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UNITED NATIONS EDUCATIONAL, SCIENTIFIC AND CULTURAL
ORGANIZATION

CONVENTION CONCERNING THE PROTECTION OF THE WORLD
CULTURAL AND NATURAL HERITAGE

WORLD HERITAGE COMMITTEE

Sixth extraordinary session

Paris, UNESCO Headquarters, Room II

17 – 22 March 2003

**Item 4 of the Provisional Agenda: Policy/legal issues concerning inscription of
properties on the List of World Heritage in Danger and the potential deletion of
properties from the World Heritage List**

**Report of the 30th Anniversary workshop "The Legal Tools for World Heritage
Conservation", Siena (11 - 12 November 2002)**

This document consists of three Sections:

SECTION I:	Summary report of the Siena workshop "The Legal Tools for World Heritage Conservation"
SECTION II:	Agenda of the Siena workshop
SECTION III:	List of Participants

NOTE The complete proceedings of this workshop are in preparation and will be submitted to the Director-General of UNESCO for their presentation to the 27th session of the World Heritage Committee (Suzhou, 29 June - 5 July 2003).

For further background on this Agenda Item also see:

WHC-02/CONF.202/INF.15	Item 12 of Summary Record of the 26th session of the World Heritage Committee
WHC-03/6 EXT.COM/4	Draft Decision on Policy/legal issues concerning inscription of properties on the List of World Heritage in Danger and the potential deletion of properties from the World Heritage List
WHC-03/6 EXT.COM/INF.4A	Legal considerations concerning the inscription of properties on the List of World Heritage in Danger and the deletion of properties from the World Heritage List (formerly WHC-02/CONF.202/8)
WHC-03/6 EXT.COM/INF.4B	IUCN Analysis of the legal issues in the Draft <i>Operational Guidelines</i> (formerly WHC-02/CONF.202/INF.12)
WHC-03/6 EXT.COM/INF.4C	Priority recommendations from the WHC/IUCN Workshop on "The Role of the World Heritage in Danger Listing in Promoting International Co-operation for the Conservation of World Natural Heritage", Amman (2000)

SECTION I: REPORT OF THE SIENA WORKSHOP

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.



World Heritage 2002
Shared Legacy, Common
Responsibility

WORKSHOP PROGRAMME

**THE LEGAL TOOLS FOR
WORLD HERITAGE
CONSERVATION**

Siena, 11 - 12 November 2002

International Workshop

On the occasion of the 30th anniversary of the World Heritage Convention

Organized by the UNESCO World Heritage Centre and the Faculty of Law of
the University of Siena

Hosted by the City of Siena with the support of the Fondazione Monte dei
Paschi di Siena



FONDAZIONE
MONTE DEI PASCHI DI SIENA



OBJECTIVES OF THE WORKSHOP:

The Workshop's main objective is to assess the scope and effectiveness of the World Heritage Convention on the occasion of its 30th anniversary and to identify the opportunities for the future strengthening of this instrument. The evaluation of the World Heritage Convention's implementation will be carried out taking into consideration the following elements:

- (i) comparative study of the existing natural/cultural heritage conventions (e.g. the Hague Convention, the RAMSAR Convention, the CMS, MAB and CBD);
- (ii) analysis of the most relevant World Heritage 'jurisprudence' (i.e. case studies, resolutions from the General Assembly and the World Heritage Committee, Operational Guidelines, national case-law, *inter alia*); and
- (iii) examination of the legal measures and actions that have been adopted by national legislation.

GENERAL STRUCTURE OF THE WORKSHOP:

Monday morning:	Introduction and discussion of the general principles and notions of the World Heritage Convention
Monday afternoon:	Evaluation of the implementation of the World Heritage Convention
Tuesday morning:	National implementation of the World Heritage Convention
Tuesday afternoon:	Future prospects of the World Heritage Convention

Each session will consist of two modules:

- **First module:** Presentation by speakers (usually three or four) of their papers previously circulated to participants (approximately 10/15 minutes per speaker).
- **Second module:** These speakers will be joined by three or four experts who will participate in a panel discussion guided by the moderator.

