

Proposed resolution to amend the Statutes

Background

A major revision to the ICOMOS Statutes was adopted by the General Assembly in 2014.

A number of concerns have been raised about the provisions of these new Statutes, especially where they differ from longstanding ICOMOS practice. While some of the operational provisions may need a trial period before an informed decision about them can be made by members, a few have already created significant difficulties, and others are foreshadowed to do so. The Board has therefore decided to hold an Extraordinary General Assembly in association with the next Annual General Assembly in October 2016, with a view to amending certain aspects of the Statutes.

This paper discusses the amendments proposed by the Board. The text of the proposed resolution to give effect to these amendments is provided at the end.

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 at the first annual General Assembly in 2015, as it is 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.

The former Statutes established a quorum for 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. 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 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 is not precisely defined, and which therefore potentially imperils the validity of those decisions, especially the statutory ones relating to the approval of annual accounts. Because only a limited number of National Committees may have the resources to attend the annual General Assembly held in conjunction with the Advisory

Committee meeting, there may be some years in which (if definitions (c) or (d) above are adopted) there would be insufficient National Committees present or represented for the decisions of the General Assembly to be valid. In 2015, definition (b) was adopted, although even so the number of National Committees present at the meeting was only just greater than a third of those that were financial and therefore eligible to vote. Consequently, to ensure that the General Assembly will always have sufficient numbers to validate its decisions, it is proposed that definition (a) be adopted and incorporated into the Statutes.

During consultation with the membership, the argument was advanced that adopting definition (a) would be contrary to the intention of the Article, which was to try to ensure that decisions of the General Assembly are genuinely representative of the broader membership, rather than of a few of the larger National Committees. While the Board is strongly supportive of this principle, it is also mindful of its duty under Article 10-d-1 of the Statutes to ensure the compliance of the operation of ICOMOS with the legislation applicable to associations, and it therefore seeks to minimise the risk of non-compliance for procedural reasons beyond its control.

The proposed amendment would therefore add after “National Committees” the words “which have voting members present at the General Assembly”.

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 (ie 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 requires 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 deemed 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 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 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 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 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 is of the opinion that, while the Director-General of ICOMOS and the Vice-President of the Advisory Committee should attend all Board meetings, it may not be necessary (notwithstanding any principle of reciprocity) to have a representative of ICCROM in attendance at every Board meeting, and on the other hand it may be appropriate for representatives of other Advisory Bodies (notably IUCN) or other organisations to attend Board meetings on occasion. The Board therefore wishes to broaden the scope and flexibility of this Article.

The proposed amendment would therefore 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 a second sentence as follows: “Representatives of the International Centre for the Study of the Preservation and Restoration of Cultural Property (ICCROM), the International Union for the Conservation of Nature (IUCN), the International Council on Museums (ICOM), and representatives of other organisations, may be invited to attend Board meetings in a non-voting advisory capacity.”

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”.

Draft Resolution

The Extraordinary General Assembly of ICOMOS, meeting in Istanbul on 19 October 2016:

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.

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 **which have voting members present at the General Assembly.***

(3) 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.***

(4) 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 within** their respective region.*

(5) 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.

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. Representatives of the International Centre for the Study of the Preservation and Restoration of Cultural Property (ICCROM), the International Union for the Conservation of Nature (IUCN), the International Council on Museums (ICOM), and representatives of other organisations, may be invited to attend Board meetings in a non-voting advisory capacity.

(6) 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.