

## CHAPTER 1

# THE WORLD HERITAGE CONVENTION: AN OVERVIEW

The World Heritage Convention, whose full title is "The Convention Concerning the Protection of the World Cultural and Natural Heritage," was adopted by UNESCO in 1972. The Convention today has 131 countries that are party to it. Through this instrument nations of the world have agreed to inventory, recognize and protect unique and irreplaceable properties of universal value. For the first time, the Convention provides a permanent framework -- legal, administrative and financial -- for international cooperation in safeguarding mankind's cultural and natural heritage, and introduces the specific notion of a "world heritage" whose importance transcends all political and geographic boundaries.

The Convention is the bedrock document of World Heritage Sites, and so this first chapter is devoted to an examination of it and how it works.

The site administrator may or may not have a role in the process of nominating a site to the World Heritage List. Nevertheless, it is important that the site manager have a basic knowledge of the legal relationship of national, state (provincial) and local governments to the World Heritage Convention. These legal relationships to a large extent govern how a particular level of government can influence or control tourism at World Heritage sites.

The full text of the Convention can be found in Appendix A.

### The World Heritage Lists

On signing the Convention, each country pledges to conserve the cultural and natural sites within its borders that are recognized by the Convention as being of exceptional and universal value. In return, the international community helps to protect these treasures. To define these significant sites the Convention has established the World Heritage List. The cultural and natural properties proposed to the list must meet specific criteria defined by the World Heritage Committee. The first eight sites were inscribed on the list in 1978. Currently there are 358 sites listed in 82 countries: 260 cultural sites, 84 natural sites and 14 mixed cultural and natural sites.

The World Heritage Committee also prepares and publishes a List of World Heritage in Danger. It includes World Heritage properties threatened with destruction, major alteration or abandonment. These threats may be caused by any one or combination of dangers including: accelerated deterioration, large-scale

public or private projects, rapid urban and tourist development, changes in use or ownership, armed conflict, fires, earthquakes, landslides, volcanic eruptions, floods, tidal waves and changes in water levels. Each time the committee makes a new entry on the List of World Heritage in Danger, it is required to publicize the fact immediately.

## The World Heritage Fund

Under the Convention, a Fund has been established for the Protection of World Cultural and Natural Heritage of Outstanding Universal Value. It is financed by contributions from member nations and from private organizations and individuals. The fund is used to respond to requests by member countries for international cooperation in supporting their efforts to protect their World Heritage Sites, as well as to meet urgent conservation needs of properties on the danger list. Member nations can request international assistance from the fund for studies, provision of experts, technicians, skilled labor, training of staff and specialists, and the supply of equipment for protection, conservation, rehabilitation and interpretation of World Heritage Properties. Member nations can also apply for long-term loans and, in special cases, for outright grants.

The level of the fund -- \$US2.3 million in 1991 -- is still far below what is required, but it has already financed important projects in Africa, Latin America, the Caribbean and Europe.

## National and International Protection

Member countries recognize that it is primarily their own responsibility to safeguard World Heritage properties in their countries. They agree to do all they can with their own resources and with international assistance. This includes agreement to:

- adopt a general policy giving cultural and natural heritage a function in the life of the community and to integrate the protection of that heritage into comprehensive planning programs.
- set up services for the protection, conservation and interpretation of that heritage.
- develop research studies and operating methods of counteracting dangers that threaten that heritage.
- take appropriate legal, scientific, technical, administrative and financial measures to preserve and present that heritage.
- foster national or regional centers for training and research in the fields of conservation and interpretation.

It is the duty of the international community as a whole to cooperate in protecting world heritage; therefore member countries agree to help when other countries ask for assistance in identifying, protecting and conserving their sites of outstanding universal value. Also each country agrees not to take deliberate measures that might directly or indirectly damage World Heritage properties in another country.

## **The World Heritage Committee**

The Convention is administered by a World Heritage Committee consisting of 21 nations elected from those nations that are party to the Convention. Elections are held every two years. The committee's main tasks are to :

- identify those nominated properties of outstanding universal value that are to be protected under the Convention and included on the World Heritage List.
- place threatened properties on the List of World Heritage in Danger.
- delete from the World Heritage List those properties that have lost their World Heritage values through damage or deterioration.
- administer the World Heritage Fund.
- inform the public about all of the above.

The executive body of the World Heritage Committee is the World Heritage Bureau. A chairman, five vice-chairmen and a rapporteur are elected by the committee at its annual meeting and hold office for one year.

