systematic inventory of cultural heritage.¹⁰⁵ Chile has five properties inscribed on the WH List, all of a cultural nature.¹⁰⁶ One of these properties is included in the List of World Heritage in Danger (*Humberstone and Santa Laura Saltpeter Works*). In addition, 18 properties are included in the Tentative List.¹⁰⁷ The Chilean WH sites represent historic buildings from the

¹⁰⁰ Constitution of the Republic of Chile, 1980, as amended in 2002, Article 10.

¹⁰¹ *Idem*, Article 24 (emphasis added)

¹⁰² Ley sobre monumentos nacionales (1970), Ley 20021 que modificada la ley 17288 sobre monumentos nacionales (2005), Ley de Bosques (1931), Reglamento de la ley 17288 sobre excavaciones y/o prospecciones arqueológicas, antropológicas y paleontológicas, Ley sobre Bases Generales del Medio Ambiente (1994), Ley sobre Recuperación y Fomento del Bosque Nativo (2010), Ley Indígena (1993).

¹⁰³ Periodic reporting, Chile, Second Reporting Cycle, at par 6. These conventions are: Convention on Biological Diversity (1992, ratified in 1994), Ramsar Convention (1971, ratified in 1981), CITES Convention (1975), Convención sobre la Conservación de las Especies Migratorias de la Fauna (Bonn Convention, 1982), Convención para la Protección de la Flora, La Fauna y las Bellezas Escénicas Naturales de América (1940, ratified in 1967), Convención internacional para la regulación de la caza de Ballenas (1946, ratified in 1979)

¹⁰⁴ *Idem*, at par 5.7.

¹⁰⁵ *Supra*, note 103.

¹⁰⁶ These are: Churches of Chiloé (2000), Historic Quarter of the Seaport City of Valparaíso (2003), Humberstone and Santa Laura Saltpeter Works (2005), Rapa Nui National Park (1995), and Sewell Mining Town (2006).

¹⁰⁷ Juan Fernández Archipelago National Park (1994), Torres del Paine and Bernardo O'Higgins National Parks, Region of Magallanes (1994), Churches of the Altiplano (1998), Archaeological sites of the Chinchorro culture (1998), Baquedano Street (1998) San Pedro de Atacama (1998), Ayquina and Toconce (1998), Cerro el Plomo high shrine (1998) La Moneda Palace (1998), San Francisco Church and Convent (1998), Houses of the hacienda San José del Carmen el Huique (1998), Malleco Viaduct (1998), Locomotive depot of the Temuco Railroad Station (1998), The Defensive Complex of Valdivia (1998), Rupestrian art of the Patagonia (1998), Fell and Pali Aike Caves (1998), Monte Verde Archaeological Site (2004), Sistema Vial Andino/ Qhapaq Ñan (2011)

17th through 19th centuries, urban architecture, monumental statues on Rapa Nui (or *Easter Island*), as well as two exceptional examples of industrial heritage.

68. Chile does not have a national strategy for capacity development in the field of heritage conservation, protection and presentation. Some universities offer graduate courses and graduate degrees in this field. However, in general, training opportunities are lacking for personnel who are directly linked to property management and supervision. On the other hand, Chilean television has played a significant role in the promotion of appreciation for the world heritage sites. This has been done through specific programs and –in past decades– through soap operas that were produced at some of these places (Easter Island, Valparaíso, Chiloé, saltpeter works). The press provides broad coverage for initiatives undertaken at the sites and for public debate about them.¹⁰⁸
69. The World Heritage Committee's assessments of the protection and conservation of the Chilean properties highlight both positive results, as well as some required improvements. In particular, with respect to the *Historic Quarter of the Seaport City of Valparaíso*, the Committee noted the active role of the civil society in the preservation of the values of the seaport city and its contribution to create a social dialogue for the conservation of the property.¹⁰⁹ On the other hand, it also noted the complexity of the legal procedures for interventions, as well as the distribution of responsibilities between national and local authorities involved in the preservation and development of the city, which complicate the management of the property.¹¹⁰
70. Regarding the *Churches of Chloé*, the Committee regretted the construction of a shopping mall in the direct vicinity of the protected property.¹¹¹ The WH Centre and the Advisory Bodies concluded that no legal provisions or regulatory measures are in place to ensure the protection of the buffer zone around each of the inscribed components, and that no environmental or heritage impact assessments are legally required for new constructions.¹¹²
71. The site *Humberstone and Santa Laura Saltpeter Works* was placed on the List of World Heritage in Danger in 2005, due to the vulnerability of the historic structures and the effects of an earthquake. Following the State of Conservation Report of 2013, the World Heritage Committee recognized the progress made in the implementation of conservation and management measures. It adopted a 'Desired state of conservation' for the removal of the property from the List of World Heritage in Danger, as well as a series of corrective measures and a timeframe for their implementation.¹¹³
72. In sum, in Chile, the inscription of cultural sites on the World Heritage List has clearly contributed to strengthening the protection and conservation of its cultural heritage. Significant efforts are being made to improve the national legal framework, with the presentation of several bills that are currently under discussion in Congress. If adopted, this new legislation will lead to improvements of the institutional context -including the creation of a Ministry of Culture and Heritage - and to increased funding for protection and conservation and cultural and natural heritage. These improvements will lead to better compliance with both the World Heritage Convention, and the 1972 Recommendation.
73. The inscription of one property on the List of World Heritage in Danger and the assistance provided from the WH Fund have significantly supported the efforts of the national authorities

¹⁰⁸ *Supra* note 103, at paras 9.3, 9.4 and 11.1.9.

¹⁰⁹ Decision 37COM7B.95, par 3

¹¹⁰ *Idem*, para 4

¹¹¹ 37COM7B.94, para 3.

¹¹² SOC Report 2013, WHC-13/37.COM/7B

¹¹³ 37COM7A.37, paras 4, 5

to take measures for the conservation of this industrial monument. Moreover, it may be noted that Chile has included 18 new properties on the Tentative List, only 2 of which are of a natural character. Considering that the Chilean Constitution explicitly refers to the protection of 'environmental patrimony', there could be scope for the identification of more natural WH sites. Due to its geographical situation, the climatic diversity and the variety of exceptional landscapes, Chile would be well placed to bring more of the natural part of its impressive heritage under the international protection of the World Heritage Convention. Finally, Chile's compliance with the 1972 Recommendation can generally be considered adequate, and will be further improved by the abovementioned forthcoming new laws.

3.3 Asia

3.3.1 India

74. India ratified the World Heritage Convention on 14 November 1977 and has since been an active participant in the system. The Indian government has been entrusted with three mandates to the World Heritage Committee, from 1985 to 1991, from 2001 to 2007 and from 2011 to 2015 respectively. To date, 30 Indian properties are inscribed on the World Heritage List, with large preponderance of cultural properties (24) over natural ones (6).¹¹⁴ Other 33 properties have been submitted on the Tentative List, again with preponderance of cultural properties over natural ones (26-7).¹¹⁵
75. Indian culture is very ancient, and has developed throughout all prehistoric and historic ages. This characteristic is reflected in the diversity of national cultural properties inscribed on the World Heritage List. Two of the 24 properties include elements originating in prehistory, while two others feature items from the 2nd-1st centuries BC. Another property dates back to the 3rd Century AD. However, the majority of them (7) originated in the period ranging from the 5th to the 10th Century AD, and other four from the 13th to the 16th Century AD. Five Indian cultural properties date back to the 16th Century AD, one to the 17th Century AD, and the most recent one, the Mountain Railways of India, originates in the 19th-20th centuries AD. Most of the cultural properties in point are represented by architectural and/or sculptural heritage.
76. As for natural properties, five of the six sites are national parks or wildlife sanctuaries having the main purpose of protecting endangered species, including tiger, Indian rhinoceros, snow leopard, Indian elephant and many species of birds. One site, the Nanda Devi and Valley of Flowers National Parks, is also characterized by the presence of endemic alpine flowers. The last of the six Indian World Heritage natural properties, the Western Ghats, is a mountain chain.
77. Of the Indian properties inscribed so far on the World Heritage List, none is at present placed on the List of World Heritage in Danger. However, two of those properties were included in that list in the past. In, 1992, the *Manas Wildlife Sanctuary* was inscribed on the List of World Heritage in Danger due to the invasion of the Bodo tribe in Assam, which occupied part of the area of the Sanctuary and developed illegal cultivation therein; the World Heritage Committee, therefore, decided to place the Sanctuary on the List of World Heritage in Danger after noting with regret that the Indian authorities had not provided a report on the status of conservation of *Manas*, "despite repeated requests over the last three years".¹¹⁶ Subsequently, in 1999, the property of the *Groups of Monuments at Hampi* was inscribed on the same list, following the

¹¹⁴ See <<http://whc.unesco.org/en/statesparties/in/>> (accessed 19 January 2014).

¹¹⁵ Ibid.

¹¹⁶ See World Heritage Committee, Sixteenth Session, Santa Fe, United States of America, 7-14 December 1992, Doc. WHC-92/CONF.002/12 of 14 December 1992, p. 28.

partial construction of two cable-suspended bridges within the protected archaeological areas.¹¹⁷ However, the latter property was removed from the List of World Heritage in Danger in 2006, after the World Heritage Committee commended India for the strong progress made towards the effective management of the property and for the quality of its management plan.¹¹⁸ As for the *Manas Wildlife Sanctuary*, it was removed from the List of World Heritage in Danger in 2001, on account of “the progress achieved by [India] in the implementation of most of the corrective measures, including the State Party’s rapid response to the 2011 mission recommendations to set up an integrated monitoring system and a swamp deer recovery plan”.¹¹⁹

78. In general terms, Indian legislation on the protection of cultural property is well-advanced, although from available sources it appears that no specific laws exist concerning the regulation and management of World Heritage properties. In particular, the *Ancient Monuments and Archaeological Sites and Remains Act 1958*, updated in 2010,¹²⁰ regulates ancient and historical monuments and archaeological sites and remains declared to be of national importance pursuant to previous acts or by the Central Government. In particular, the Act regulates all activities related to the said monuments, sites and remains, including preservation, acquisition of rights, maintenance, protection from pollution, misuse or desecration as well as right of access. The Act also establishes the rules applicable to “Protected Areas”, within which no person may construct any building or carry out any mining, quarrying, excavating, blasting or any operation of a like nature, or utilize the area or any part thereof in any other manner without the permission of the Central Government.¹²¹ The 1958 Act is complemented by the *Ancient Monuments and Archaeological Sites and Remains Act (Framing of Heritage Byelaws and Other Functions of the Competent Authorities) Rules, 2011*, providing in particular for the requirement to obtain a permission released by a competent authority in order to carry out major works involving the monuments, sites and remains concerned, in particular construction works.¹²² The complex of provisions included in the relevant domestic legislation appears adequate to ensure that the integrity of the main examples of Indian cultural heritage (including those inscribed on the World Heritage List) is not compromised. The Indian legislative framework and the policies adopted to implement them also incorporate the most important guidelines included in the 1972 Recommendation.
79. At the end of the First Periodic Reporting Cycle (2000-2006),¹²³ the World Heritage Committee noted that inventories of monuments and sites of national importance and state-level significance were maintained by the Archaeological Survey of India (ASI) and state Archaeology Departments, for a total amount of 3,611 of such monuments and sites.¹²⁴

¹¹⁷ See World Heritage Committee, Decision 23COM VIII.1-2, in Twenty-third session, Marrakesh, Morocco, 29 November – 4 December 1999, Doc. WHC-99/CONF.209/22 of 2 March 2000, p. 32.

¹¹⁸ See World Heritage Committee, Decision 30 COM 7A.24, in Decisions adopted at the 30th Session of the World Heritage Committee, Vilnius, Lithuania, 8-16 July 2006, Doc. WHC-06/30.COM/19 of 23 August 2006, p. 39.

