



WORLD HERITAGE 2002
Shared Legacy, Common Responsibility

Associated Workshops
Italy
11-12 November 2002

THE LEGAL TOOLS FOR WORLD HERITAGE CONSERVATION

SIENA

CONCLUSIONS OF THE INTERNATIONAL WORKSHOP

Hosted by the City of Siena at Santa Maria della Scala
Organized by the University of Siena and UNESCO's World Heritage Centre
With the support of the Monte dei Paschi di Siena Foundation

INTRODUCTION

A workshop on "**The Legal Tools for World Heritage Conservation**" was held in Siena, Italy, on 11-12 November 2002. The workshop, organised by the UNESCO World Heritage Centre and the University of Siena, was hosted by the City of Siena at Santa Maria della Scala and supported by the Fondazione Monte dei Paschi di Siena.

The workshop was organized within the framework of the Congress of experts entitled "World Heritage 2002: Shared Legacy, Common Responsibility" (Venice, 14-16 November 2002) organized jointly by the UNESCO World Heritage Centre and the Government of Italy on the occasion of the 30th anniversary of the *Convention concerning the protection of the world cultural and natural heritage* (adopted by the UNESCO General Conference in 1972).

AIMS OF THE WORKSHOP

The workshop "The Legal Tools for World Heritage Conservation" had two main aims:

- (i) to bring together leading international legal experts and specialists in order to assess the scope and effectiveness of the *World Heritage Convention* on the occasion of its 30th anniversary; and,
- (ii) to identify the opportunities for future strengthening of this instrument.

OUTLINE OF THE WORKSHOP

The workshop was attended by a number of distinguished international legal experts and specialists, both academics and practitioners, other interested participants, a representative of the IUCN Environmental Law Programme, a representative of ICOMOS, the Assistant Director-General for Culture of UNESCO, staff of the UNESCO World Heritage Centre and the Chief of the Section for International Standards, Cultural Heritage Division of UNESCO.

The workshop was organized into four sessions, namely,

- (i) The *World Heritage Convention* and International Law
- (ii) Building on Experience: An assessment of the implementation of the *World Heritage Convention*
- (iii) The National Dimension: Application and interpretation of the *World Heritage Convention* by national bodies
- (iv) Protecting our Common Heritage: The *World Heritage Convention* and international responsibilities

SUMMARY OF THE MAIN THEMES AND CONCLUSIONS

I. OPENING SESSION

1. The workshop participants were welcomed by the Assistant Director-General for Culture of UNESCO. The Mayor of Siena gave a brief presentation which highlighted the importance of protecting the City of Siena as a World Heritage site whilst providing access and social services in a spirit of inclusion to the inhabitants of Siena. The Rector of the Santa Maria della Scala and the Rector of the University of Siena welcomed the participants and spoke about their respective institutions' roles in conservation and research. The Deputy Director of the Fondazione Monte dei Paschi di Siena outlined the role of the Fondazione in the social, economic and cultural life of Siena.

II. THE WORLD HERITAGE CONVENTION AS A UNIQUE LEGAL INSTRUMENT

2. On the occasion of the 30th Anniversary of the *World Heritage Convention*, there was agreement amongst participants that the workshop was a valuable opportunity to analyse its achievements and to discuss ways to further strengthen its implementation.

3. It was recognized that the *World Heritage Convention* was one of the very first international environmental protection treaties, and on reflection was in many aspects "ahead of its time". The innovation of the *World Heritage Convention* is characterised by the inclusion of the notion of common heritage of humanity and of a system of international co-operation and assistance. For this reason, the imagination of the drafters of the *Convention* and those involved in its early implementation were remembered and celebrated.

4. The workshop also acknowledged the *World Heritage Convention* as a unique legal instrument as it has the capacity to reconcile the following opposing interests:

- (i) culture and nature;
- (ii) national legislation and common heritage of humanity;
- (iii) permanent sovereignty and international solidarity;
- (iv) cultural identity and universality.

