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## World Heritage

# 23 GA

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

TWENTY-THIRD SESSION OF THE GENERAL ASSEMBLY OF STATES PARTIES TO THE CONVENTION CONCERNING THE PROTECTION OF THE WORLD CULTURAL AND NATURAL HERITAGE

> Paris, UNESCO Headquarters November 2021

Provisional agenda item 8: Possible measures concerning arrears, including with respect to the examination of nominations submitted by the concerned States Parties, without detriment to the protection of States that cannot pay for causes beyond their control

#### **SUMMARY**

In accordance with paragraph 11 of Resolution 22 GA 7, this document outlines possible measures concerning arrears, including with respect to the examination of nominations submitted by the concerned States Parties, without detriment to the protection of States that cannot pay for causes beyond their control.

Draft Resolution: 23 GA 8, see Part III.

## I. BACKGROUND

- At its 22nd session (UNESCO, 2019), the General Assembly of the States Parties to the World Heritage Convention decided to include on the agenda of its 23rd session an item entitled "Possible measures concerning arrears, including with respect to the examination of nominations submitted by the concerned States Parties, without detriment to the protection of States that cannot pay for causes beyond their control" (Resolution 22 GA 7, paragraph 11).
- 2. The addition of this item follows repeated discussions that have taken place since 2012 at both the World Heritage Committee and at the General Assembly on the subject of arrears/non-payments of assessed contributions under Article 16 of the Convention.
- The payment of compulsory and voluntary assessed contributions is, under Article 16 of the World Heritage Convention, an obligation incumbent on all States Parties to the Convention. The World Heritage Committee further reiterated this in its Decision 44 COM 14 (Fuzhou/online, 2021). However, failure to pay does not prevent States from continuing to enjoy the benefits conferred on them by the Convention, beginning with exercising the right to submit nominations for inclusion on the World Heritage List.

## II. POSSIBLE MEASURES CONCERNING ARREARS

#### A) Rights conferred by the Convention

- 4. The principal rights of States Parties to the Convention are, inter alia;
  - a. the possibility of presenting a nomination to the World Heritage Committee;
  - b. the possibility of exercising a right to vote;
  - c. the possibility of submitting nominations for inclusion on the World Heritage List;
  - d. the possibility of choosing the system of assessed voluntary contributions (Article 16.2);
  - e. the possibility of requesting international assistance (Article 19);
  - f. the possibility of denouncing the Convention (Article 35).

#### B) Existing measures

- 5. As it stands, the text of the Convention only provides for one measure in the event of a delay in paying the compulsory or voluntary contribution for the current year and the calendar year immediately preceding it, under Article 16, i.e.:**losing eligibility as a member of the World** Heritage Committee (Article 16.5).
- 6. In addition, in 1989, the Committee noted "that there continued to be delays in the payment of obligatory or voluntary contributions", as a result of which it decided that "the States Parties which are in arrears with their payments for the biennium in question would not be in a position to obtain international assistance under the Fund, except in exceptional or emergency circumstances" (Decision 13 COM XII.34, UNESCO, 1989). In the same decision, the Committee requested that the Secretariat modify the Operational Guidelines to reflect the decision. The revised Operational Guidelines including these provisions were

adopted by the Committee at its 15th session (Carthage, 1991) by Decision **15 COM XIV.57**.

7. These are therefore the only two measures in place to date concerning the non-payment of contributions.

#### C) Feasibility of other measures

- 8. With regards to the right to denounce the Convention, or the right to choose the system of voluntary contributions (paragraphs 4(d) and 4(f) above), it is clear that the non-payment of contributions cannot have any impact, since these rights fall strictly within the sovereignty of the States concerned.
- 9. The only rights in relation to which the feasibility of measures concerning contributions can be examined are therefore the right to vote in the General Assembly and the Committee, and the right to submit a nomination for inclusion on the World Heritage List.
- 10. At present, these rights remain in effect, regardless of the status of contributions.