¹¹⁹ See World Heritage Committee, Decision 35 COM 7A.13, in Decisions adopted by the World Heritage Committee at its 35th Session, Paris, UNESCO Headquarters, 19-29 June 2011, Doc. WHC-11/35.COM/20 of 7 July 2011, p. 21-22.

¹²⁰ See *Ancient Monuments and Archaeological Sites and Remains Act 1958* (Act No. 24 of 1958), Updated as the *Ancient Monuments and Archaeological Sites and Remains (Amendment and Validation) Act, 2010*. All national legislative instruments quoted in the present Report have been taken from the UNESCO Database on National Cultural Heritage Law, available at <<http://www.unesco.org/culture/natlaws/>> (accessed 25 January 2014).

¹²¹ See Section 19.

¹²² See Sections 6 and 20.

¹²³ The Second Periodic Reporting Cycle (2008-2015) is still ongoing, and its outcomes are not yet available at the moment of the preparation of the present Report; see <<http://whc.unesco.org/en/periodicreporting/>> (accessed 25 January 2014).

¹²⁴ See “Application of the World Heritage Convention by the States Parties – India”, available at <<http://whc.unesco.org/archive/periodicreporting/apa/cycle01/section1/in-summary.pdf>> (accessed 25 January 2014), p. 1; this document is a synthesis of “Periodic Reporting Exercise on the Application of the World Heritage Convention, Section I, Application of the World Heritage Convention by the State Party – State Party: India”, 5 December 2004, available at <<http://whc.unesco.org/archive/periodicreporting/apa/cycle01/section1/in.pdf>> (accessed 25 January 2014).

80. With respect to natural heritage, several acts have been enacted, including the *Indian Forest Act* (1927), the *Wildlife Protection Act* (1972), the *Forest Conservation Act* (1980), the *Environment Protection Act* (1986), and the *Biodiversity Conservation Act* (2002).¹²⁵ The number of protected areas has been increased from 65 in the 1970s to 587 national parks and sanctuaries for wild flora and fauna in 2002.¹²⁶ Management plans of natural parks are regularly prepared for 5-10 years periods by site managers in consultation with NGOs, people's representatives and research institutions; environmental protection schemes are also developed by the central government, which have included eco-development in and around protected areas, protection of tigers and elephants, wetland conservation, and conservation and management of coral reefs, biosphere reserves.¹²⁷ The management of both cultural and natural heritage usually involves representatives of local communities, including NGOs and other bodies representing the civil society. Also management plans concerning Indian World Heritage properties appear to be comprehensive and well structured.¹²⁸ Another important aspect to be emphasized is that funds are allocated at various levels for the protection of cultural and natural heritage, including by the "National Culture Fund" (NCF), established in 1996 to encourage private-public partnership in the restoration of heritage.¹²⁹
81. Activities for information and awareness building concerning national World Heritage include the observance of a "World Heritage Week" in November of each year. With regard to cultural heritage in particular, a series of guidebooks has been published and distributed to the public, in addition to postage stamps and short films. The Indian government itself has emphasized that the motivation to propose nominations for inscription on the World Heritage List emanates from the desire "to bring out the universal value and hidden symbolic meaning of a given property to humanity at large".¹³⁰ Concerning natural heritage, "Eco-clubs" have been established along the whole country as "non-formal proactive system[s] to involve school children in conservation education". Several centres for environmental information have also been established.¹³¹
82. In the last decade, the Indian government has adopted concrete measures to comply with the recommendations of the World Heritage Committee concerning some crucial aspects related to the implementation of the World Heritage Convention. One of the main concerns of the Committee is represented by the need of identifying categories of cultural and natural heritage, which are under-represented in the World Heritage List, in order to promote their inclusion in the List itself.¹³² To this end, India has carried out a revision of its own Tentative List involving state government authorities and different ministries, as well as local bodies and NGOs on a regional basis.¹³³
83. Other issues raised by the World Heritage Committee concern, with respect to natural heritage, the need to reduce man-wildlife conflicts, assessment of threat status of endangered species, restoration of degraded habitats, poaching control, community participation, conflict resolution, intelligence gathering, education and ecotourism.¹³⁴ Various initiatives have

¹²⁵ *Ibid.*, p. 2.

¹²⁶ *Ibid.*, p. 3.

¹²⁷ *Ibid.*, p. 2.

¹²⁸ See Jantar Mantar, Jaipur, Management Plan 2009-2013, Department of Art, Literature and Culture, Rajasthan, January 2009, available at <<http://whc.unesco.org/en/documents/105315>> (accessed 25 January 2014).

¹²⁹ *Ibid.*

¹³⁰ See "Application of the World Heritage Convention by the States Parties – India", n. 14 above, p. 3.

¹³¹ *Ibid.*

¹³² This concern is expressed, for example, in the *Cairns Decisions* of 2000, 24COM VI, in World Heritage Committee, Twenty-fourth session, Cairns, Australia, 27 November – 2 December 2000, Report, Doc. WHC-2000/CONF.204/21 of 16 February 2001, p. 9.

¹³³ See "Application of the World Heritage Convention by the States Parties – India", n. 14 above, p. 1.

¹³⁴ *Ibid.*, p. 3.

been/are being developed by the Indian government to address these issues. For example, with respect to the problem of man-wildlife conflicts, various aspects are being considered for improvement, including capacity-building of specialized staff¹³⁵ and ad hoc studies in different parts of the country.¹³⁶ Concerning protection of endangered animal species, ecological and behavioural studies have been carried out, including on tigers, leopards, elephants, bears and lions.¹³⁷ In situ captive breeding programmes have also been developed, for example with respect to three endangered species of crocodiles, resulting in the raising and releasing of thousands of them in wild.¹³⁸ Following these and other efforts, the population of a number of critically endangered species – including tigers, lions, rhinos, wild asses, Asian elephants and leopards – has substantially increased.¹³⁹ Indian authorities have also been working on the issue of improvement of community participation; among the other measures taken in this respect, the Indian Board for Wildlife has developed a policy which includes effective and sensitive consideration of the interests of poor and tribal people living around protected areas, through ensuring their maximum participation in the preparation of nominations and management of the relevant properties.¹⁴⁰ Last but not least, as regards ecotourism, the *National Tourism Policy* adopted in 2002 emphasizes the deep-rooted relationship of tourism with natural and cultural heritage, trying to promote integration of tourism with other sectors, including site development, improved sanitation, the development of an integrated circuit through road, rail and waterways, development of village tourism, visitor facilities, adventure tourism and wildlife tourism.¹⁴¹ In addition, the involvement of local people in tourism-related activities has helped in improving awareness and support for conservation of natural heritage.¹⁴²

84. Coming to cultural heritage, the aspects that should be improved include environmental impact studies, training programmes for site managers, enhancement of digital documentation and youth education with electronic and print media.¹⁴³ These are crucial aspects. For example, according to the outcomes of the First Periodic Reporting Cycle, no specific training module has been developed in India for World Heritage sites, and the staff working in these sites has received no heritage training in or outside the country,¹⁴⁴ although specific training initiatives have been developed, especially concerning natural heritage.¹⁴⁵
85. In December 1996 the Supreme Court of India enacted a very important judgment regarding World Heritage properties, in the case *M. C. Mehta (Taj Trapezium Matter) vs. Union of India and Others*.¹⁴⁶ The judgment concerned the activity of industries located in the *Taj Trapezium Zone* (TTZ), a defined area of 10,400 sq. km around the Taj Mahal having the purpose of protecting the monument from pollution. The name of the Zone derives from the fact that the TTZ is shaped like a trapezoid. It includes over 40 protected monuments, including three World Heritage properties – the Taj Mahal, Agra Fort and Fatehpur Sikri. In light of the necessity to

¹³⁵ See “Periodic Reporting Exercise on the Application on the World Heritage Convention, Section I, Application of the World Heritage Convention by the State Party – State Party: India”, n. 14 above, p. 13.

¹³⁶ *Ibid.*, p. 14.

¹³⁷ *Ibid.*

¹³⁸ *Ibid.*, p. 18.

¹³⁹ *Ibid.*, p. 19.

¹⁴⁰ *Ibid.*, p. 8.

¹⁴¹ *Ibid.*, p. 17.

¹⁴² *Ibid.*, p. 19.

¹⁴³ See “Application of the World Heritage Convention by the States Parties – India”, n. 14 above, p. 3.

¹⁴⁴ See “Periodic Reporting Exercise on the Application on the World Heritage Convention, Section I, Application of the World Heritage Convention by the State Party – State Party: India”, n. 14 above, p. 26.

¹⁴⁵ *Ibid.*, *passim*.

¹⁴⁶ Writ Petition (C) No. 13381 of 1984 (Kuldip Singh, Faizanuddin JJ), Judgment of 30 December 1996, available at <<http://www.elaw.org/node/2718>> (accessed 25 January 2014).

protect the Taj Mahal and the other monuments against environmental pollution, the Court ruled to ban the use of coal/coke by the said industries, ordering them to switch over natural gas or to relocate outside the TZZ. The Court also ordered the Gas Authority of India Ltd. (GAIL) to supply natural gas to the industries concerned, which had to adapt their technologies to use such a more environment-friendly fuel. The Court gave significant weight to the fact that the Taj Mahal is a monument inscribed on the World Heritage List, relying on the expert advice of UNESCO experts sought by the government of India.¹⁴⁷ It emphasized that

“the old concept that development and ecology cannot go together is no longer acceptable. Sustainable development is the answer. The development of industry is essential for the economy of the country, but at the same time the environment and the ecosystems have to be protected. The pollution created as a consequence of development must be commensurate with the carrying capacity of our ecosystems”.¹⁴⁸

86. It can be concluded that in recent years, the action by the government of India in implementing the World Heritage Convention has considerably improved. India has adopted several measures to comply with the recommendations of the World Heritage Committee. The most urgent problems have been solved with efficiency and within a relatively limited amount of time, as shown by the cases of the *Groups of Monuments at Hampi* and of the *Manas Wildlife Sanctuary* previously described, recently removed from the List of World Heritage in Danger after India has complied with the specific recommendations of the World Heritage Committee. The national legal legislation, as well as the policies adopted in the field of heritage protection and conservation, which apply to the national heritage as a whole are, to a large extent, in line with the 1972 Recommendation.
87. As a concluding general remark, it is opportune to note that in India legislation, specific initiatives as well as ad hoc institutions are much more advanced in the sector of natural heritage than in the cultural field. Under the perspective of the World Heritage system, this circumstance may appear paradoxical, in consideration of the imbalance in favour of cultural heritage in the number of properties inscribed on the World Heritage List.

3.3.2 Uzbekistan

88. Uzbekistan, as a successor state to the USSR, became party to the World Heritage Convention on 13 January 1993. Four Uzbek properties are inscribed on the World Heritage List, one of which – *Itchan Kala* – was inscribed in 1990 under the Soviet sovereignty. The three properties subsequently inscribed are the *Historic Centre of Bukhara* (1993), *the Historic Centre of Shakhrisabz* (2000) and *Samarkand – Crossroad of Cultures* (2001). They are all cultural properties.¹⁴⁹ No Uzbek property has ever been included in the List of World Heritage in Danger. Other 31 properties have been submitted on the Tentative List, with overwhelming preponderance of cultural sites (24) over natural (4) and mixed (3) properties.¹⁵⁰
89. The preponderant attention devoted by Uzbekistan to cultural heritage is justified on account of the extraordinary character of its cultural properties, which have been shaped by a long history in a land located in the middle of the Silk Road and has always represented a crossroads and melting pot of different cultures. The magnificence of such a heritage is shown by the cities of Bukhara, Samarkand and Khiva (*Itchan Kala*), which have more than 2,000 years

¹⁴⁷ Ibid., at 26.