AGENDA

Monday 11 November 2002

9:00-9:30

Welcome

- Mr M. Bouchenaki (Assistant Director-General for Culture, UNESCO)
 - Mr M. Cenni (Mayor of Siena)
 - Dr A. Carli (Rector, Santa Maria della Scala)
 - Dr P. Tosi (Rector, Università degli Studi di Siena)
- Mr G. Mancini (Vice-president, Fondazione Monte dei Paschi di Siena) will give a short presentation on *Partnerships and Public-Private Co-operation for World Heritage Conservation*

09:30-13:00

The World Heritage Convention and International Law

Session Chair:

Mr M. Bouchenaki (Assistant Director-General for Culture, UNESCO)

Speakers:

• *Introduction*

Prof. F. Francioni (Università degli Studi di Siena)

• *The World Heritage Convention and its relation to the body of International Law*

Prof. P.-M. Dupuy (European University Institute, Florence)

• *The Concept of Common Heritage of Humanity*

Prof. A. Kiss (Université de Strasbourg)

• *Public Interests and Common Concerns*

Prof. J. L. Sax (University of California - Berkeley)

Round Table:

- Prof. J. Fromageau (Université de Paris-Sud)
- Ms C. Redgwell (University of Oxford)
- Mr A. Yusuf (UNESCO Legal Adviser)

13:00-14:30

Lunch

14:30 -18:30

Building on Experience: An assessment of the implementation of the World Heritage Convention

Session Chair:

Dr A. Wichiencharoen (Chair, National Committee for World Heritage, Thailand)

Speakers:

• *Analysis of the Tools for the Implementation of the World Heritage Convention*

Dr S. Titchen (Chief, Policy and Statutory Implementation Unit, UNESCO World Heritage Centre)

• *Reinforcing the Implementation Mechanisms of the World Heritage Convention*

Prof. E. Franckx (Vrije Universiteit Brussel)

• *The World Heritage Convention's Role amongst other Conventions for the Protection of Cultural Heritage*

Mr G. Carducci (Chief, International Standards Section, Cultural Heritage Division, UNESCO)

• *The World Heritage Convention and the Outcomes from the World Summit on Sustainable Development*

Mr J. Scanlon (Head, IUCN Environmental Law Programme)

Round Table:

- H.E. Mr S. Fernandez (Ambassador of Chile to Egypt)
- Prof. T. Scovazzi (Università di Milano-Bicocca)
- Dr B. von Droste (former Director, UNESCO World Heritage Centre)

Tuesday 12 November 2002

9:00-13:00	The National Dimension: Application and interpretation of World Heritage decisions by national bodies
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Session Chair: Dr M. Amr (Permanent Delegation of Egypt to UNESCO)

Speakers:

- *Drafting and Enforcing Heritage Legislation in Developing Countries*
Prof. A. Benjamin (Director, Law for a Green Planet Institute, Brazil)
- *Judicial Interpretations of the World Heritage Convention*
Mr M. Peek (Permanent Delegation of Australia to UNESCO)
- *Heritage Law in Africa: The Neglect of Monuments and Sites in Sub-Saharan Africa*
Prof. F. Shyllon (University of Ibadan, Nigeria)
- *National Capacity-Building: Training Tools for Heritage Management*
Dr Y. Kassahun (Director of Distance Learning and Research Center, International Development Law Organization, IDLO)

Round Table:

- Mr J. Tunney (University of Abertay, Dundee)
- Ms M. Cornu (Centre d'études sur la coopération juridique internationale - CNRS, Paris)
- Ms S. Gimbrère (Ministry of Culture, The Netherlands)
- Ms B. Hoffman (International Bar Association, Art and Cultural Heritage Law Committee)

13:00-14:30 **Lunch**

14:30-18:00	Protecting our Common Heritage: The World Heritage Convention and international responsibilities
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Session Chair: Mr A. Yusuf (UNESCO Legal Adviser)

Speakers:

- *The World Heritage Convention: Obligations owed to States Parties or to the international community as a whole?*
Dr R. O'Keefe (University of Cambridge)
- *International Liability and Heritage Sites*
Prof. P.S. Rao (Member of the International Law Commission)
- *The Legal Challenges of the List of World Heritage in Danger*
Prof. L. Condorelli (Università di Firenze)
- *Thirty Years On: The Place of the World Heritage Convention in International Law*
Prof. F. Francioni (Università degli Studi di Siena)

Round Table:

- Prof. A. Draye (ICOMOS / Université catholique de Louvain)
- Mr A. González (Permanent Delegation of Argentina to UNESCO)
- Prof. S. Sucharitkul (Golden Gate University, San Francisco)
- Mr M. Bouchenaki (Assistant Director-General for Culture, UNESCO)

18:00-18:30	Synthesis and Conclusions of the Workshop
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SECTION III: LIST OF PARTICIPANTS

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