

TECHNICAL REVIEW OF THE
UNITED NATIONS ENVIRONMENTAL,
SCIENTIFIC & CULTURAL ORGANIZATION
CONVENTION ON WORLD HERITAGE

by Tom McDonnell

The World Heritage Convention was signed by the United States and adopted by the General Conference of the United Nations Environmental, Scientific and Cultural Organization on November 16, 1972. The purpose of the convention is to establish "an effective system of collective protection of the cultural and natural heritage of outstanding universal value" currently referred to as "global commons." In 1995 there were 469 cultural and natural sites designated in 105 countries around the world, of which 20 are found in the United States.

The Convention embodies the important concept of linking together the conservation of nature and that of culture. To quote UNESCO, "[f]or a long time, nature and culture were perceived as opposing elements in that man was supposed to conquer a hostile nature, while culture symbolized spiritual values. However, nature and culture are of course complementary; the cultural identity of different peoples has been forged in the environment in which they live and frequently, the most beautiful man-made works owe part of their beauty to their natural surrounding." UNESCO then goes on to say, "The Convention thus assumes and affirms the existence of a World Heritage which belongs to all mankind" or global commons.

Under Article 1, the Convention can be used to protect cultural heritage which currently includes the Statue of Liberty, Independence Hall in Philadelphia and the Taj Mahal. Under Article 2, the convention can be used to protect areas of "natural heritage, such as Yellowstone National Park, the Everglades, and most recently the Carlsbad Caverns in New Mexico and Glacier National Park. These areas were designated World Heritage sites on December 5, 1995. Article 2 also extends protection to areas which constitute the habitat of threatened or endangered species of plants and animals.

Articles 4-6 of the convention are key. While nations recognize the duty of ensuring the identification, protection and conservation of World Heritage sites belongs primarily to them, the nation state signing the treaty also agrees to do "all it can" to protect these sites. Article 6 clarifies this statement even further by stating,

"Whilst fully respecting the sovereignty of the State [nation]...State Parties to this Convention recognize that such heritage constitutes a world heritage for whose protection it is the duty of the international community as a whole to cooperate."

Article 4 goes on to state that a nation signing the treaty is "to the utmost of its own resources, and where appropriate, with any international assistance and co-operation" protect these sites.

Article 5 outlines the responsibilities of the nation state. "Every State Party to the Convention shall endeavor, in so far as possible" to: 1) integrate the protection of that heritage into comprehensive planning programmes; 2) set up one or more agencies to protect the heritage; 3) conduct studies that counteract "dangers" to the heritage; and, 4) take appropriate legal, scientific, technical, administrative and financial measures necessary for protection of the heritage.

Article 8 of the Convention established the World Heritage Committee as a Bureau within the United Nations Education, Scientific and Cultural Organization. The World Heritage Committee is made up of 21 representatives elected from among the 142 nations that signed the Convention on World Heritage since 1972. Three other representatives can also take seats on the committee. These include a representative from the International Union for Conservation of Nature (IUCN), a representative from the International Centre for the Study of the Preservation and Restoration of Cultural Properties (Rome Centre), and one representative from the International Council of Monuments and Sites (ICOMOS). In addition to having the capacity of holding seats on the World Heritage Committee itself, it is also important to note that the Director-General of the United Nations Educational, Scientific and Cultural Organization is directed under Article 14 of the Convention to utilize "to the fullest extent possible the services" of these three organizations.

The World Heritage Committee is headquartered in Paris, France, and has two major functions. The first function is to administer the World Heritage Fund and to determine how financial resources are to be allocated to the countries and organizations which request assistance. Monies coming into the fund come from: 1) obligatory contributions from the State Parties to the Convention which are fixed at one percent of their contribution to the budget of UNESCO; 2) from voluntary contributions from State Parties; and, 3) donations from institutions or private individuals or from promotional activities. The IUCN reports that the annual budget of the World Heritage Fund is \$2.5 million annually. The U.S. Department of State from 1972 to 1993 contributed \$18.3 million in U.S. taxpayer monies to the World Heritage Fund.

The second major function of the committee is to define the World Heritage, which entails selecting the cultural and natural wonders that are to form part of the World's Heritage. The Committee is helped in this function by the International Council on Monuments (ICOMOS) and the IUCN which examine the proposals of different countries and draw up evaluation reports on each proposal.

The World Heritage Committee draws its authority to work with "international and national government and non-government organizations having objectives similar to those of this Convention" from Article 13, Paragraph 7 of the treaty. In regards to non-governmental organizations (NGO's), paragraph 7 says "for the implementation of its programmes and projects, the Committee may call on such organizations... as well as on public and private bodies of individuals." Under this provision, it was therefore possible for NGO groups like the Greater Yellowstone Coalition, American Rivers and the National Parks and Conservation Organization to have worked directly with UNESCO on the designation of Yellowstone National Park as "World Heritage in Danger" in 1995.

In fact, there may be some financial incentive for environmental groups to work directly with UNESCO on World Heritage programs. Under Articles 19-26 of the Convention, assistance in programs and projects may be made available to non-government organizations in the form of grants, low-interest or interest free loans, staff training and the provision of experts, technicians and skilled labor once a nation party has made a request for international assistance. It appears, however, most of the resources provided to American NGO's for the preparation of nominations for World Heritage sites come through the United States Committee of the International Council on Monuments and Sites (US/ICOMOS).