¹⁴⁸ Ibid., at 30.

¹⁴⁹ See <<http://whc.unesco.org/en/statesparties/uz/>> (accessed 26 January 2014).

¹⁵⁰ Ibid.

of history, with their most significant development in the period ranging from the 14th to the 17th centuries.

90. As noted above, four Uzbek properties are inscribed on the World Heritage List, all of cultural character. No Uzbek property has ever been included in the List of World Heritage in Danger. 31 properties are included on the Tentative List, with marked preponderance of cultural properties. At the end of the First Periodic Reporting Cycle (2000-2006) only cultural properties were included in the Tentative List.¹⁵¹ However, in more recent times the Tentative List has been updated through including four natural and three mixed sites. The motivation inspiring the selection of properties for the nomination process is described as that of “[p]reserv[ing] and safeguard[ing] the unique historical and architectural properties located within own territories on the higher level (national and international)”.¹⁵² Such a motivation clearly shows how the attention of the Uzbek authorities is centred on cultural heritage. The nomination process is based on a preliminary list of monuments prepared taking into account “the prescriptions from the governmental experts”, which in turn arise from information collected from local municipalities and local citizens; such a list is subsequently submitted to different institutions and the final document is prepared by the national authority competent in the field of cultural heritage, i.e. the Principal Department for Preservation and Management of Cultural Monuments and Properties of the Ministry of Cultural Affairs of the Republic of Uzbekistan.¹⁵³
91. The main legislative act adopted by Uzbekistan concerning the protection of cultural heritage is the *Law on Preservation and Utilization of Objects of Cultural Heritage* of 2001.¹⁵⁴ According to Article 10, safeguarding (“State guards”) of cultural heritage is realized through the following means: State registration of sites presenting historic or cultural value and maintenance of a national public register (cadastre) of the relevant objects; realization of historic-cultural expertise; drawing up of zones of guards of sites of cultural heritage; regulation of activities in areas where cultural heritage is located; delineation of sites of town-planning activity in the areas where cultural properties are located; installation of security signs; monitoring of the conditions of the relevant sites; and other diverse measures determined according to local law. A specific provision of the Law in point – Article 19 – is devoted to the inclusion of “sites of a cultural heritage in a List of a world-wide cultural heritage sites... presenting outstanding universal value from the point of view of a history, art, science, aesthetics, ethnology or anthropology, can be referred to the sites world-wide cultural heritage in the order established by the Convention about guards of world-wide cultural and natural heritage, by including in List of a world-wide cultural heritage”.¹⁵⁵ The provision reads as follows: “[o]n the basis of historical-cultural expertise the proposals on submitting of documentations on objects of cultural heritage to the World Heritage List of the World Heritage Committee of [...] (UNESCO), are carried out through the National Commission of the Republic of Uzbekistan for UNESCO”.
92. The Law of 2001 is complemented by the *Regulation on Historic-Cultural Expertise of Objects of a Cultural Heritage*, adopted in 2002. Also in 2002, the Cabinet of Ministers of the Republic of

¹⁵¹ See “Application of the World Heritage Convention by the States Parties – Uzbekistan”, available at <<http://whc.unesco.org/archive/periodicreporting/APA/cycle01/section1/uz-summary.pdf>> (accessed 25 January 2014), p. 1.

¹⁵² See “Periodic Reporting Exercise on the Application of the World Heritage Convention, Section I, Application of the World Heritage Convention by the State Party – State Party: Republic of Uzbekistan”, 13 March 2003, available at <<http://whc.unesco.org/archive/periodicreporting/APA/cycle01/section1/uz.pdf>> (accessed 25 January 2014), p. 6.

¹⁵³ Ibid.

¹⁵⁴ *Law of the Republic of Uzbekistan on Preservation and Utilization of Objects of Cultural Heritage*, 30 August 2001, No. 269-II, available at <<http://www.unesco.org/culture/natlaws/>> (accessed 25 January 2014).

¹⁵⁵ This is an exact quote of the English translation of the law, provided by the Republic of Uzbekistan.

Uzbekistan adopted Decree No. 269 “About measures of further improvement of protection and exploitation of cultural heritage properties”.¹⁵⁶

93. In terms of operational measures, in the period 1993-1996 measures of engineer fortification, conservation of surviving parts and details of architectural decor, as well as works on facilities in protected areas were carried out.¹⁵⁷ Further works, aimed at improving geological conditions of the relevant areas, decreasing new constructions in protected areas, reconstruction of old dwelling structures through using handicrafts workshops and community social centres, as well as supplying such areas with the necessary facilities (including gas, water, electro energy supplies, telephone communications) were planned for the period 1996-2010. At the end of the First Periodic Reporting Cycle, those works had already begun. In particular, Decree of President of the Republic of Uzbekistan 15 April 1999 No. VII-2286¹⁵⁸ elaborated measures on tourism development in areas where architectural and archaeological monuments are located, including preparation and publication of books and newspapers, advertising prospects about historical and cultural monuments of Uzbekistan, elaboration of websites and CD-ROMs.¹⁵⁹ Management plans of Uzbek World Heritage Property appear to be of good quality.¹⁶⁰
94. Several activities for information and awareness-raising concerning World Heritage properties are developed in Uzbekistan. They include the following: an UNESCO Chair on Management and Preservation of Historic Centres at the Samarkand State Institute of Architecture and Civil Engineering, opened in 1999; documentary films, anniversary coins, postcards and stamps dedicated to sites inscribed on the World Heritage List, as well as dedicated TV/radio programmes; translation into Uzbek and dissemination in schools of the UNESCO Kit “World Heritage in Young Hands”,¹⁶¹ and an Annual Central Asian Youth Camps on World Heritage in 1997-2002 organized by the National Commission of Uzbekistan for UNESCO; inclusion in school curricula of ten hours per week which are dedicated to cultural heritage and spirituality.¹⁶²
95. One of the main issues relating to the implementation of the World Heritage Convention by the government of Uzbekistan concerns the almost exclusive attention devoted to cultural heritage, with very little attention being reserved to natural properties. However, as previously noted, a partial correction of this imbalance is being undertaken through the inclusion of a few natural (four) and mixed (three) properties in the Tentative List.
96. Another significant issue concerns the technical difficulties experienced by Uzbekistan in mapping cultural heritage and incorporating “international experience”.¹⁶³ In order to minimize this problem, the national higher and special secondary educational institutions entrusted with the training of young professionals – namely the Tashkent Architecture and Building Construction Institute, the Samarkand State Architecture and Building Construction Institute, the Tashkent Arts and Design Institute, as well as other colleges and lyceums specialized in different heritage-related fields (e.g. building construction) – have established

¹⁵⁶ See “Periodic Reporting Exercise on the Application of the World Heritage Convention, Section I, Application of the World Heritage Convention by the State Party – State Party: Republic of Uzbekistan”, n. 4 above, p. 8.

¹⁵⁷ Ibid.

¹⁵⁸ “National Programme on Development of Tourism in Uzbekistan in the period till 2005”

¹⁵⁹ See “Periodic Reporting Exercise on the Application of the World Heritage Convention, Section I, Application of the World Heritage Convention by the State Party – State Party: Republic of Uzbekistan”, n. 4 above, p. 8.

¹⁶⁰ See World Heritage Committee, Thirty-second session, Quebec City, Canada, 2-10 July 2008, Item 7 of the Provisional Agenda: State of conservation of properties inscribed on the World Heritage List and/or on the List of World Heritage in Danger, Mission Report, Samarkand – Crossroads of Cultures World Heritage site (Uzbekistan) (603 rev), 12 – 17 December 2007, 19 May 2008, p. 9; see also World Heritage Committee’s Decision 31 COM 7B.74 (2008).

¹⁶¹ See <<http://whc.unesco.org/en/educationkit/>> (accessed 26 January 2014).

¹⁶² See “Application of the World Heritage Convention by the States Parties – Uzbekistan”, n. 3 above, p. 2.

¹⁶³ See “Application of the World Heritage Convention by the States Parties – Uzbekistan”, n. 3 above, p. 2.

close links of cooperation with specialized foreign universities, which allow them to share experience and carry out innovations in the field of preservation of cultural properties.¹⁶⁴

97. One further problem is represented by the fact that cultural properties located in desert areas are built with earthen unbaked bricks, which make them particularly vulnerable to climatic extremes of rain and snow.¹⁶⁵ In this respect, the improvement of the quality of construction materials would be highly desirable.¹⁶⁶ At the same time the replacement of original building materials with new ones would result in the loss of integrity of the properties concerned.
98. Like many other former Soviet republics, Uzbekistan has been forced to face a slow process of enfranchisement from the legacies of its Communist past. This has inevitably had an impact on all sectors of the national society, including protection of its cultural and natural heritage. Cultural heritage represents one of the main elements of national pride, and its preservation has been reinforced in recent years also through a more active role within the system established by the World Heritage Convention. More than by limited number of properties inscribed on the World Heritage List (four), this is shown by the careful renovation of the Tentative List, with the inclusion of, *inter alia*, a few natural and mixed properties.
99. A number of steps have been made in order to improve national action in the field of cultural heritage protection. First, the degree and quality of local communities' participation in the management of cultural properties has been improved. Cultural heritage belonging to the State cannot be privatized, but the *Law on Preservation and Utilization of Objects of Cultural Heritage* of 2001 establishes that landowners have the obligation to preserve the "external and internal appearance" of their properties which are included within an area of cultural significance.¹⁶⁷ Also, self-governing bodies (called *Mahalla*) exist which involve local communities in the safeguarding of cultural heritage.¹⁶⁸ NGOs are actively engaged in the protection of about 10,000 cultural heritage properties.¹⁶⁹ Involvement of local communities is also ensured in the context of the development of tourism infrastructure.¹⁷⁰
100. Secondly, as emphasized above, several operational measures have been adopted in two different phases. The first (1993-1996) was devoted to measures of engineer fortification, conservation of surviving parts and details of architectural decor, as well as works on facilities in protected areas; the second (1996-2010) to the improvement of geological conditions of the relevant areas and to other different structural works. Of course, important steps remain to be made, including strengthening of information technologies for the monitoring and management of cultural properties, in particular for seismic strengthening, repair materials, as well as restoration of murals and frescoes.¹⁷¹
101. Third, as already noted, a number of activities for information and awareness-raising concerning World Heritage properties have been, and are being, developed in Uzbekistan.
102. Fourth, funds from the State budget are allocated for cultural heritage; these funds finance thematic plans for conservation elaborated on the basis of "requests from local inspections", in the context of which priority is granted in favour of properties inscribed on the World Heritage

¹⁶⁴ See "Periodic Reporting Exercise on the Application of the World Heritage Convention, Section I, Application of the World Heritage Convention by the State Party – State Party: Republic of Uzbekistan", n. 4 above, p. 17.

¹⁶⁵ See "Application of the World Heritage Convention by the States Parties – Uzbekistan", n. 3 above, p. 2.

¹⁶⁶ Ibid.

¹⁶⁷ Ibid., p. 1.

¹⁶⁸ Ibid.

¹⁶⁹ Ibid., p. 2.

¹⁷⁰ See "Periodic Reporting Exercise on the Application of the World Heritage Convention, Section I, Application of the World Heritage Convention by the State Party – State Party: Republic of Uzbekistan", n. 4 above, p. 9.

¹⁷¹ See "Application of the World Heritage Convention by the States Parties – Uzbekistan", n. 3 above, p. 3.