5. Other particular features of the *Convention* include the establishment of a World Heritage Committee, a World Heritage List, a List of World Heritage in Danger, a World Heritage Fund, a system of International Assistance for, and reporting by, States Parties, the involvement of organizations (non-governmental and inter-governmental) in the evaluation of World Heritage nominations and monitoring of World Heritage properties and a designated Secretariat.

III. ANALYSIS OF THE WORLD HERITAGE CONVENTION IN THE CONTEXT OF INTERNATIONAL LAW

6. During the workshop, importance was given to the influence of international law and its significant transformation in the last 30 years, on the internal regime of World Heritage. It was noted that environmental law had evolved at a greater pace than cultural property law.

7. The *World Heritage Convention* was situated within an analysis of key principles and issues in international environmental and cultural property law and discourse. The *World Heritage Convention* was described as being a convention which creates obligations of interdependence, rather than traditional reciprocal obligations.

8. Important principles to be considered when interpreting the *Convention* in the context of international law are:

- (i) the common concern of the international community;
- (ii) the principle of co-operation;
- (iii) the principle of preventive action;
- (iv) the precautionary principle;
- (v) the principle of intergenerational equity; and
- (vi) the principle of evolving interpretation of international legal instruments which requires that these instruments also be interpreted taking into account current trends in international and national jurisprudence and practice.

IV. EVOLUTION THROUGH IMPLEMENTATION

9. Looking back at the history of implementation of the *Convention*, emphasis was placed on the significant evolution in the following main areas.

- (i) The continuing normative work of UNESCO to create an international legal framework for the protection of tangible cultural heritage has been complemented by the *World Heritage Convention*. Furthermore, the *World Heritage Convention* continues to be a source of inspiration and experience for the development of new legal instruments, including the protection of intangible cultural heritage.
- (ii) The scope of the definition of cultural and natural heritage has been significantly expanded to include cultural landscapes and to address the representivity of the World Heritage List. Furthermore, it is increasingly recognized that cultural and natural heritage are an important part of social and cultural identity.
- (iii) There have been improvements in the institutional support structure of the *Convention* with, for example, the establishment of the World Heritage Centre in 1992.
- (iv) A system of monitoring and preparation of Periodic Reports of the implementation of the *Convention* and of the state of conservation of World Heritage properties by States Parties, has been activated (Article 29).

V. IMPLEMENTING THE WORLD HERITAGE CONVENTION AT A NATIONAL LEVEL

10. With regard to national implementation two questions were raised:

- (i) Have States Parties succeeded in complying with their treaty obligations under the *World Heritage Convention*? and,
- (ii) Are the provisions in the *World Heritage Convention* and/or the *Operational Guidelines for the implementation of the World Heritage Convention* reflected in national law?

11. UNESCO was called upon to reinforce assistance to States Parties to develop appropriate legislation and other protection mechanisms for World Heritage.

12. Some presentations of practice and judicial interpretations concerning the nature and extent of obligations under the *World Heritage Convention* at a national level were made. These could provide lessons learned for other countries.

13. The importance of training (for example, for local communities, non-governmental organisations, lawyers and judges) in the field of legislative protection of the World Heritage was emphasised. Once the specific training needs of States Parties are identified, partnerships for training between UNESCO and the International Development Law Organization (IDLO), the International Bar Association (IBA) and other institutions such as universities, could be beneficial.

14. It was considered that further discussion on the interpretation of the *World Heritage Convention's* use of the term "Presentation" and its implications concerning access to World Heritage properties would be useful.

15. With reference to the requirement in the *Operational Guidelines* for adequate protection at the time of inscription of a property on the World Heritage List, two issues were raised:

- (i) the need for the World Heritage Committee to establish a mechanism to evaluate the adequacy of legal protection of the property at the time of nomination; and,
- (ii) the need to determine at the national level, the specific, and often complex, requirements for legal protection of World Heritage cultural landscapes.