## **The World Heritage Centre**

UNESCO established the World Heritage Centre in 1992 reporting directly to the Director-General. The Centre's main role is to carry out, rapidly and efficiently, activities related to the implementation of the World Heritage Convention and more specifically to:

- encourage states which are not yet party to the Convention to join.
- encourage member countries to nominate sites of outstanding universal value to the World Heritage List.
- support the implementation of the Convention in states parties.
- assist states in setting up institutions and training competent staff for the management, protection and restoration of cultural and natural heritage.

- facilitate project preparation for conservation operations and provide services for their implementation.
- mobilize extra-budgetary funds for this purpose.
- monitor the state of conservation of sites already inscribed on the list.
- respond promptly to emergency situations at endangered sites in cases of armed conflict and natural and man-made disasters.
- ensure the broadest possible promotion of UNESCO's work in the field of cultural and natural heritage to the public and specialized audiences.

## **The World Heritage Logo**

The logo, symbolizes the interdependence of cultural and natural properties: the central square is a form created by man and the circle represents nature, the two being intimately linked. The emblem is round like the world, but at the same time it is a symbol of protection.

## **Government's Legislative Responsibilities**

All government levels may have a role to play in relation to tourism and cultural World Heritage Sites. The role each plays will vary from country to country and from site to site and will depend on a range of factors including the respective government's philosophy and involvement in tourism and conservation.

However, so far as the protection and management of a cultural World Heritage Site is concerned, it is the national government that is under obligation to comply with the requirements of the World Heritage Convention. Only the national government has an international responsibility under the Convention. The Convention is only open to countries which are members of UNESCO and other such countries as are invited by UNESCO to accede to it. Where a country has a federal or non-unitary form of government, there is a specific provision to ensure that the national government is the state party. National governments are known under the convention as "states parties." Article 34 defines that the central or national government of a country that is a signatory to the Convention has the same obligations as any other States Party even though it may not have the direct power under that country's constitution to deal with the World Heritage Site. They may delegate powers, depending upon the particular country's form of government, but they cannot delegate their ultimate responsibility to the international community.

The obligations the World Heritage Convention impose on national governments relate to authenticity, management, education and protection. While the duties that must be performed to fulfill the obligations can be delegated by the national government to state and local levels of government, the obligations remain, at an international level, obligations of the national government.

State and local governments may have responsibilities for World Heritage sites or parts thereof. These responsibilities are only placed upon them because of the country's contribution or because of acts by the national government. If the state or local government does not carry out its obligations, only the laws of its own country can be invoked against that level of government.

## **The Need for National Legislation**

To assist in the proper management of World Heritage Sites, it is recommended that all countries signatory to the Convention consider the introduction of domestic legislation to regulate and control the management of World Heritage Sites within their jurisdiction. This should be done under their respective constitutions or pursuant to their obligations under the Convention. This is an important issue, not just in relation to tourism but in relation to all activities within the country that may affect World Heritage sites.

Despite the fact that more than 129 countries are signatories to the Convention, there is only one country that has enacted specific domestic legislation which sets out the powers and responsibilities of the national government in relation to the Convention and World Heritage Sites within the country. This country is Australia, and the legislation is the 1983 World Heritage Properties Conservation Act, as amended by the Conservation Legislation Act in 1988.

There are provisions in the United States of America which clarify certain points: who shall coordinate United States participation in the Convention (the Secretary of the Interior); the way in which nominations shall proceed; and, perhaps most important of all, the stipulation that no property may be nominated unless it has previously been determined to be of national significance.

There is brief mention of the Convention in the legislation of some other countries but by way of notification only, and there are no specific provisions setting out how the relevant national government shall comply with its obligations under the Convention.

Every country that is a signatory to the Convention should consider the introduction of such legislation to:

- (1) give further weight in recognizing the Convention;
- (2) specifically and clearly empower a particular level of government to enforce the protection of World Heritage Sites;
- (3) improve the overall protection and conservation of such sites.

This is particularly important in those countries (such as Australia), where by virtue of its constitution, the central government has no direct power to enable it to deal with, protect or otherwise comply with the terms of the Convention.

## **The World Heritage Convention and Tourism**

Much of the attraction to tourists of property that is on the World Heritage List is the fact that it is on the list. Thus it is in the interests of all to insure that

nothing is done to prejudice the listing. Everything possible should be done to enhance the property in accordance with the standards adopted by the World Heritage Committee at the time of its inscription.