List or included in the Tentative List. In the last years funds devoted to cultural heritage protection have been significantly increased.¹⁷²

103. Fifth, training in the field of cultural heritage protection has been increased, as shown, *inter alia*, by the establishment and/or strengthening of specialized higher and secondary educational institutions entrusted with the training of young professionals in the field.
104. Last but not least, Uzbek authorities have tried to maximize the opportunities offered by tourism development, especially through publishing reference books and book albums, newspapers, websites and multimedia CD-ROMs specifically dedicated to World Heritage and other cultural properties.¹⁷³
105. The main shortcoming concerning the implementation of the World Heritage Convention in Uzbekistan is undoubtedly that almost exclusive attention is devoted to cultural heritage, while natural properties are not sufficiently considered. At the end of the First Periodic Reporting Cycle it was recommended to elaborate an inventory of natural sites and revise the Tentative List accordingly.¹⁷⁴ As already indicated, this operation has been completed in recent years, and natural and mixed properties now figure in the Tentative List. Several of the abovementioned measures taken by the government to improve heritage protection and conservation, will also lead to better compliance with the 1972 Recommendation, and benefit the totality of cultural and natural heritage, also beyond the WH sites.
106. As it has been recently recommended at a meeting involving experts from Kazakhstan, Kyrgyz Republic, Tajikistan, Uzbekistan, UNESCO, ICOMOS and CRATerre-ENSAG, the government of Uzbekistan should update and harmonize national legislation in view of strengthening protection and conservation of actual and potential World Cultural Heritage in the country, including “newly recognized types of cultural heritage”.¹⁷⁵ It should also update National Cultural Heritage Inventory to include “new concepts of cultural heritage”.¹⁷⁶

3.3.3 Lao Peoples’ Democratic Republic

107. Lao Peoples’ Democratic Republic has been a party to the World Heritage Convention since 1987. Two Lao properties have been inscribed in the World Heritage List: the city of Luang Prabang (1995) and the Van Phou site with associated Champasak Landscape (2001). Two sites are included in the Tentative List: the *Sites Megalithiques de Xieng Khouang* (1992) and the *That Luang de Vientiane* (1992). No Lao site is at present in the World Heritage in Danger List. No specific implementing law has been enacted for the application of the World Heritage Convention in the domestic legal system of the Lao Republic.
108. Therefore, compliance by the Lao Republic with the World Heritage Convention depends on the general legal framework applicable to the protection of cultural and natural heritage, which is provided by the Law on National Heritage of 9 November 2005. Article 2 of this Law contains an express reference to “world heritage” as a specific category of heritage falling within the scope of application of the law. Articles 19 and 24 of the same law refer to cultural and natural sites of “outstanding world value” as properties to be protected under the UNESCO mandate. It is clear that, in spite of the different terminology used in the Law, as compared to the standard “outstanding universal value” terminology of the World Heritage Convention, these provisions are intended to provide the domestic law framework for the implementation of the Convention. Earlier legal enactments are also relevant to the

¹⁷² See “Application of the World Heritage Convention by the States Parties – Uzbekistan”, n. 3 above, p. 1.

¹⁷³ See “Application of the World Heritage Convention by the States Parties – Uzbekistan”, n. 3 above, p. 1.

¹⁷⁴ *Ibid.*, p. 2.

¹⁷⁵ See “Priority Action Plan for Cultural Heritage”, available at <whc.unesco.org/document/116609> (accessed 26 January 2014), pp. 2-3.

¹⁷⁶ *Ibid.*, at 3.

implementation of the Convention, in particular the Resolution of the Council of Ministers on the management of cultural products and the Decree of the President of the Republic of 20 June 1997 *pour la conservation du patrimoine culturel, historique et naturel national*. This Decree focuses mainly on the conservation of historical and archaeological sites and reserves ownership of archaeological finds to the state (Article 22). Unfortunately, in spite of the centrality of archaeological heritage in national legislation and policy, the Lao Republic is not a party either to the UNESCO 1970 Convention on illicit traffic, or to the 1995 UNIDROIT Convention on the return of stolen and illegally exported cultural objects.

109. At the institutional level, the responsibility for the implementation of the World Heritage Convention falls primarily on the Ministry of Information and Culture under Article 63 of the Law on National Heritage. However, a certain degree of decentralization is foreseen by Article 65 and 66, which give administrative responsibility to local authority at district level and village level.
110. In sum, the national legislation incorporates the main principles of the World Heritage Convention, and authorities and national, regional and local level are involved in the conservation and protection of the national heritage. As the State Party reported during the Second Reporting Cycle, both the funding and the human resources for heritage conservation, protection and presentation could be increased, and the enforcement of the existing legal framework could be strengthened. Whereas a national strategy for capacity building in the field of heritage conservation exists, its implementation could be improved.¹⁷⁷ These elements support the conclusion that the incorporation of the 1972 Recommendation into national law and policies could also be further strengthened.

3.4 Arab Countries

3.4.1 Tunisia

111. Tunisia ratified the World Heritage Convention on 10 March 1975, and subsequently served three mandates to the World Heritage Committee: from 1976 to 1983, from 1987 to 1993 and from 2005 to 2009 respectively. Eight Tunisian properties are at present inscribed on the World Heritage List, seven of which are of cultural character and only one is a natural site.¹⁷⁸ None of those properties is at present included on the List of World Heritage in Danger. Other ten properties have been submitted on the Tentative List, six of which are cultural properties, three are natural properties and one is a mixed property.¹⁷⁹
112. Tunisian cultural heritage inscribed on the World Heritage List is almost equally distributed between archaeological (four) and religious-Islamic (three) properties. Of the four archaeological sites, three (including *Carthage*) belonged to the Punic civilization and one to the Roman Empire. The only natural World Heritage property belonging to Tunisia – *Ichkeul National Park* – is composed by a lake and wetland which are a major stopover point for hundreds of thousands of species of migrating birds.
113. The complex of Tunisian properties inscribed on the World Heritage List shows a clear preponderance of cultural properties (seven) over natural ones (only one). Although none of those properties is at present included in the List of World Heritage in Danger, one of them was actually included in such a list in the past. This happened with the only natural property belonging to Tunisia inscribed on the World Heritage List, *Ichkeul National Park*. This property

¹⁷⁷ Periodic Reporting, Second Reporting Cycle, Lao Peoples' Democratic Republic, Section I, para 12.

¹⁷⁸ See <<http://whc.unesco.org/en/statesparties/tn/>> (accessed 27 January 2014).

¹⁷⁹ *Ibid.*

was included in the List of World Heritage in Danger in 1996, following the construction of two dams in the area of the site which “had a devastating impact on the wetland values of Ichkeul National Park”, as it “limit[ed] the freshwater flow to the area” and led the Park not to support any longer “the large migrating bird populations that it used to” as well as to a dramatic increment of the salinity of the lake and marshes.¹⁸⁰ The World Heritage Committee also noted that structural problems in the property remained, “as the Park lacks sufficient infrastructure, budget and management”.¹⁸¹ The Committee viewed the situation of *Ichkeul National Park* as particularly serious, to the point of seriously considering its deletion from the World Heritage List. However, after noting that the Ichkeul ecosystem was not irreversibly lost, the Committee decided *only* to include the property in the List of World Heritage in Danger, although at the same time it informed the Tunisian authorities of the possibility “of the deletion of the property from the World Heritage List if rehabilitation of the site would not be possible”.¹⁸² The property was removed from the List of World Heritage in Danger in 2006, when the World Heritage Committee recognized that there had been “considerable progress in recent years in the rehabilitation of the property, with improved water quality leading toward the restoration of vegetation critical to the functioning of the ecosystem, the gradual return of wintering and breeding birds, though not yet to former numbers at the time of inscription on the World Heritage List, and the recovery of fish populations”.¹⁸³ The Committee also congratulated Tunisia “for its strong commitment to the conservation of the property and in particular for putting in place a high quality scientific monitoring programme that contributes to regular reporting on progress”,¹⁸⁴ and consequently decided to remove the site from the List of World Heritage in Danger.

114. As for the Tentative List, it includes at present ten properties, six of which are cultural properties, three are natural properties and one is a mixed property.¹⁸⁵
115. In Tunisia, the first step of the process of identification of properties of cultural and natural heritage is represented by the establishment of national inventories by the National Institute of Heritage (*Institut National du Patrimoine – INP*).¹⁸⁶ The INP was re-organized by Decree 93-1609 of 26 July 1993; it is a public body of administrative nature with legal personality and financial autonomy, placed under the responsibility of the Ministry of culture. Its main task is the inventory, safeguarding and valorisation of cultural heritage.¹⁸⁷ The INP is assisted by the Agency for the Valorisation of Heritage and Cultural Promotion (*Agence de mise en valeur du patrimoine et de promotion culturelle – AMVPPC*), established by Law n° 11-88 of 25 February 1988 (as modified by Law 16-97 of 3 March 1997). The mission of AMVPPC is, *inter alia*, to ensure the valorisation of cultural heritage for cultural, tourism-related and economic purposes, to develop cultural tourism, to organize cultural programmes and manifestations, as well as to ensure the promotion of investments, sponsoring and patronage of cultural projects and creation of cultural industries.¹⁸⁸

¹⁸⁰ See World Heritage Committee, Twentieth session, Merida, Mexico, 2-7 December 1996, Report, Doc. WHC-96/CONF.201/21 of 10 March 1997, Decision VII.36, p. 31.

¹⁸¹ *Ibid.*

¹⁸² *Ibid.*, p. 32.

¹⁸³ See World Heritage Committee, Thirtieth Session, Vilnius, Lithuania, 8-16 July 2006, Decisions adopted at the 30th session of the World Heritage Committee (Vilnius, 2006), Doc. WHC-06/30.COM/19 of 23 August 2006, Decision 30 COM 7A.12, p. 25, at 4.

¹⁸⁴ *Ibid.*, at 5.

¹⁸⁵ See Section 1 above.

¹⁸⁶ See Le Directeur Général de l’Institut National du Patrimoine a Monsieur le Directeur du Centre du patrimoine mondial, Objet: Application de la convention du Patrimoine Mondial par l’Etat Partie, 26 Septembre 2000, available at <<http://whc.unesco.org/archive/periodicreporting/ARB/cycle01/section1/tn.pdf>> (accessed 25 January 2014), p. 2.

¹⁸⁷ *Ibid.*, p. 3.

¹⁸⁸ *Ibid.*, pp. 4-5.

116. In Tunisia domestic legislation related to cultural heritage is very well developed. The most important legislative act in this respect is represented by the *Code of Archaeological Heritage, Historical Heritage and of Traditional Arts* of 1994.¹⁸⁹ The 1994 Code provides protection for archaeological, historical and traditional heritage (which is classified as part of the State's public domain, except when private property is established consistent with law in force),¹⁹⁰ cultural sites (i.e. sites determined by the combined action of men and nature),¹⁹¹ groups of historical and traditional buildings,¹⁹² historical monuments¹⁹³ and movable cultural property.¹⁹⁴ Cultural sites are protected through regulating works of construction and restoration in the areas concerned, which are subject to the authorization of the competent authorities.¹⁹⁵ Historical monuments are protected through ad-hoc orders of protection released by the competent ministry, on its own initiative or on initiative of private persons and with the prior opinion of the national commission of heritage;¹⁹⁶ any kind of work on historical monuments, for whatever purpose, must be authorized by the Minister.¹⁹⁷ All private and public buildings within a radius of 200 metres from an historical monument are subject to the same rules regulating the monument itself.¹⁹⁸
117. Another legislative act of significance for the present survey is the *National Charter of Archaeological Sites and Historical Monuments*,¹⁹⁹ having the purpose of establishing a general inventory of the places and buildings which constitute a part of the national heritage.²⁰⁰ An ad-hoc national committee is established with the competence of facilitating the realization and elaboration of the Charter.²⁰¹ Cultural heritage is also the object of a number of provisions included in the *Code of the Organization of the Territory and Town Planning*.²⁰² In particular, Article 1 includes among the purposes of the Code the protection of natural and cultural sites, including archaeological sites. Also, Article 7 provides that the minister competent in the field of cultural heritage must participate in the enactment of a joint proposal, with other ministers, concerning the elaboration of a list of "sensible zones" and important operations of town-planning when cultural or archaeological sites or their buffer zones are involved.
118. During the First Periodic Reporting Cycle (2000-2006) the government of Tunisia emphasized that national heritage is a main substrate of national identity and a decisive factor of the cultural, social and economic development of the country.²⁰³ This is the reason why the government of Tunisia devotes particular attention to the promotion of cultural heritage and awareness raising concerning its special importance for the identity of the national people. Starting from primary school, educational programmes include teaching of history and civilization of Tunisia from prehistory to contemporary times. Guided tours are organized with the purpose of reinforcing the attachment of young people to the national archaeological and

¹⁸⁹ *Loi n° 94-35 du 24 février 1994 relative au code du patrimoine archéologique, historiques et des arts traditionnelles*. All national legislative instruments quoted in the present Report have been taken from the UNESCO Database on National Cultural Heritage Law, available at <<http://www.unesco.org/culture/natlaws/>> (accessed 25 January 2014), except otherwise noted.