VI. SUGGESTED MECHANISMS FOR REINFORCEMENT

16. Throughout the discussion, the benefits of "soft law" (such as the 1968 and 1972 UNESCO Recommendations and the *Operational Guidelines*) were emphasised. It was considered that the scope of the 1972 *Recommendation concerning the Protection of the Cultural and Natural Heritage at the National Level* is greater than the *World Heritage Convention*. It was suggested that greater use be made of the 1972 Recommendation.

17. In terms of enforcement of obligations, it was noted that the *Convention* does not include a dispute settlement or conciliation mechanism. However, if an international treaty such as the *Convention* does not specifically provide a dispute settlement mechanism or clause, this does not necessarily imply that a lacunae exists as general international law may apply in the absence of specific provisions. Particular mention was made of the principles found in the UN Charter and the 1969 *Vienna Convention on the Law of Treaties*. Moreover, international law and other international institutions provide promising solutions such as "good offices", mediation and conciliation procedures. A number of constructive and practical proposals for operational mechanisms based on the objective of World Heritage site protection and co-operation were made. Incentive measures could also be considered and indicators would need to be developed.

18. Noting that conventions are not rigidly segregated regimes, it was proposed that reporting and other mechanisms used in human rights and environmental treaties may provide models for the reinforcement of the *World Heritage Convention* as they all relate to common concerns of the international community.

VII. ADDRESSING OTHER GAPS AND LIMITATIONS OF THE *WORLD HERITAGE CONVENTION*

19. The following gaps and limitations were identified:

- (i) In the context of a World Heritage property that is an ensemble of immovable and movable heritage, it was questioned whether the scope of the *World Heritage Convention* be extended to include the protection of movable heritage;
- (ii) The issue of private ownership of heritage was raised in relation to questions of access, protection and economic gain. It was considered that this issue could become of increasing relevance to the implementation of the *World Heritage Convention* in the future.

VIII. CHALLENGES FOR THE FUTURE

20. The *World Heritage Convention* should, because of its innovation and visibility, continue to be seen as a source of ideas and experience for the development of future normative instruments (including the proposed UNESCO Declaration on Intentional Destruction of Cultural Heritage).

21. Discussion focused on possible cases of intentional destruction during times of peace that could be considered as crimes against the common heritage of humanity. In cases where these acts aim at the persecution of a group of people these acts could also be considered as a violation of human rights;

22. In working to reinforce the overall architecture of UNESCO's cultural heritage protection instruments and the other key environmental treaties (e.g. the *Convention on Biological Diversity*, the *Ramsar Convention on Wetlands of International Importance especially as Waterfowl Habitat* etc), there is a need to ensure the proper place of the *World Heritage Convention* (for example by increasing visibility, co-ordination and harmonization of activities, sharing of information etc) not just as a cultural convention but also as a relevant and powerful environmental treaty.

23. Attention should be given to ensuring that the *Convention* plays a pivotal rather than a marginal role in the follow up to the World Summit on Sustainable Development (Johannesburg, September 2002) and in preparation for the World Parks Congress (Durban, 2003). How can implementation of the *World Heritage Convention* contribute to poverty alleviation through, for example, opportunities for tourism and sustainable use?

24. Furthermore, it was suggested that UNESCO streamline and co-ordinate its work of the different UNESCO cultural heritage conventions for a greater synergy to benefit heritage conservation (the 1954 *Convention for the Protection of Cultural Property in the Event of Armed Conflict* and its two Protocols, the 1970 *Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property*, the 1972 *Convention Concerning the Protection of the World Cultural and Natural Heritage* and the 2001 *Convention on the Protection of the Underwater Cultural Heritage*).

25. In preparing for a new decade of implementation of the *World Heritage Convention* and ensuring the transmission of our World Heritage to future generations, awareness raising through education, media and marketing, networking, partnerships between governments and private entities and a focus on the development of appropriate national legislation and protective mechanisms were considered important.