#### 1) The right to vote at the General Assembly and the Committee

- 11. Comparing the election procedures of the various governing bodies of UNESCO's Cultural Conventions, it emerges that those that provide for elections have no restrictive measures in place on the right to vote (Second Protocol (1999) to The Hague Convention of 1954 for the Protection of Cultural property in the Event of Armed Conflict, the 2005 Convention on the Protection and Promotion of the Diversity of Cultural Expressions, and the 2003 Convention for the Safeguarding of the Intangible Cultural Heritage).<sup>1</sup>
- 12. With regards to UNESCO's governing bodies, exercising the right to vote at the General Conference is subject to the payment of contributions under Article IV.C.8(b) of UNESCO's Constitution: "A Member State shall have no vote in the General Conference if the total amount of contributions due from it exceeds the total amount of contributions payable by it for the current year and the immediately preceding calendar year.".Similarly, following the amendment to the Constitution at the 40th session of the General Conference, in the case of the Executive Board, "A Member State shall have no vote if the total amount of contributions due from it exceeds the total amount of contributions payable by it for the current year and the immediately preceding calendar year.".Similarly, following the amendment to the Constitution at the 40th session of the General Conference, in the case of the Executive Board, "A Member State shall have no vote if the total amount of contributions due from it exceeds the total amount of contributions payable by it for the current year and the immediately preceding calendar year. (Article V.C.14.(b) of the Constitution). In both cases, the General Conference may, however, decide to make an exception to this rule "if it is satisfied that failure to pay is due to conditions beyond the control of the Member State" (Articles IV.C. 8(c) and V.C.14(b) of the UNESCO Constitution). The procedure applicable to communications from Member States invoking this provision is determined by Article 80 of the Rules of Procedure of the General Conference, and Article 48.2 of the Rules of Procedure of the Executive Board.
- 13. Since 2019, the Constitution, as modified by the General Conference at its 40th session, also provides for a restriction on eligibility: "A Member State shall not be eligible as a Member of the Executive Board if the total amount of contributions due from it exceeds the total amount of contributions payable by it for the current year and the immediately preceding calendar year. The General Conference may nevertheless permit such a Member State to be eligible as a Member of the Executive Board if the total conference may nevertheless permit such a for pay is due to conditions beyond the control of the Member State."(Article V.A.1.b)).

<sup>&</sup>lt;sup>1</sup> Note that no elections are provided for in the text of the 2001 Convention on the Protection of Underwater Cultural Heritage, or in the 1970 Convention on the Means of Prohibiting the Illicit Import, Export and Transfer of Ownership of Cultural Property.

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14. In the 1972 Convention, while there is already an explicit restriction on eligibility for membership of the Committee in the event of a delay in paying the compulsory or voluntary contribution for the current year and the calendar year immediately preceding it, the Convention does not provide for any restriction on the right to vote at the General Assembly of States Parties to the Convention, or on members of the Committee's right to vote at the Committee. It should be noted in this regard that UNESCO's Constitution, which has already provided for a restriction on the right to vote at the General Conference, was amended at its 40th session to also provide for restrictions on the right to vote at the Executive Board. Since the right to vote is tied to the status of a State Party to the Convention, a restriction on the right to vote at the General Assembly or the Committee would imply that States Parties to the Convention were considering revisions to the Convention. The Convention's procedure for revision is set out in Article 37 of the Convention. According to Article 37.1, "This Convention may be revised by the General Conference of the United Nations Educational, Scientific and Cultural Organization." Furthermore, "Any such revision shall, however, bind only the States which shall become Parties to the revising convention."