¹⁹⁰ See Article 1.

¹⁹¹ See Article 2.

¹⁹² See Article 3.

¹⁹³ See Article 4.

¹⁹⁴ See Article 5.

¹⁹⁵ See Articles 9-12.

¹⁹⁶ See Article 26.

¹⁹⁷ See Article 28.

¹⁹⁸ See Article 45.

¹⁹⁹ *Carte nationale des sites archéologiques et des monuments historiques*, Décret n° 92-1443 du 3 août 1992.

²⁰⁰ See Article 1.

²⁰¹ See Article 7.

²⁰² *Loi n° 94-122 du 28 novembre 1994, portant promulgation du code de l'aménagement du territoire et de l'urbanisme*.

²⁰³ See Le Directeur Général de l'Institut National du Patrimoine a Monsieur le Directeur du Centre du patrimoine mondial, Objet: Application de la convention du Patrimoine Mondial par l'Etat Partie, n. 9 above, p. 3.

historic heritage; this public effort is further strengthened through the involvement of various kinds of NGOs.²⁰⁴ In addition, since 1992 a yearly cultural manifestation called “The month of cultural heritage” is organized, with the purpose of ensuring a dynamic involvement of the population in cultural life.²⁰⁵

119. The main issues which arose from the First Periodic Reporting Cycle concerned the following needs: improving knowledge of heritage; ensuring consolidation, restoration and valorisation of sites and historical monuments; developing national projects and safeguarding plans for the valorisation of traditional heritage.²⁰⁶ In general terms, Tunisia shows a high level of sensitiveness for the importance of protecting cultural heritage, a sensitiveness which is reflected in the excellent quality of domestic legislation in the field. At the same time, it is a fact that the implementation of the World Heritage Convention by the Tunisian government is not well-balanced, as attention for cultural heritage is clearly predominant *vis-à-vis* natural heritage. However, with respect to the latter Tunisia has shown a good capacity to comply with the recommendations of the World Heritage Committee in the context of the case of Ichkeul National Park, the only natural property belonging to Tunisia inscribed on the World Heritage List, which was removed from the List of World Heritage in Danger in 2006 thanks to the fact that Tunisia had been able to reverse a negative situation which appeared at the time to be desperate.²⁰⁷
120. Other positive steps have been made by Tunisia in the context of the implementation of the World Heritage Convention. For example, the INP has developed a multi-faceted strategy aimed at ensuring the formation of operators in the World Heritage field through, *inter alia*, offering scholarships for carrying out doctoral studies in France, as well as through the development of specific programmes (including those aimed at the formation of “architects of heritage”) at the national level or based on international cooperation of bilateral or multilateral character, especially with European universities.²⁰⁸ Programmes of cooperation have also been developed with UNESCO and the advisory bodies of the World Heritage Centre, ICOMOS, ICOM and ICCROM.²⁰⁹ Also, the Tunisian government has constantly developed different fund-raising strategies in order to comply with all its obligations concerning the preservation of its own immense heritage.²¹⁰
121. Considering the comprehensive national legislation on cultural heritage, the policies adopted to implement them, and the various initiatives taken by the government to ensure adequate professional training, education, fundraising, and public involvement in raising awareness about cultural heritage, demonstrate that Tunisia is making significant efforts, resulting in a high degree of compliance with both the World Heritage Convention and the 1972 Recommendation.

3.4.2 Yemen

122. Yemen became a party to the World Heritage Convention on 7 October 1980. Since then four properties have been inscribed in the WH List. Three of them – the *Old Walled City of Shibani*, the *Old City of Sana’a*, and the *Historic Town of Zabid* – are cultural sites, and one – the *Socotra Archipelago* – is a natural site. Since 2000 the *Historic Town of Zabid* has been placed

²⁰⁴ Ibid., p. 8.

²⁰⁵ Ibid.

²⁰⁶ Ibid., p. 9.

²⁰⁷ See Section 2 above.

²⁰⁸ See Le Directeur Général de l’Institut National du Patrimoine a Monsieur le Directeur du Centre du patrimoine mondial, Objet: Application de la convention du Patrimoine Mondial par l’Etat Partie, n. 9 above, pp. 6-7.

²⁰⁹ Ibid., p. 7.

²¹⁰ Ibid.

in the List of the World Heritage in Danger due to the continuous deterioration of the original construction material and to the replacement of about 40% of them with concrete building.

123. There is no specific legislation in Yemen exclusively dedicated to the implementation of the World Heritage Convention. The applicable legal framework is Law n. 21 of 1994 on antiquities, which was amended on 7 February 1997 (an English translation from the Arabic is available only for the latter). Under this Law, the Ministry of Culture and the General Organization for Antiquities Museums and Manuscript (the “Organization”) are competent for the implementation of domestic cultural heritage law and for international cultural heritage norms, arguably including the World Heritage Convention. Articles 8 and 9 of the law confer on the Organization the power to expropriate archaeological objects upon compensation of the rightful owner. Article 29 restricts commercial activities in cultural sites, a provision that can help the conservation and protection of World Cultural Heritage in Yemen.
124. Unfortunately, the country does not appear to have established a system of national inventories or registers for natural and cultural heritage. However an ample Tentative List has been submitted with the following ten cultural and natural heritage properties: *Archaeological site of Marib, Historic City of Saada, Historic City of Thula, Madrasa of Rada, Jibla and its surroundings, Jabal Haraz, Jabal Bura, Balhaf / Burum coastal area, the Hawf Area, Shama / Jethum coastal area.*
125. Periodic reporting on the status of conservation evidences an unsatisfactory involvement of national and local authorities in the identification of potential World Heritage sites and in the elaboration of the Tentative List, with significant role played by the UNESCO National Commission and expert consultants. This circumstance, together with the lack of a specific legal framework of national law or regulations for, weakens the effectiveness of the World Heritage Convention in the Yemeni legal system. This conclusion is confirmed by the lack of specific study or research programs addressing World Heritage management and conservation problems, as well as the inadequacy of resources and institutional capacity to enforce the existing legal framework, even though Yemen is the beneficiary of financial assistance from the World Heritage Fund, the World Bank, and the European Union. The same conclusion must be drawn with regard to compliance with the 1972 Resolution, which has not been systematically incorporated into the national legal and policy framework.

3.5 Africa

3.5.1 Ethiopia

126. Since its ratification of the World Heritage Convention on 6 July 1977, Ethiopia has nominated eight cultural sites and one natural site. The inscription of these properties in the World Heritage List bears witness to a long history of civilization and to a rich variety of cultural heritage, which includes prehistoric settlements (*Tiya*), cultural landscapes (*Konso*), paleontological sites (*Awash and Omo Valleys*), as well as historic fortified towns and monuments (*Fasil Ghebbi, Harar, Aksum*), and unique rock-hewn churches (*Lalibela*). The only natural site, *Simien National Park*, has been placed on the List of the World Heritage in Danger as a consequence of its deterioration due to increased human encroachment by agricultural activities and excessive grazing. Ethiopia has submitted five properties on the Tentative List. They are: *Bale Mountain National Park, Dirre Sheik Hussein cultural site, Sof Oman caves, Gedeo landscape, and Malka Kunture archaeological site.*
127. Ethiopia’s legal framework for heritage protection rests on Article 91 of the Constitution, which provides that the “Government shall have the duty to support, on the basis of equality, the growth and enrichment of cultures and traditions that are compatible with fundamental rights, human dignity, democratic norms and ideals”. This is a very modern formulation of the

commitment to the protection and promotion of culture. It brings together material and immaterial heritage and also makes it clear that cultural expressions must be compatible with fundamental human rights and human dignity. No specific legislation has been enacted by Ethiopia to give effect in its domestic legal system to the World Heritage Convention. However a general legal framework for heritage protection can be found in the 2000 Proclamation n. 209 on Research and Conservation of Cultural Heritage. This Proclamation establishes also an institutional framework consisting of the “Authority for Research and Conservation of cultural Heritage”, composed of an Advisory Council, a General Manager and staff. A Centre for Research and Conservation of the Cultural Heritage within the Ministry of Culture and Sports has the responsibility of promoting policies for the identification, conservation and valorisation of cultural heritage, including heritage that has been inscribed in the world Heritage List.

128. The record of the world heritage implementation in Ethiopia presents positive aspects as well as certain weakness. On the positive side Ethiopia has had an active role in promoting a campaign to safeguard the principle monuments and sites in its territory, mobilizing assistance and funding from UNEP and UNESCO. This has helped maintain its world cultural heritage in a satisfactory state of conservation. At the same time Ethiopia has been successful in its international campaign to obtain the return of the *Aksum obelisk*, which had been removed from its original site and brought to Rome during the Italian occupation of Ethiopia and placed in front of the building that today hosts the FAO headquarters.²¹¹ The massive obelisk – representing an important element of Ethiopian identity – was successfully transferred by Italy back to Ethiopia and relocated in April 2005 in the original site of *Aksum*, a World Heritage site since 1980.²¹² The weak aspects of world heritage implementation in Ethiopia have been identified in the periodic reports under Article 29 of the Convention. They essentially relate to the lack of specific legal tools for the implementation of the Convention, inadequate involvement of local communities in the identification, conservation and management of world heritage properties and insufficient funds to ensure maintenance of cultural heritage and proper management of natural heritage. Moreover, the State Party itself reported during the Second Reporting Cycle, that there is limited cooperation between different levels of government for the conservation and protection of cultural and natural heritage, and that there is no national strategy for capacity development in the field of heritage conservation, protection and presentation, but nonetheless this is being done on an ad hoc basis.²¹³ These considerations are also relevant for Ethiopia's compliance with the 1972 Recommendation, which would need to be improved on these same points.

3.5.2 Cote d'Ivoire

129. Cote d'Ivoire ratified the World Heritage Convention on January 9, 1981. Since then, it has had four properties inscribed in the World Heritage List: three of them natural – *Comoé National Park*, *Mount Nimba Reserve*, and *Tai National Park* – and one cultural – *Historic Town of Grand Bassam* inscribed in 2012. At present two properties are placed in the List of the World Heritage in danger, *Mount Nimba Reserve* (serial site) and *Comoé National Park*. In 2006 Cote d'Ivoire submitted three properties for the Tentative List: *Parc National des Iles Ethotilé*, *Parc Archéologique d'Ahouakro*, and *Mosquées de style soudanaise du Nord*.
130. Article 7 of the Cote d'Ivoire Constitution guarantees the right of access to culture for all citizens and the State's commitment to ensure the enjoyment of such right. However, the implementing legislation and policy enactments in the area of cultural and natural heritage are

²¹¹ Italy was bound to return the obelisk to Ethiopia under the terms of the 1947 Peace Treaty between Italy and the Allied Powers.

²¹² On 25 November 2009 an exhibition of the history and vicissitudes of the Aksum obelisk was organised by the Italian Government at the FAO headquarters.

