

Board resolution to amend the Statutes

Background

Since ICOMOS changed its Statutes in 2014, a number of practical problems have arisen in their implementation that need to be resolved for consistency and good governance. The Board is asking members to support a resolution making seven minor amendments to the Statutes at the Extraordinary General Assembly to be held on 12 December in Delhi.

The Board had previously proposed to hold an Extraordinary General Assembly to amend the Statutes in 2016, but as a result of requests from members for more time to consider the proposed changes, the Board subsequently decided to postpone the EGA until December 2017. Apart from the proposal to extend the renewable term of the auditor, all of the proposed amendments were circulated to members for comment in 2016, and discussed by those present at the 2016 Annual General Assembly in Istanbul. The proposed resolution below reflects the outcome of these consultations.

An explanation of the proposed changes is attached as an Appendix.

Resolution

The Extraordinary General Assembly of ICOMOS, meeting in Delhi on 12 December 2017:

Recalling its resolutions 18GA 2014/12 and 18GA 2014/13;

Noting that the proposal to amend the ICOMOS Statutes (2014) has been prepared by the Board;

Having examined the proposal for the amendment of the ICOMOS Statutes, as well as the explanatory report prepared by the Board;

Adopts by a two-thirds statutory majority the following amendments to the ICOMOS Statutes, as proposed and sent to the members:

(1) In Article 9-b, amend the sentence:

For each meeting, the General Assembly shall elect its President, three Vice-Presidents, and a Rapporteur whose term of office shall be for the duration of the meeting.

as follows:

*For each meeting, the General Assembly shall elect its President, **up to** three Vice-Presidents, and a Rapporteur whose term of office shall be for the duration of the meeting.*

(2) In Article 9-c, amend the sentence:

Unless specified otherwise in these Statutes, decisions shall be taken by a majority of the voting members, present and represented, provided that they come from at least a third of the National Committees.

By adding a second sentence as follows:

Unless specified otherwise in these Statutes, decisions shall be taken by a majority of the voting members, present and represented, provided that they come from at least a third of the National Committees.

Should the voting members present and represented come from less than the required third of National Committees, the General Assembly shall be adjourned for one hour and reconvened, after which its decisions shall be valid regardless of the number of National Committees.

(3) In Article 9-d-6, amend the sentence:

Every third year, nominate the auditor for a three-year term of office renewable once, based on a proposal by the Board;

as follows:

*Every **sixth** year, nominate the auditor for a **six**-year term of office renewable once, based on a proposal by the Board;*

(4) In Article 9-d-9, amend the sentence:

A retiring Board member who has served three consecutive terms may not be re-elected before the expiration of a minimum period of three years. The longest continuous term of service allowed as a member of the Board, elected or ex officio, is nine years.

as follows:

*A retiring Board member who has served three consecutive terms **in any one position** may not be re-elected before the expiration of a minimum period of three years. The longest continuous term of service allowed as a member of the Board, elected or ex officio, is nine years, **or twelve years if served in more than one position.***

(5) In Article 9-d-10, amend the sentence:

The candidates for the position of Vice-President shall be nominated by their respective region.

as follows:

*The candidates for the position of Vice-President shall be nominated by **National Committees or individual members within** their respective region.*

(6) In Article 10-a, amend the sentence:

A representative of the International Centre for the Study of the Preservation and Restoration of Cultural Property (ICCROM), the Vice-President of the Advisory Committee, and the Director General of the International Secretariat shall be in attendance at Board meetings in a non-voting advisory capacity.

and add two further sentences as follows:

The Vice-President of the Advisory Committee, and the Director General of the International Secretariat, shall be in attendance at Board meetings in a non-voting advisory capacity. A representative of the International Centre for the Study of the Preservation and Restoration of Cultural Property (ICCROM) shall be invited to attend in a non-voting capacity. Representatives of other organisations may be invited to attend Board meetings in a non-voting advisory capacity as observers.

(7) In Article 13, amend the sentence:

National Committees shall comprise all members of ICOMOS within a country, as defined in Article 6-a. A National Committee must have at least five Individual Members.

as follows:

National Committees shall comprise all members of ICOMOS within a country, as defined in Article 5-a. A National Committee must have at least five Individual Members.

Appendix: Explanatory report on the proposed amendments

Article 9-b: number of Vice-Presidents of the General Assembly

Article 9-b states in part:

For each meeting, the General Assembly shall elect its President, three Vice-Presidents, and a Rapporteur whose term of office shall be for the duration of the meeting.

While the election of three Vice-Presidents has been longstanding practice for triennial General Assemblies, and is a reflection of the number and length of the sessions, it seems unnecessary for an annual General Assembly which would normally have a single session lasting perhaps two hours. A single Vice-President should be sufficient for these meetings.