While tourism can frequently, as a substantial income earner, assist with the conservation of World Heritage Sites, it can also pose a threat to the authenticity, preservation and proper management of these sites. Such threats must be taken seriously and dealt with to insure that they can be resolved lest the country in question finds itself in breach of its obligations under the Convention.

For there to be successful tourism programs at World Heritage cultural sites, it is important for national governments to consider, at the outset of the nomination process for World Heritage listing, the requirements of the tourism infrastructure and whether or not these will compromise the listing of the sites. Similarly, the later introduction of tourism to sites already on the World Heritage list must only be undertaken with a clear understanding of the country's obligations under the World Heritage Convention for authenticity and the proper management of the site or sites in question.

There are two major documents that govern the operation of the World Heritage List. The site administration of a World Heritage cultural site should have current copies of both documents. The first of these is the World Heritage Convention (see Appendix A) which was adopted in 1972. The second is the Operational Guidelines, last revised in February 1992 (see Appendix B.) Together they describe the process whereby a site gains election to the World Heritage List. This process is important to keep in mind as change is brought about or contemplated as a result of tourism.

When a site is nominated for possible listing and brought before the World Heritage Committee, the nomination must describe the degree of authenticity of the monument and the degree of management of the site. Those elements form part of the official site nomination and part of the basis upon which a site is elected to the World Heritage List. Currently, there is no requirement for a listed site to obtain the approval of the World Heritage Committee to make changes that may effect the site's authenticity or its management. However, any changes that have a detrimental effect may result in the consideration of the site's de-listing.

Further, if such changes are perceived to result in a breach of the World Heritage Convention, they may result in international action against the national government. Actions breaching the Convention, depending upon the internal laws of the country, allow for action to be taken by one or more of the country's citizens against the national government in order to require the offensive action to be rectified. Even though other authorities govern the day-to-day management of the property, there remains the overlying requirement to comply with the authenticity and management standards in place and accepted by the World Heritage Committee at the time the place was inscribed on the World Heritage List.

## Management Responsibilities

Under the Convention the responsibilities of a state party are to protect cultural and natural properties of "outstanding universal value." The Operational Guidelines amplify this point:

"The convention provides for the protection of these cultural and natural properties deemed to be of outstanding universal value. It is not intended to provide for the protection of all properties of great interest, importance or value, but only for a select list of the most outstanding of these from an international viewpoint. The outstanding universal value of cultural and natural properties is defined by Articles 1 and 2 of the convention. These definitions are interpreted by the committee by using two sets of criteria: one set for cultural property and another set for natural property." (Paragraph 6 (i))

"The fundamental principle stipulated in the convention is that properties nominated therefore should be carefully selected. The criteria and conditions of authenticity of integrity against which the committee will evaluate properties are set out in paragraphs 24 and 36. Within a given geo-cultural region, it may be desirable for States Parties to make comparative assessments for the harmonization of tentative lists and nominated cultural properties. Support for the organization of meetings for this purpose may be requested under the World Heritage Fund." (Paragraph 9)

Once outstanding properties have been identified and nominated, states parties must take appropriate protective measures as outlined in their nomination papers. Paragraph 22 of the Guidelines clarifies this expectation:

"Where the intrinsic qualities of a property nominated are threatened by action of man and yet meet the criteria and the conditions of authenticity or integrity set out in paragraphs 24 and 36, an action plan outlining the corrective measures required should be submitted with the nomination file. Should the corrective measures submitted by the nominating State not be taken within the time proposed by the State, the property will be considered by the Committee for de-listing in accordance with the procedure adopted by the Committee. State Parties are encouraged to prepare plans for the management of each natural site nominated and for the safeguarding of each cultural property nominated. All information concerning these plans should be made available when technical cooperation is requested."

Under the Convention each state party undertakes to protect, conserve and present the cultural heritage within its territory and to participate in international agreements. Its cooperation to achieve these ends are enumerated in Articles 5 and 6 of the Convention. (see Appendix A for text).