²¹³ Periodic Reporting, Second Reporting Cycle, Cote d'Ivoire, par 12.

scarce. No specific law has been adopted to ensure the effective implementation of the World Heritage Convention in the domestic legal order. Only two administrative decrees have been adopted with respect to the *Historic Town of Grand-Bassam* with the evident purpose of preparing the ground for the nomination of this site for the World Heritage List.²¹⁴ A general law on the protection of cultural heritage was adopted in 1987, shortly after ratification of the World Heritage Convention,²¹⁵ and an environmental code came into force in 1996,²¹⁶ which provides the general legal framework also for the protection of natural heritage relevant to the World Heritage Convention.

131. In spite of the rather weak domestic enforcement of the World Heritage Convention, Cote d'Ivoire, has undertaken a broad range of international commitments that are relevant also to effective implementation of the World Heritage Convention. It has ratified the 1954 Hague Convention, the 1970 Convention, as well as the 2003 Convention and the 2005 Convention. In addition, Cote d'Ivoire has adhered to the African Charter for Culture and to the African Charter for Human and Peoples Rights (The Banjul Charter), which stands out among the human rights instruments for its coverage of the collective dimension of cultural and environmental rights, it has ratified the 1968 African Convention on Nature,²¹⁷ and signed the 2003 successor instrument of the African Convention on Nature. The main challenge for the effective enforcement of the World Heritage Convention in Cote d'Ivoire remains the development of national policies, at administrative, educational and technical level, capable of improving the status of conservation of its two natural properties in the List in Danger: *Mount Nimba* and *Comoè National Park*. The development of such policies, as well as their integration into planning policies, would also be important with a view to strengthening the conservation and protection of the cultural and natural heritage beyond the WH sites, in accordance with the 1972 Recommendation.

3.5.3 Nigeria

132. Nigeria ratified the World Heritage Convention on 23 October 1974. The Nigerian government served three mandates to the World Heritage Committee, from 1976 to 1980, from 2001 to 2005 and from 2007 to 2011 respectively. At the moment of this writing, only two Nigerian properties are inscribed on the World Heritage List; they are the *Sukur Cultural Landscape* and the *Osun-Osogbo Sacred Grove*, both of cultural character.²¹⁸ Twelve properties have been submitted on the Tentative List; they include seven cultural properties, three natural properties and two mixed properties.²¹⁹
133. Both properties inscribed on the World Heritage List present spiritual elements linked to animist religions. The *Sukur Cultural Landscape* includes the Palace of the Hidi (Chief), located on a hill which dominates the villages below, terraced fields and their sacred symbols, dry stone structures, as well as the remains of a former flourishing iron industry, The site combines material and spiritual elements of culture, the latter being represented by the ritual significance of terraces and by sacred trees.²²⁰ As for the *Osun-Osogbo Sacred Grove*, it is one of the last remnants of primary high forest in southern Nigeria, which is particularly significant as it is considered the residence of the goddess of fertility Osun, one in the pantheon of gods

²¹⁴ See Décret n. 99-319, *delimitant un périmètre de protection du patrimoine architectural de Grand-Bassam*, of 1999, and Arrêté n. 039 *portant la réglementation, conservaton et mise en valeur du patrimoine architectural de Grand-Bassm* of 2001.

²¹⁵ *Loi n. 87-806 sur la protection du patrimoine culturel*, 28 juillet 1987.

²¹⁶ *Loi n. 96-766 3 octobre 1996*.

²¹⁷ *Convention africaine sur la conservation de la nature et des ressources naturelles*, Algiers, 15 septembre 1968, ratified by Cote d'Ivoire on 15 January 1969.

²¹⁸ See <<http://whc.unesco.org/en/statesparties/ng/>> (accessed 27 January 2014).

²¹⁹ *Ibid.*

²²⁰ See <<http://whc.unesco.org/en/list/938>> (accessed 27 January 2014).

of the Yoruba people; many sanctuaries and shrines, sculptures and works of art in honour of Osun and other deities are present in the landscape of the site.²²¹ No Nigerian property has ever been included on the List of World Heritage in Danger. Twelve properties are included in the Tentative List, featuring seven cultural properties, three natural properties and two mixed properties.

134. Cultural Heritage in Nigeria is managed by the National Commission for Museums and Monuments (NCMM), established by the Federal Military Government in 1979.²²² Among the competences of the Commission is declaring an antiquity as a national monument.²²³ The Commission may also have access to a monument for reasons of inspection and maintenance and, where practicable, it may remove the monument or part of it from its location (even when the owner of the monument is a private person) for purposes of repair or protection. According to Section 19, no person may search for antiquities by means of excavation or other similar operation without a permit released by the Commission and with the consent of the State government. The NCMM has established a Department of Monuments Heritage and Sites, which is responsible for the management of Nigerian World Heritage properties.
135. Other relevant legislation is represented by the *Nigerian Cultural Policy* of 1988, which affirms that “[t]he State shall preserve as Monuments old city walls and gates, sites, palaces, shrines, public buildings, promote buildings of historical significance and monumental sculptures”. The *Land Use Act* of 1990 is also of significance, as it establishes that the Federal Government may transfer on State government’s trusteeship of protected lands in urban areas.²²⁴
136. Concerning the *Sukur Cultural Landscape*, in order to make its inscription on the World Heritage List possible, local agreements were reached with the Hidi-in-Council. By virtue of these agreements the property could be declared a State monument by the Adamawa State Government. As a consequence, the NCMM was empowered to protect the property as part of the National Patrimony and to participate in its management, pursuant to Decree No. 77 of 1979. In performing this task, the NCMM closely cooperates with the Adamawa State Council for Arts and Culture, the Madagali Local Government Council, and the Sukur Development Association. Management plans are to be implemented by the Department of Monuments Heritage and Sites, which should ensure the effective involvement of local communities.²²⁵
137. As regards the *Osun-Osoybo Sacred Grove*, it is a property of the Federal Government of Nigeria and was declared a national monument in 1965 (its area being extended in 1993). The government of the Osun State is responsible for the management of the property, together with the NCMM, according to the provisions of Decree No. 77 of 1979. Support in the management of the area is offered by local NGOs. Local communities are entitled to exercise their cultural rights in the area of the site; these rights are exercised through the Oba of Osoybo and his Council, the Osoybo Cultural Heritage Council (OCHC).²²⁶
138. Presentation and promotion of World Heritage properties is mainly realized through websites. In particular, with respect to the *Sukur Cultural Landscape*, its website²²⁷ includes a film prepared in 2010, called “The 13 Months of Sukur: Africa’s first world heritage cultural

²²¹ See <<http://whc.unesco.org/en/list/1118>> (accessed 27 January 2014).

²²² See Decree No. 77 of 28 September 1979, available in the CD-Rom “Droit and Patrimoine in Afrique”, 2002, extract taken from the UNESCO Database on National Cultural Heritage Law, at <<http://www.unesco.org/culture/natlaws/>> (accessed 25 January 2014).

²²³ See Section 12.

²²⁴ See Osun-Osoybo Sacred Grove, Advisory Body (ICOMOS) evaluation, April 2005, available at <http://whc.unesco.org/archive/advisory_body_evaluation/1118.pdf> (accessed 27 January 2014).

²²⁵ See Advisory Body (ICOMOS) evaluation, September 1999, available at <http://whc.unesco.org/archive/advisory_body_evaluation/938.pdf> (accessed 27 January 2014).

²²⁶ See Advisory Body (ICOMOS) evaluation, n. 7 above.

²²⁷ See <<http://www.sukur.info/>> (accessed 27 January 2014).

landscape”,²²⁸ which can be purchased online. The website also includes information about the Sukur society,²²⁹ culture,²³⁰ music (including samples on audiotape)²³¹ and language.²³² No similar websites appear to exist with respect to *Osun-Osogbo Sacred Grove*, although specific pages are dedicated to the property in a number of websites dedicated to the World Heritage.²³³

139. In September 1999, while providing its advisory evaluation of the *Sukur Cultural Landscape*, ICOMOS recommended that protection of the property be ensured through maintaining the long-established traditional customs of the local community. In terms of specific measures, the adoption of a cultural and tourist management plan involving the creation of a body responsible for its implementation was recommended, as well as the production of tourism related-materials, the integration of reception and accommodation facilities with the environment and the development of means of transport appropriate in light of the specificity of the landscape and its environment.²³⁴
140. With respect to *Osun-Osogbo Sacred Grove*, in April 2005 ICOMOS noted that the spiritual significance of the property was strongly intertwined with the rain forest. For this reason, it recommended that the equilibrium between the natural aspects of the site and the culture of local communities should be preserved and strengthened in order to sustain the spiritual worth of the Grove. ICOMOS also recommended that a detailed cultural tourism management plan be prepared, taking into primary account the high value of the spiritual, symbolic and ritual worth of the property.²³⁵
141. For both properties, no particular information is available concerning the implementation of these recommendations, although the creation of the Website of the *Sukur Cultural Landscape* referred to above²³⁶ may constitute partial implementation of ICOMOS’ recommendations concerning the property.
142. In trying to provide a general evaluation of the level of implementation of the World Heritage Convention in Nigeria, one cannot ignore that only cultural properties have been inscribed on the World Heritage List by this State. However, since 1995 natural and mixed properties have been included in the Tentative List, showing a commitment by the Nigerian government to extend its attention to natural heritage. Also, the creation of ad hoc institutions devoted to the protection of World Heritage – in particular the Department of Monuments Heritage and Sites established by NCMM²³⁷ – is a clear indicator of the improvement of the national action aimed at implementing the Convention. Furthermore, the increment of interest by Nigerian authorities for cultural heritage is demonstrated by the decision taken in 2012 of declaring a number of properties as new National Heritage sites.²³⁸

²²⁸ See <<http://www.sukur.info/sukurfilm.htm>> (accessed 27 January 2014).

²²⁹ See <<http://www.sukur.info/Soc/socindex.htm>> (accessed 27 January 2014).

²³⁰ See <<http://www.sukur.info/Cult/cultindex.htm>> (accessed 27 January 2014).

²³¹ See <<http://www.sukur.info/Music/musicindex.htm>> (accessed 27 January 2014).

²³² See <<http://www.sukur.info/Lang/langindex.htm>> (accessed 27 January 2014).

²³³ See, in particular, <<http://www.africanworldheritagesites.org/cultural-places/traditional-cultural-landscapes/osun-osogbo.html>>; <<http://www.worldheritagesite.org/sites/osunosogbo.html>>; <<http://www.wmf.org/project/osun-osogbo-sacred-grove>> (all accessed 27 January 2014).

²³⁴ See Advisory Body (ICOMOS) evaluation, n. 8 above.

²³⁵ See Advisory Body (ICOMOS) evaluation, n. 7 above.

²³⁶ See text corresponding to n. 10 above.

²³⁷ See Section 2 above.

²³⁸ See “FG to declare new National Heritage sites”, *Daily Times NG*, 20 June 2012, available at <<http://www.dailytimes.com.ng/article/fg-declare-new-national-heritage-sites>> (accessed 27 January 2014).

143. These strengthened efforts on the part of the Nigerian government have also led to improvements with regard to the general conservation and protection of the national heritage, resulting also in better compliance with the 1972 Recommendation.