The proposed amendment would therefore insert the words “up to” before the words “three Vice-Presidents”, so that each Assembly could decide how many Vice-Presidents to elect.

Article 9-c: validity of decisions at a General Assembly

Article 9-c states:

Unless specified otherwise in these Statutes, decisions shall be taken by a majority of the voting members, present and represented, provided that they come from at least a third of the National Committees.

This raised a difficulty in establishing whether decisions could be taken at the first annual General Assembly in Fukuoka in 2015, as it was not clear how “a third of the National Committees” is to be defined. A number of definitions are possible:

- (a) A third of the National Committees eligible to attend and vote (refer to (b) below) that have voting members present at the meeting
- (b) A third of the National Committees that are eligible to attend and vote, being accredited by the Board according to Article 10-b-5 and having paid at least two-thirds of the dues owing for the current year, in accordance with Article 6-b, whether their voting members are present at the meeting or not
- (c) A third of all the National Committees accredited by the Board, whether or not they are financial in accordance with Article 6b, or present at the meeting
- (d) A third of all the National Committees, whether accredited or not, financial or not, or present or not.

It was decided in 2015 to adopt definition (b), as this was considered to best reflect both the intention of the Statutes and long-established practice that voting rights at General Assemblies should be accorded only to National Committees that had paid their membership dues. The number of such National Committees with nominated voting members present in 2015 just exceeded the necessary minimum, and it was evident to the Board that in future years there was a real possibility that the ability of the General Assembly to take valid decisions would be threatened. This actually occurred at the General Assembly the following year in Istanbul, where although members from the requisite third of all eligible National Committees were in attendance, not all of those Committees had nominated their voting members as required by Article 13-d-4 of the Statutes. Accordingly, that General Assembly was unable to take valid decisions in accordance with Article 9-c of the Statutes.

The former Statutes established a quorum for convening General Assemblies, and a provision that if the quorum was not present, the meeting would be reconvened at a later date and its decisions would then be valid regardless of the number present. This led to the practice of “opening” the General Assembly a day or so before the official scheduled opening, in order to comply with the provisions for a quorum without delaying the meeting proper. The new Statutes only require such a quorum for extraordinary General Assemblies for the purposes of amending the Statutes or for dissolving the association (Articles 23 and 24).

The intention of the new Statutes was to do away with this rather artificial procedure for ordinary General Assemblies, especially in the case of an annual General Assembly when a day’s postponement of the meeting for lack of a quorum might not be a practical possibility. Instead, however, the Statutes have effectively established a quorum for the validity of decisions which cannot be guaranteed to be met, and which therefore potentially imperils the validity of those decisions, especially the statutory ones relating to the approval of annual accounts.

The Board’s previous proposal to ensure that the General Assembly will always have sufficient numbers to validate its decisions was to adopt definition (a) for the statutory third of National Committees, and incorporate this definition into the Statutes. On reflection, however, the Board notes the comments that

adopting this definition as a general rule goes against the intention of the Statutes to have decisions of the General Assembly that are genuinely representative of the broader membership, rather than of a few of the larger National Committees, and that it would therefore be preferable to keep the current definition, but provide a mechanism for ensuring a quorum for decisions if for any reason the statutory minimum requirements cannot be met.

The proposed amendment would therefore add the following sentence at the end of Article 9c: *“Should the voting members present and represented come from less than the required third of National Committees, the General Assembly shall be adjourned for one hour and reconvened, after which its decisions shall be valid regardless of the number of National Committees.”*

Article 9-d-6: renewal of the auditor’s term of office

Article 9-d-6 states, as one of the tasks of the General Assembly:

Every third year, nominate the auditor for a three-year term of office renewable once, based on a proposal by the Board;

In the process of seeking proposals from accountancy firms to act as auditors for ICOMOS, the Secretariat has been advised that the normal minimum term of office for an auditor in France is six years. While the Board acknowledges the need to change the auditor from time to time so as to allow fresh eyes to review its financial records, it is also mindful of the expense likely to be incurred if frequently appointed new auditors need to spend additional time becoming familiar with the special nature of the ICOMOS accounts. The task of auditing the annual ICOMOS accounts is not straightforward, because the organisation has few parallels among associations incorporated in France. The multiplicity of sources of income, and the way in which expenditure is allocated to different activities, make the auditor’s task complex and demanding. The Board accordingly proposes that the six-year minimum term be reflected in the wording of the Statutes, and that the provision for renewing the auditor’s contract once be retained, bringing the auditor’s total term into line with the maximum term of office now being proposed for Board members.

The proposed amendment would therefore replace “third” and “three” in Article 9-d-6 with “sixth” and “six”.

Article 9-d-9: terms of office for elected positions

Article 9-d-9 states in part:

A retiring Board member who has served three consecutive terms may not be re-elected before the expiration of a minimum period of three years. The longest continuous term of service allowed as a member of the Board, elected or ex officio, is nine years.