## 2) The right to <u>submit</u> nominations for inclusion on the World Heritage List

- 15. Of the UNESCO Conventions, only the 1972 Convention and the 2003 Convention for the Safeguarding of the Intangible Cultural Heritage provide for inclusion on lists; they do not provide for any restriction on the right to submit property/items for inclusion.
- 16. Article 11.1 of the 1972 Convention provides that every State Party shall submit "an inventory of property forming part of the cultural and natural heritage, situated in its territory and suitable for inclusion in the list provided for in paragraph 2 of this Article".
- 17. On the basis of these inventories, the Committee will establish the World Heritage List. Thus, Article 11.2 of the 1972 Convention stipulates that "[o]n the basis of the inventories submitted by States in accordance with paragraph 1, the Committee shall establish, keep up to date and publish, under the title of 'World Heritage List', a list of properties forming part of the cultural heritage and natural heritage, as defined in Articles 1 and 2 of this Convention, which it considers as having outstanding universal value in terms of such criteria as it shall have established."
- 18. A legal opinion on the imposition of restrictions on the submission of nominations by members of the Committee was presented at the 7th extraordinary session of the Committee in 2004 (Document WHC-04/7 EXT.COM/4B.Add). In the light of Article 11.1 of the Convention, this opinion states that the "States Parties have a right to have the inventory examined by the Committee for possible inclusion on the World Heritage List". Furthermore, to the extent that the right of States Parties to have their sites examined by the Committee for possible inclusion on the World Heritage List is exercised through nominations, the legal opinion specifies that "the submission of nominations by States Parties constitutes the exercise of the right to have their inventory considered by the Committee, a right which stems from the terms of Article 11, paragraph 2." It follows that prohibiting States Parties from proposing a site for inclusion would result in those States Parties being unable to exercise their rights under the Convention.
- 19. To the extent that the Convention recognises States Parties' right to have their nominations examined by the Committee, the introduction of a restriction <u>on certain</u> <u>States, due to failure to pay their financial contribution, from submitting their nominations</u> <u>would require a revision to the Convention.</u>

## 3) <u>The examination</u> of nominations by the Committee.

- 20. The legal opinion presented at the 7th extraordinary session of the Committee in 2004 (Document WHC-04/7 EXT.COM/4B.Add) states that while "it would be legally problematic to attempt to prohibit members of the Committee from submitting nominations, it does however appear to be possible that the Committee imposes on itself certain restrictions in examining nominations", and specifies that "[t]he Committee is empowered to lay down rules, by which it imposes on itself a limit or a priority in the number or in the categories of nominations it examines during a session. "Thus, to enable it to manage a high number of nominations, the Committee has over time adopted decisions to limit the number of nominations submitted to it for examination. The most recent decision (Decision 40 COM 11, Istanbul/UNESCO, 2016) set this limit to 35 nominations per year, with just one nomination per State Party. These decisions by the Committee are based on its explicit powers under the Convention to establish its working methods and rules (e.g. for adopting rules of procedure, criteria, etc.) or its specific functions as defined in the Convention. These limitations do not affect the fundamental right of States to have their nomination examined by the Committee; they only have an impact on the timetable for examination if the annual limit of 35 nominations has been exceeded.
- 21. For examining nominations submitted by the States Parties, the Committee also decided to establish an order of priority system for examining nominations if the limit of 35 nominations had been exceeded, in which case the examination of additional nominations would be deferred to the following year, There are currently 12 such priorities, which are listed in paragraph 61(c) of the Operational Guidelines.
- 22. The Committee may therefore envisage adding to paragraph 61(c) of the Operational Guidelines a priority for the examination of nominations by the Committee linked to the payment of contributions. As such, the payment of contributions would have a potential impact only if the annual limit of 35 files was exceeded. In addition, not only would payment of contributions status need to be determined in the order of priorities, but the corresponding timetable (deadline for reviewing payments) would also need to be determined. Provision should also be made for what would happen if contributions were paid during the evaluation process (which is spread over two calendar years).
- 23. The fact that the evaluation of nominations entails a cost that is borne by the World Heritage Fund could potentially justify **deferring the examination of a nomination in connection with the payment of contributions**. It would then be necessary to determine the procedures for applying such a mechanism, including the deadline for reviewing payments and how many times such a deferral could occur.
- 24. As requested by the General Assembly in 2019, restrictions should also take account of the *"protection of States that cannot pay for causes beyond their control"*. This protection would entail the establishment of a verification procedure yet to be determined. This would risk substantially increasing the complexity of the existing processes: the criteria applicable to "causes beyond the control of States" would need to be determined, a verification body should be set up according to a procedure yet to be determined, and meeting according to a timetable also yet to be determined, and which would be compatible with the timetable in paragraph 168 of the Operational Guidelines, etc. The expected benefit of arrears collection appears to be limited when compared to the staff costs that could be incurred in setting up and applying such a procedure.

#### **III. DRAFT RESOLUTION**

#### Draft Resolution: 23 GA 8

The General Assembly,

- 1. Having examined Document WHC/21/23.GA/8,
- 2. <u>Reiterating</u> that for all States Parties to the Convention, the payment of annual contributions to the World Heritage Fund is a legal obligation under Article 16;
- 3. [...]