Chapter 4 Effectiveness and Legitimacy of the 1972 World Heritage Convention and Recommendation: their Impact on the Domestic Law and Policies of State Parties

144. As the foregoing analysis shows, the effectiveness of the World Heritage Convention in the domestic laws and policies of State Parties depends on a variety of factors – legal, political, economic, administrative and cultural – that present a significant degree of specificity and variation in every country examined. This variation, however, does not prevent the identification of common elements and crosscutting features of the system of WH implementation. The examination of such features will help assess the strength of the protection system established by the World Heritage Convention and the 1972 Recommendation, and, vice-versa, their weakness and shortcomings.
145. The first common element to be considered is that the protection of cultural and natural heritage mandated by the Convention, and suggested by the 1972 Recommendation, has not been effected by the adoption in national law of ad hoc legislation applicable specifically to World Heritage properties. On the contrary, in the generality of countries examined the safeguarding of World Heritage sites occurs within the scope of application of general laws on the protection of cultural heritage and of environmental codes of general application. Far from being an element of weakness of World Heritage implementation, this has facilitated the integration of World Heritage protection and management within the general framework and institutional setting for the safeguarding of cultural and natural heritage. This model of national implementation has avoided the risk of clinically isolating the World Heritage Convention in a self-contained legal niche and of cutting off the World Heritage Convention from the companion Recommendation that covers all cultural and natural heritage situated in the territory of Member States. At the same time, we can safely say that in some countries the ratification of the World Heritage Convention has acted as a catalyst for the adoption or updating of domestic legislation on the protection of cultural and natural heritage. In this sense the World Heritage Convention has had a positive spill over effect on the national systems of heritage protection, not only of heritage of outstanding universal value.
146. The second element to consider is the role of state sovereignty in the implementation of the World Heritage Convention. As is made clear by Article 6, the Convention is based on the full recognition of State Parties' sovereignty over the cultural and natural heritage located in their territory. It is not an exaggeration to say that the World Heritage Convention has built its success on a careful balancing of this principle with the original, idealistic concept that certain cultural and natural sites are of such outstanding universal value to be considered the common heritage of humanity. This delicate balance between sovereign rights and the public interest of the international community is accepted as matter of principle in the totality of the countries examined. This is certainly a factor contributing to the effectiveness and legitimacy of the system of international cooperation established by the World Heritage Convention.
147. At the same time, since the general trend among the 190 parties to the World Heritage Convention (with few exceptions, such as Australia²³⁹, Italy²⁴⁰, Romania) is to avoid the adoption of ad hoc legislation, i.e. specific implementing legislation, giving effect to the obligations arising from the World Heritage Convention system, sovereignty may become an easy excuse for amplifying the discretion allowed to each State Party in deciding the measures

²³⁹ World Heritage Protection Act 1983, with subsequent incorporation in the Environmental Protection and Biodiversity Conservation Act of 1999. For a comment M. Peek and S, "Judicial Interpretation of the World Heritage Convention in the Australian Courts" in *Art and Cultural Heritage. Law, Policy and Practice* (B. Hoffman ed.), Cambridge, 2006, p. 206 f.

²⁴⁰ Law 20 February 2006, No 77, For a comment, F. Lenzerini's note in 16 *Italian Yearbook of International Law*, 2006, p. 395 ff.

and policies by which to implement the Convention. This discretion can reach its most critical point when at the judicial level national courts may even question whether the World Heritage Convention can be the source of true legal obligations with regard to the protection and conservation of properties, which have been entered into the WH List. This question is rarely raised in judicial practice.

148. But, paradoxically, it has been raised in countries that have adopted specific implementing legislation to ensure the effectiveness of the World Heritage Convention in national law. This is the case of Australia where a number of disputes have been brought before courts to adjudicate the controversial construction of a dam, the power of the state to enact legislation for inquiry into matters involving the compatibility of forestry development affecting world heritage status, and the impact of the electric fencing of agricultural farms on the species protection and biodiversity world heritage value.²⁴¹ These cases show that the legal significance of the World Heritage Convention and its impact on domestic law can be put into question even in legal systems where the implementation of the World Heritage Convention has been effected by ad hoc legislation. The same cases, however, show that Australian judicial practice in this respect has been one of consistent recognition of the binding force of the World Heritage Convention in its national legal order.
149. The full recognition of the legal force of the Convention in national law, and even the presence of specific implementing legislation, does not exclude that the balance between sovereignty and international community interest can be tilted in favour of sovereignty and to the detriment of world heritage protection in a number of situations.
150. At the stage of identification and nomination of a property for world heritage listing, the rigid requirement of the territorial state's consent, as provided by article 11, paragraph 3, becomes an element of weakness of the system whenever the lack of such consent prevents the extension of the WH safeguarding to sites that are considered of outstanding universal value in the opinion of the international cultural and scientific community. This is a problem in situations of internal conflict or of severe institutional weakness, when no stable governmental authority can take the initiative to manifest its consent to the nomination of a property. But also in situation of peace and stable government, a potential world heritage property may be side-lined because it represents a national minority or an ethnic group whose culture or natural heritage is seen with indifference or aversion by the national government. Although a relaxation of the rigid requirement of the territorial state's consent is not possible without a modification of the Convention, at least a pro-active initiative of the WH Committee and some form of moral suasion to obtain the consent of the territorial state in this type of situations would be desirable to increase the credibility and effectiveness of the Convention.
151. Similarly, unflinching deference to state sovereignty, as required by the Convention can have adulterating effects on the process of nomination whenever a potential world heritage site is situated in an area of contested sovereignty. In the case of the Karakorum mountains and of Mount Zion, the dispute between India and Pakistan for the first, and between Israel and Arab states for the second, effectively hindered the consideration of those sites as possible candidates for World Heritage inscription, in spite of the clear letter of Article 11, paragraph 3, which excludes that inscription of a property in the WH List may prejudice the rights of the parties to a dispute over the territory in which the property is located. On the reverse side, in the case of the nomination by Cambodia and the inscription in the WH List of the temple of Prea Vihear, the established outstanding universal value recognized to the temple cannot hide the fact that the temple and its surrounding zone had become a tool to set scores in a territorial dispute between Cambodia and Thailand, twice brought before the International

²⁴¹ For analysis of these cases, see Peek and Reye, *supra*, n. 238, and B. Boer and G. Wiffen, *Heritage Law in Australia*, Oxford, 2006.

Court of Justice for adjudication.²⁴² Bringing the World Heritage Convention in the battlefield of territorial claims reveals a misconception of the Convention, because this Convention is not an instrument for the advancement of national prestige or territorial claims but a tool for promoting cooperation and safeguarding heritage of exceptional value for humanity.

152. Another area where the relationship between state sovereignty and the world community interest to safeguard WH properties has undergone strain, and is in need of improvement, is that of the legitimate exercise of the WH Committee's power to place a property in the List of the WH in Danger or to actually proceed to its de-listing. Normally, the placing of a property in the List of WH in Danger occurs with the consent of the territorial state, as Article 11 paragraph 4 of the Convention refers to WH properties in need of major conservation measures "and for which assistance has been requested under this Convention". Some cases, however have seen defied such requirement, as in the event of an armed conflict in the relevant territory (Dubrovnik), or when the territorial state stubbornly oppose the Danger listing, based on domestic policy considerations and on a unilateral reading of the Convention.
153. Two cases are especially important. The first concerns Ecuador and the deterioration of the state of conservation of the Galapagos Islands due to over-fishing and excessive tourism concentration. This led in 1995 to the recommendation by International Union for Conservation of Nature (IUCN) that the site be placed on the List in Danger. The Government of Ecuador, while acknowledging the threats posed to the archipelago, strongly opposed the proposal claiming that the many conservation measures were in the meantime being adopted and implemented to resolve the problems identified by IUCN. Interestingly, a creative solution was found whereby the desire of the State Party to avoid the Danger listing was reconciled with a correct application of the operational guidelines' criteria for Danger listing: the WH Committee diplomatically decided at the 1996 meeting in Merida that the Galapagos would be placed on the List of the World Heritage in Danger, *not immediately, but effective 15 November 1997, unless satisfactory evidence was received by 1 May 1997 that appropriate remedial action had been taken.*²⁴³ This gave the opportunity to Ecuador to accelerate the adoption of a special law on the protection of the Galapagos and thus avoid the inclusion of the site in the Danger List.²⁴⁴ The positive aspect of this case is the fruitful dialogue between the State Party and UNESCO and the active cooperation in the elaboration of a suitable legal framework that avoided the Danger listing at the critical date.
154. A comparable situation occurred with regard to the *Curonian Spit*, a cultural heritage site jointly nominated by Lithuania and the Russian Federation. In 2003, the World Heritage Committee expressed its concern over potential oil pollution and damage to the *Curonian Spit's* fragile ecological system from a project by a Russian company, which set up an oil platform in the Baltic Sea in the vicinity of the World Heritage site. In 2004, the Committee set a deadline of February 1, 2005 for the two states parties to present a written agreement to undertake an Environmental Impact Assessment. In the absence of such an agreement, the *Curonian Spit* would be automatically inscribed on the List of World Heritage in Danger. A few days before the set date, Lithuania and the Russian Federation announced their agreement for a post-project environmental assessment. This is another example of a situation in which the List of World Heritage in Danger and the dialogue between the WH Committee and the states

²⁴² See recent decision of the ICJ on this case, 11 November 2013 in which the Court ruled that Cambodia had sovereignty over the whole area of the Temple of Preah Vihear and that Thailand was obligated to withdraw from the area. This judgement provided an authoritative interpretation of a prior 1962 decision of the International Court of Justice in the same case, in which Cambodian sovereignty over the Temple had been established, but Thailand continued to question whether Cambodian sovereignty extended to the adjacent areas.

²⁴³ See UNESCO, Report of the Rapporteur on the twentieth session of the WHC in Merida, 2-7 December 1996, WHC-96/conf 201-21.

²⁴⁴ Unfortunately the problem came up again ten years later: in 2007 the Galapagos were included in the List of the World Heritage in Danger.

concerned have proven to be effective tools for strengthening conservation and international cooperation.²⁴⁵

155. A less constructive dialogue between the territorial state and the Convention governing bodies characterizes another important contentious case of listing in the World Heritage in Danger: *Kakadu National Park* in Australia. This case concerned the opening by Australia of uranium mining in an enclave of the park that Australia had excised from the designated area at the time of the nomination of the property as World Heritage. Faced with an onsite mission report by a panel established by the Committee, in consultation with Australia, and with the panel's conclusion that the mining was causing "severe ascertained and potential dangers to the cultural and natural heritage values" of the park,²⁴⁶ Australia vehemently opposed the inclusion of the site in the Danger List. The chief legal argument used by Australia was that in no circumstances could a world heritage site be placed on the Danger List against the will of the territorial state. The strong diplomatic offensive staged by the Australian government led to a political accommodation whereby the Committee decided not to inscribe *Kakadu* on the Danger List, while, at the same time, the Committee expressed grave concern for "the serious impact to the living cultural values of *Kakadu National Park* posed by the proposal to mine and mill uranium at Jabiluka".²⁴⁷
156. This ambiguous, and somewhat contradictory, decision was unfortunate. First, it departed from the recommendation formulated by the independent experts of the fact finding panel – which included cultural, natural and legal independent experts; second, and more important, the Committee preferred to dodge the fundamental question whether the consent of the territorial state is unconditionally required for Danger listing. It is an elementary duty of a treaty body such as the WH Committee to interpret in good faith the text of the applicable provisions of the treaty in every case that is brought to its consideration. In the case of Article 11 paragraph 3, it is clear from the text and the context of the provision that the requirement of the consent of the territorial state may be set aside "in case of urgent need", which may well arise when the territorial state refuses to cooperate in addressing serious actual and potential dangers.²⁴⁸ To have left this matter of principle in a legal limbo with the *Kakadu* decision, certainly has not contributed to the effectiveness of the Convention and has not enhanced the credibility of the working methods of the Committee. On the bright side, as a consequence of the high profile of the dispute, the uranium mine in *Kakadu* was not activated. Further, as a consequence of the strong worldwide reaction to the case, dialogue between UNESCO and mining business led to the important 2003 pledge by the mining association to treat World Heritage sites as no go areas for mining activities.²⁴⁹ At the same time in recent years the Committee has also appeared more assertive and willing to effectively exercise its monitoring powers by resorting as an extreme measure to the deletion of properties from the World Heritage List when, in light of fundamental change of circumstances, such properties have lost their World Heritage value²⁵⁰.
157. As already recalled in Chapter I of this report, the World Heritage Convention's impact is not exclusively on the domestic law of the State Parties. On the contrary, it has been used as an

²⁴⁵ WHC-13/37.COM/7B.Add, p. 200. See also the country analysis on Lithuania in Section III of this report.