This provision was introduced to meet a widely-held view among members (expressed through several consultations leading up to the amended Statutes) that there was insufficient turnover in leadership positions within ICOMOS. The new provision has nevertheless led to concerns in particular about the position of President of ICOMOS, with a real risk that there would be a new ICOMOS President every three years (assuming a President has previously served an initial term as an ordinary Board member followed by a term as a member of the Bureau). Changing the President so frequently may not be good for the organisation.

The role of President requires the building of relationships over a period of years with UNESCO, other organisations such as ICCROM and IUCN, and members of the World Heritage Centre and Committee, and also requires a period of prior learning through service on the Board and Bureau. A continuous term of nine years is not considered sufficient for both requirements: it risks producing Presidents that are either insufficiently experienced for the role, or that will occupy it for too brief a time to make good use of their experience. Similar considerations apply to the roles of Treasurer and Secretary-General.

A number of options have been proposed to deal with this problem:

- (a) Leave the Statutes as they are, and require Board and Bureau members to retire for three years before returning to seek election as President
- (b) Extend the longest continuous term of service for all Board positions to twelve years
- (c) Extend the longest continuous term of service to twelve years for a Board member who is subsequently elected President
- (d) Allow the General Assembly to resolve to increase (by one term) the maximum continuous term of office for any Board member, which it could then do in the case of a Board member elected President
- (e) Extend the longest continuous term of service for all Board members to twelve years provided that these are served in at least two positions (ie as Board member, Treasurer, Secretary-

General, Vice-President or President), retaining the nine year limit for Board members serving continuously in the same position.

- (f) Change the definition so that a person may serve no more than two continuous terms in any one position (i.e. as Board member, Treasurer, Secretary-General, Vice-President or President), with a maximum continuous term in all positions of twelve years.

The principles affecting the selection of an option are:

- It is preferable for a person to come into the Presidency straight after previous roles on the Board and Bureau, so that the knowledge and experience gained and relationships formed in these previous roles continue into the Presidency without a three year break. This is the main reason for proposing an amendment, and means that option (a) is not desirable;
- French law and practice are understood to require the same rule for terms of office to apply to all members of the Board, with no exceptions for any particular position. If this is the case, option (c) cannot be adopted, and it also raises doubts about option (d);
- There has been a strongly expressed membership view that the continuous terms in the previous Statutes were too long. Consequently, while the simplest amendment would be option (b), if adopted it would allow ordinary Board members to remain in office for even longer continuous terms than were possible under the previous Statutes. In other words, the amendment would improve matters for a few Board positions, notably the President, but arguably make matters worse for the others.

The Board has decided to propose option (e), which it regards as providing more flexibility than option (f). Option (e) retains the existing limit of three continuous terms for all Board members unless they are elected to a different position either during or at the end of their three continuous terms. However, because under Article 9-d-10 Board members are elected first (which is also understood to be required by French law) and then the President and other Bureau officers are subsequently elected from among the elected Board members, the situation could well arise that a Board member who has served three continuous terms in one position nominates for a fourth term with the intention of being elected to a different position, is elected to the Board on that understanding, but then fails to be elected to the different position sought and is consequently not able to remain on the Board. In this case, it is proposed that the Rules of Procedure will provide for the Board candidate with the highest number of votes of those not elected to the Board in the initial election to be declared elected.

During consultation with the membership, objections were made both to any extension of the maximum number of consecutive terms, and to the fact that the terms of office might not be the same for all Board members. It was also suggested that such unequal terms of office might not be in conformity with French associations law and practice and could possibly be discriminatory. As a result, the Board authorised the Director-General to seek a legal opinion on this matter. That opinion has concluded that the neither French law, nor doctrine or jurisprudence should create any legal problem regarding the Board's proposed amendment. A copy of the executive summary of the legal opinion follows:

The proposed amendment to the Statutes of ICOMOS **introduces an exception to the principle of a maximum duration of nine years** for three consecutive terms, bringing the maximum duration to twelve years, if elected as an officer in a different function during or at the end of three consecutive terms.

Because of this exception, the terms of the officers may have **different durations**. This has been criticized on the grounds that *"the French law of associations provides that the term of office shall be fixed by the Statutes, it is **the same for all members of the Board**".*

It has also been argued that *"the proposed amendment, in that it establishes a difference between members of the Board, does not appear to conform to the French law of associations and could even be considered **discriminatory**."*

First of all, this opinion points out that the association under French law amounts legally to a **contract** governed by the **general principle of contractual freedom** prevailing under the French law of obligations.

Under this principle, the authors of the Statutes have **considerable freedom**, including with regard to the organizational arrangements for the governing bodies of the association, since the **law of 1901** is **silent** on this point.

Alternatively, the association is also a **group** that, by analogy with the law of corporations (which are also groups), is subject to a **principle of equality** whose scope is **not clearly defined**.