## **Authenticity and Management**

The responsibilities under the Convention, when a site is submitted for inclusion in the List, are to insure its proper management and authenticity. These responsibilities are especially important in relation to the effects of tourism on the place. The Operational Guidelines requires that sites :

"...meet the test of authenticity in design, materials, workmanship or setting (the Committee stressed that reconstruction is only acceptable if it is carried out on the basis of complete and detailed documentation on the original and to no extent on conjecture)." (Paragraph 24(b) (i))

"...and have adequate legal protection and management mechanisms to insure the conservation of the nominated cultural property. The existence of protective legislation at the national, provincial or municipal level is therefore essential and must be stated clearly on the nomination form. Assurance of the effective implementations of these laws are also expected. Furthermore, in order to preserve the integrity of cultural sites, particularly those open to large numbers of visitors, the State Party concerned should be able to provide evidence of suitable administrative arrangements to cover the management of the property, its conservation and its accessibility to the public." (Paragraph 24(b) (ii))

While not precise, these guidelines do establish a framework within which it is possible to judge whether a proper standard is being maintained. In some cases, for example, in relation to historic towns, the Guidelines themselves acknowledge the management problem and state that preference should be given to "small or medium-sized urban areas which are in a position to manage any potential growth." Further:

"In view of the effects which the entry of a town in World Heritage List could have on its future, such entries should be exceptional. Inclusion in the List implies that legislative and administrative measures have already been taken to insure the protection of the group of buildings and its environment." (Paragraph 33)

It may be that additional areas must be controlled to insure that the place itself receives adequate protection, as the Guidelines recommend:

"Whenever necessary for the proper conservation of a cultural or natural property nominated, an adequate 'buffer zone' around a property should be provided and should be afforded the necessary protection. A buffer zone can be defined as an area surrounding the property which has restrictions placed on its use to give an added layer of protection; the area constituting the buffer zone should be determined in each case through technical studies. Details on the size, characteristics and authorized uses of a buffer zone, as well as a map indicating its precise boundaries, should be provided in the nomination file relating to the property in question." (Paragraph 17)

The national government may need to delegate the responsibility to properly manage a buffer zone to a state or local government. In doing so, of course, the national government should insure that the management plan for the buffer zone is compatible with that for the World Heritage site.



## Juridical Provisions

Another aspect of the nomination documents is the provision of juridical data to the World Heritage Committee. This data supplies the text of the laws that protect the nominated property and describes how these laws actually work. The Guidelines stipulate:

"Under the 'Juridical data' section of the nomination form States Parties should provide, in addition to the legal texts protecting the property being nominated, an explanation of the way in which these laws actually operate. Such an analysis is preferable to a mere enumeration or compilation of the legal text themselves." (Paragraph 11)

Guideline 54(b), in reference to a paragraph entitled Responsible Administration, asks for the following juridical information.

### Owner

#### Legal Status

- category of ownership (public or private)
- details of legal and administrative provisions for the protection of the property. The nature of the legal text as well as their conditions of implementation should be clearly specified.
- state of occupancy and accessibility to the general public.

### Responsible administration

- details should be given of the mechanism or body already set up or intended to be established in order to insure the proper management of the property.

Paragraph 54 (f) also requires the following information:

### Legal information

- laws or decrees that govern the protection of monuments and site (date and text)
- decrees or orders that protect the nominated property (date and text)
- master plan for historic preservation, land-use plan, urban development plan, regional development plan or other infrastructure projects.
- town planning regulations and orders issued in application of these plans

Further, indications should be given as to whether various juridical provisions prevent:

- uncontrolled exploitation of the ground below the property
- the demolition and reconstruction of buildings situated within the protected zones
- the raising of the height of buildings
- the transformation of the urban fabric

What are the penalties foreseen in case of a contravention of these juridical provisions?

What, if any, juridical or other measure exist that encourage the revitalization of the property concerned in full respect of its historic authenticity and its social diversity?

There is also a responsibility to comply with the laws or regulations within the particular country to protect the World Heritage Site(s). These laws may have been passed pursuant to a power that the national government has acquired as a result of becoming a signatory to the World Heritage Convention or just because the site control is part of the country's national laws.

There are countries such as Australia, Canada and the United States of America with a federal system of government where, by virtue of the laws or written constitution of the country, the national government does not have control of these matters necessary to carry out the protective measures required under the Convention. Regardless of the way in which the internal government of the particular country is organized, the national government will have to, in some way, because of its obligations under the World Heritage Convention, assume those powers to insure the site's protection or in some other way insure that convention requirements are met.

What this means in simple terms is that the country's national government has a two-fold responsibility:

- (1) that of insuring that the World Heritage Convention is complied with (this obligation cannot be delegated to another level of government) and
- (2) that of insuring that the actions necessary to comply with the Convention are fulfilled. This responsibility can be delegated although the national government will remain ultimately responsible to the Convention.

These requirements must be met before a site can be considered for listing by the World Heritage Committee. They are as important as compliance with one or more of the criteria for listing. The failure of any one of those two that would result in the loss of outstanding universal value as required by the convention will, in theory, allow the World Heritage Committee to consider and, if thought appropriate, remove a property from the List.