²⁴⁶ Disclosure: the present writer was the Chairperson of the panel acting on the mandate of the WH Committee. See UNESCO Report of the rapporteur on the twenty-second session of the World Heritage committee in Kyoto, 30 November-5 December 1998, WHC-98/conf. 203/18 para. VII.28.

²⁴⁷ UNESCO Report of the rapporteur on the third extraordinary session of the World Heritage Committee in Paris 12 July 1999, WHC-99-conf205-5.

²⁴⁸ See G. Buzzini and L. Condorelli, "List of World Heritage in Danger and Deletion of Property from the World Heritage List", in F. Francioni (ed) *The 1972 World Heritage Convention. A Commentary*, Oxford, 2008, p. 175 ff.

²⁴⁹ World Park Congress declaration, South Africa 2003. UNESCO press release, 22 August 2003.

²⁵⁰ Two World Heritage properties have been removed from the List: the natural heritage of the Arabian Oryx (Oman) in 2007, and the Dresden Elbe Valley (Germany) in 2009.

effective legal tool also at the level of international law adjudication, both as the applicable law to a dispute, and as a source of interpretative criteria to establish the content and scope of international obligations arising from legal sources different from the World Heritage Convention. The first example is provided by the already mentioned ICSID arbitration *SPP v Egypt*, in which the World Heritage Convention was held to be the relevant applicable law capable of trumping foreign investors' rights in a tourist development project that had to be cancelled because of its adverse impact on the WH site of the Pyramids. The second example is provided by the *Parkering v Lithuania* arbitration, where the WH status of Vilnius was used a criterion to limit Lithuania's obligations under an investment treaty with Norway and by the cases of international criminal responsibility arising under the Statutes of the International Criminal Tribunal for Former Yugoslavia and of the International Criminal Court²⁵¹. This expansion of the effects of the World Heritage Convention beyond its formal scope of application can contribute to overcoming the present problem of "fragmentation" of international law into a multitude of normative sectors insulated one from another, and can at the same time be an important factor of the legitimacy and effectiveness of the World Heritage Convention.

²⁵¹ See *supra* Section II

Chapter 5 Conclusions and Recommendations

158. With 190 states parties and nearly one thousand sites inscribed in the WH List, it is clear that the sustainability of the system of world heritage protection will increasingly depend on the decentralized compliance by State parties and their spontaneous implementation of policies aimed at fulfilling the obligations arising under the Convention and the objectives set in the 1972 Recommendation. The country analysis carried out in this report indicates that the countries examined have adopted legislation and created institutions dedicated to the conservation and management of cultural and natural heritage. None of the countries examined has chosen the road of the adoption of specific measure to give effect solely to the World Heritage Convention. The conclusion reached in our analysis is that by adopting general laws and codes on cultural and natural heritage a more comprehensive protection can be achieved for all forms of heritage and not only for items of outstanding universal significance suitable for WH inscription. This not only facilitates the fulfilment of the objectives of the 1972 Recommendation, which covers all cultural and natural heritage, but can also promote coherence and mutual support of different legal regimes of heritage protection from protection in time of war trade, countering illicit trade in cultural object, and safeguarding intangible cultural heritage.
159. The increasing number of WH sites and the diminishing resources available to UNESCO will make a direct supervision of the effective implementation of the Convention in domestic law more difficult. This will require a “responsible” use of sovereignty by State Parties as the most important agents for the effective implementation of the Convention. At the same time, *this report wishes to suggest that a system of “indicators” should be introduced to gauge the level of effective observance by State Parties to the Convention and of the 1972 Recommendation. Some of these “indicators” are already implied in the questionnaires and the periodic reports. They include framework legislation for heritage protection, action plans to promote heritage, education and training of experts. More could be added, including budget analysis to determine the amount of resources devoted to heritage conservation and impact of heritage law and policy on international economic relations of State Parties, especially in the field of trade and foreign direct investments.*
160. As suggested by some of the cases examined in this report (*SPP Properties v Egypt, Parkering v Lithuania, S. Elena v Costa Rica, Kakadu*) the effectiveness of the World Heritage Convention and of the 1972 Recommendation cannot be gauged only in relation to the implementing domestic legislation of the State Parties, but must be assessed also at the level of the international relations of the territorial state. This is especially important with regard to investment projects impacting on world heritage sites or on sites of significant cultural or natural value for the purpose of the 1972 Recommendation. Therefore, *this report wishes to recommend that when considering an international investment project in their territory, states evaluate the impact that such investment may have on sites inscribed on World Heritage List and on cultural and natural heritage which is relevant for the purpose of the application of the 1972 UNESCO Recommendation.*
161. The World Heritage Convention does not contain any provision for the settlement of disputes arising from its interpretation or application. The non-reciprocal nature of the obligations established by the Convention and the largely voluntary character of its system of international cooperation may explain this gap. However, after more than forty years since its adoption, the World Heritage Convention has developed into a much more complex and fine-tuned set of duties and rights related to the protection and conservation of world heritage. Thus, it is unavoidable that an increasing number of cases are brought before the Committee where diverging views are put forward by State Parties, advisory bodies, and UNESCO itself. These views may concern the concrete application of the test of “outstanding universal value”, the

extent of the obligation to cooperate, the disagreement over a fact, such as the existence of a serious danger for a WH site, or the necessity of the territorial state's consent to place a property on the List of the World Heritage in Danger. In all these cases the absence of impartial and objective mechanism of dispute resolution may have destabilizing effects on the Convention. The WH Committee as an intergovernmental body driven by political-diplomatic considerations may not be the ideal forum for delivering an impartial and objective interpretation of the Convention in concrete cases. The undesirable drifting of the Committee toward a more marked "politicization" of its decision has already been pointed out on the occasion of the 2012 Kyoto symposium marking the 40th anniversary of the World Heritage Convention. Therefore, *this report wishes to conclude that a better approach needs to be developed to deal with the persistent divergency of State Parties' views about the meaning of certain provisions of the Convention and about the scope of obligations arising there under.* One option that could be considered would be to defer the solution of legal disputes arising under the World Heritage Convention to a technical-legal group of independent experts, selected in consultation with the Advisory Bodies, and competent to provide authoritative opinions on the meaning of specific provisions of the Convention and rules of the Operational Guidelines, and to fully analyse the motives and implications of the diverging view existing over such provisions and rules.

162. Finally, *this report wishes to conclude that, to increase effectiveness and legitimacy of UNESCO normative action, a reflection should be started to promote systemic integration between the World Heritage Convention and the other UNESCO regimes of heritage protection.* The present system is one of increasing fragmentation and complexification of normative and institutional arrangements, with the 1972 Convention, the 1954 Convention and its second protocol, the 1970 Convention, the 2001 Convention, the 2003 Convention and the 2005 Convention. There is overlapping and interaction between these different treaty regimes, and it has become abundantly clear that interaction will intensify in the future, especially between the World Heritage Convention, on the one side, and the Hague system, the 1970 Convention and the 2003 Convention. At the time of dwindling resources for UNESCO and most Member States, a certain amount of institutional concentration and normative coordination could result, not only in a more cost effective organization of UNESCO's efforts for the safeguarding of cultural and natural heritage; it might also improve the understanding of the deeper interconnection between the different regimes of heritage protection and enhance coherence in the development of the legal tools that are necessary to make such protection effective in the national law and policies of Member States.

Recommendation 1.	Strengthen the existing results reporting framework, which includes the Periodic Reports, through the development of indicators and benchmarks to improve follow up on progress made by State Parties with the implementation of both the 1972 Convention and the 1972 Recommendation.
Recommendation 2.	State Parties to evaluate the impact that international investment projects in the territory of State Parties may have on sites inscribed on the World Heritage List and on cultural and natural heritage in general, which is relevant for the purpose of the application of the 1972 UNESCO Recommendation.
Recommendation 3.	Reflect and discuss about how to deal with situations of persistent divergency of State Parties' views about the meaning of certain provisions of the Convention and about the scope of obligations arising thereunder.

Recommendation 4. Reflect and discuss about how to promote the systemic integration between the 1972 Convention and the other UNESCO regimes in view of achieving mutual supportiveness between the different treaty systems of heritage protection.

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ICTY, *Prosecutor v Prlic, Stojic, Praljak et al*, Case IT-04-74, Judgment of 29 May 2013

List of Conventions

Convención para la Protección de la Flora, La Fauna y las Bellezas Escénicas Naturales de América (1942)	Convention on Nature Protection and Wild Life Preservation in the Western Hemisphere
Convención internacional para la regulación de la caza de Ballenas (1946)	International Convention for the Regulation of Whaling
European Cultural Convention (1954)	European Cultural Convention
The Hague Convention (1954)	Convention for the Protection of Cultural Property in the Event of Armed Conflict with Regulations for the Execution of the Convention
(First) Protocol to the Hague Convention (1954)	First Protocol to the Convention for the Protection of Cultural Property in the Event of Armed conflict 1954
Second Protocol to the Hague Convention of 1954 (1999)	Second Protocol to the Hague Convention of 1954 for the Protection of Cultural Property in the Event of Armed Conflict
Convention africaine sur la conservation de la nature et des ressources naturelles (1968)	African Convention for the Conservation of Nature and Natural Resources
London Convention (1969)	European Convention on the Protection of the Archaeological Heritage
Ramsar Convention (1971)	Convention on Wetlands of International Importance
UNESCO Convention (1970)	Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property
CITES (1973)	Convention on International Trade in Endangered Species of Wild Fauna and Flora
CMS (1979)	Convention on the Conservation of Migratory Species of Wild Animals
Bonn Convention (1979)	Convention on the Conservation of Migratory Species of Wild Animals
Convención sobre la Conservación de las Especies Migratorias de la Fauna	Convention on the Conservation of Migratory Species of Wild Animals
Bern Convention (1979)	Convention on the Conservation of European Wildlife and Natural Habitats
Granada Convention (1985)	Convention for the Protection of the Architectural Heritage of Europe (Granada)
Basel Convention (1989)	Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and Their Disposal

Convention Alpine (1991)	The Alpine Convention
Valetta Convention (1992)	European Convention on the Protection of the Archaeological Heritage (Revised)
Malta Convention (1992)	European Convention on the Protection of the Archaeological Heritage (Revised)
Convention on Biological Diversity (1992)	Convention on biological diversity
IUCN Convention	Convention on biological diversity
Convention of Climate Change (1992)	The United Nations Framework Convention on Climate Change
Convention to Combat Desertification (1994)	United Nations Convention to Combat Desertification in Those Countries Experiencing Serious Drought and/or Desertification, Particularly in Africa (UNCCD)
UNIDROIT (1995)	UNIDROIT Convention on Stolen or Illegally Exported Cultural Objects
Florence Convention (2000)	The European Landscape Convention
European Landscape Convention (2000)	The European Landscape Convention
Paris Convention (2001)	Convention on the Protection of the Underwater Cultural Heritage
Paris Convention (2003)	Convention for the Safeguarding of Intangible Cultural Heritage
Diversity of Cultural Expressions Convention (2005)	Convention on the Protection and Promotion of the Diversity of Cultural Expressions
Framework Convention on the Value of Cultural Heritage for Society	Council of Europe Framework Convention on the Value of Cultural Heritage for Society
WHC	World Heritage Committee
World Heritage Convention	Convention Concerning the Protection of the World Cultural and Natural Heritage (1972)