This principle of equality is **sometimes likened to a democratic spirit** that may apply to associations to justify and to lead to **equal treatment**.

Even if such a democratic nature of the association existed, which is **contested by a part of the doctrine**, it would only justify a general principle of equal treatment **of members (not of officers)**, especially from the perspective of **access to information** and of the capacity to **participate** in the work of the association.

This principle of equality **cannot be put forward to justify** the regulation or limitation of how officers join the governing bodies of the association.

According to the doctrine, it is indeed **possible to envisage an unequal treatment of officers** of an association.

Only discrimination based on **reasons punishable by law** (such as gender, race, physical appearance, health status, etc.) may be illicit.

Such is not the case of the unequal treatment brought about by the proposed statutory amendment, which is based on the membership of the Bureau.

Moreover, it **does not affect the freedom of the administrators**, each remaining free to run for election to the Bureau.

Finally, it is **in line with social interest**, which will be, as a precautionary measure, documented in the new Statutes by the addition of a phrase justifying its utility.

The Board wishes to emphasise that this proposal is not being put forward with the aim of extending the statutory terms of any current Board members who have already served on the Board for nine years. In affirmation of this, all Board members who are coming to the end of their nine-year mandate have chosen not to stand for re-election at the forthcoming General Assembly if the proposed amendment is approved.

The proposed amendment would therefore add after “three consecutive terms” the words “in any one position”, and add after “nine years” the words”, or twelve years if served in more than one position”.

Article 9-d-10: nomination of Vice-Presidents

Article 9-d-10 states in part:

The candidates for the position of Vice-President shall be nominated by their respective region.

This raises a difficulty because (unlike IUCN, for example) ICOMOS has no formal regional structure, and therefore no formal mechanism for organising the nomination of Vice-Presidents. However, because the Statutes require the Vice-Presidents to “assist the President in representing ICOMOS and furthering its aims and activities throughout the world, in particular in their region” (Article 11-d-2-b) it is important for Vice-Presidents to have the support of members in their region. To give effect to this objective, it is proposed that the members or National Committees within the region nominate the candidates for Vice-President.

The proposed amendment would therefore add before “their respective region” the words “National Committees or individual members within”.

Article 10-a: attendance at Board meetings

Article 10-a states in part:

A representative of the International Centre for the Study of the Preservation and Restoration of Cultural Property (ICCROM), the Vice-President of the Advisory Committee, and the Director General of the International Secretariat shall be in attendance at Board meetings in a non-voting advisory capacity.

As background, the ICCROM Statutes provide for representatives from ICOMOS, IUCN and ICOM to be non-voting members of its Council, the Statutes of IUCN provide that its Council may invite observers to its meetings, and the Statutes of ICOM do not make specific provision for representatives of other organisations to attend its Executive Council meetings.

The Board's original concern with this article was that it appeared to place an obligation on the ICCROM representative to attend all Board meetings, and that it might also be appropriate for representatives of other Advisory Bodies (notably IUCN) or other organisations to attend Board meetings on occasion. Moreover, there might be occasions on which the Board would wish to discuss confidential matters without representatives of other organisations present. However, the Board noted the concern of ICCROM that the previous wording of the proposed amendment did not adequately reflect the intention of the Statutes to provide reciprocity for the existing arrangement whereby ICOMOS attends ICCROM Council meetings. The Board has therefore altered the wording to distinguish the ICCROM representative from both the Director-General and Advisory Committee Vice-President, and from other organisations that do not accord Board reciprocity to ICOMOS. In addition, the new Rules of Procedure include a provision that observers

and non-voting attendees at Board meetings may be required by the President to absent themselves from the meeting during the discussion of matters of a confidential nature.

The proposed amendment would now omit the words “A representative of the International Centre for the Study of the Preservation and Restoration of Cultural Property (ICCROM)” from the sentence above, and add after it two sentences as follows: “A representative of the International Centre for the Study of the Preservation and Restoration of Cultural Property (ICCROM) shall be invited to attend in a non-voting capacity. Representatives of other organisations may be invited to attend Board meetings in a non-voting advisory capacity as observers.”

Article 13: incorrect cross-reference

Article 13 states:

National Committees shall comprise all members of ICOMOS within a country, as defined in Article 6-a. A National Committee must have at least five Individual Members.

Article 6-a states:

Members shall commit to comply with the ICOMOS Ethical Principles and with the decisions of the General Assembly and the Board.

This appears to be an incorrect cross-reference. Article 13 is more likely to refer to Article 5-a, which states:

ICOMOS shall have four categories of members: Individual Members, Institutional Members, Affiliates and Honorary Members.

Individual members shall constitute the majority of the membership.

The proposed amendment would therefore replace “Article 6-a” in Article 13 with “Article 5-a”.