In the United States, the Convention on World Heritage is administered by the U.S. Department of State's Office of International Organization and the Department of the Interior's National Park Service, with financial assistance sometimes provided by the U.S. Agency for International Development. These federal agencies support and often direct work conducted by the United States Committee of the International Council on Monuments and Sites (US/ICOMOS) which is made up of non-governmental historic preservation organizations. The US/ICOMOS presently has 500 members and is headquartered in Washington D.C. These private NGO organizations not only prepare the nominations of cultural sites for addition to the World Heritage list, but are also involved in creating public awareness, developing educational programs, and occasionally in the actual administration of World Heritage projects.

The Department of the Interior draws its authority to implement the Convention on World Heritage and to work with NGO groups from Title IV

of the National Historic Preservation Act Amendments of 1980 (Pub. L. 96-515; 16 U.S.C. 470a-1,a-2). It is also under Title IV where the regulations for U.S. federal implementation of the Convention for World Heritage can be found. A Federal Interagency Panel for World Heritage was formed to make recommendations on U.S. World Heritage policies, procedures and nominations. This panel is chaired by the Assistant Secretary for Fish and Wildlife and Parks, and includes representatives from the National Park Service, the U.S. Fish and Wildlife Service, the State Department, the President's Council on Environmental Quality, the Smithsonian Institute and the Council on Historic Preservation.

The procedures for listing of cultural and natural properties begin at Paragraph 17 of the *UNESCO Operational Guidelines for Implementing the World Heritage Convention*. Procedures for cultural sites are specifically found starting at Paragraph 23, while those dealing with natural heritage sites begin at Paragraph 43. In relationship to the nomination of a site for listing, Paragraph 14 of the guidelines states that areas are to be nominated without "undue publicity" and with the participation of local people, only so far as they don't "prejudice future decision-making by the Committee."

Paragraph 17 states, "that 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."

According to Paragraph 44(a), natural heritage properties, like United Nations biosphere reserves, are to be "sufficient" in size, and demonstrate key aspects of long-term conservation of the ecosystems and the biodiversity they contain. Paragraph 44(a)(vii) goes on to say that "Sites described in paragraph 44(a) should be the most important sites for the conservation of biological diversity. Biological diversity, according to the new global Convention on Biological Diversity, means the variability among living organisms in terrestrial, marine and other aquatic ecosystems and the ecological complexes of which they are part..." Paragraph 44(b)(vi) then recommends the establishment of buffer zones around these natural heritage sites "in order to protect the site's heritage values from direct effects of human encroachment and impacts of resource use outside of the nominated area." Even if the lands within the buffer zone do not meet the criteria of World Heritage, the guidelines recommends implementation of a buffer zones and uses the case of the biosphere reserve as an example why these buffered areas are important.

Article 11, Paragraph 4 of the Convention and paragraph 56 of the *Operational Guidelines for the Implementation of the World Heritage Convention* outline how a World Heritage site can be listed as in danger.

Sites can be listed if they are threatened by natural disasters such as floods and volcanos, they can be listed because of man caused disasters such as changing land ownership, urbanization, tourism, and armed conflict. UNESCO is "particularly concerned that all possible measures should be taken to prevent the deletion of any property from the List..."

Under paragraph 69, the nation "state" may request assistance from UNESCO if the state feels a designated heritage area is in danger. If a request is received, UNESCO is to establish a committee to work in consultation with the state party (in the case of Yellowstone and the Everglades National Parks, the consulting party was the Department of the Interior's National Park Service) to adopt a program for corrective measures.

What weight, in terms of authority and influence, does the Convention on World Heritage carry over domestic environmental law? On September 9, 1995, the *Casper Star Tribune* quoted Yellowstone Park Superintendent Mike Finley as saying that in his opinion the park service could use the convention as legal authority for its actions:

"As a prime sponsor of the treaty and its first signatory, the U.S. has a statutory responsibility to ensure that Yellowstone, a designated World Heritage site, is preserved and protected, Finley said. As ratified by Congress, the provisions of the World Heritage Treaty have the force and statutory authority of federal law, he said. By inviting the committee to visit the park and assess the mine's potential impacts, the Interior Department acted as it was legally required to do, he added."

In recent years, the questions of authority are also being raised by UNESCO and the World Heritage Committee. In an article entitled "The World Heritage Convention: 20 Years Later," [*UNESCO Sources*, July-Aug., 1992], the article states that UNESCO respects the sovereignty of nation states by not intervening in the management of a World Heritage site unless assistance is requested by that nation. But the article goes on to raise the question "how far can the Convention force state parties to protect sites on the list?" It appears the Department of the Interior, UNESCO and the environmental community are now putting this question to test."

At the nineteenth session of the World Heritage Committee, held on December 4-9, 1995 in Berlin, Germany, the committee began referring to itself and to the Convention as "an emergent tool to assist all State Parties in conservation." This statement indicates that regardless of jurisdictional claims of non-interference in sovereignty, the World Heritage Committee is now willing to allowed itself to be used as a tool by which domestic policy can be influenced.

According to the minutes of the Berlin meeting, there were some individuals

on the World Heritage Committee who appeared already willing to take the authoritative role of Committee one step further. After assurances from the U.S. representative "that the State Party does not consider action by the Committee to be an intervention in domestic law or policy", the minutes note that "even if the State Party did not request action, the Committee still had an independent responsibility to take action based on the information it had gathered."

The question of how far the World Heritage Committee can extend its authority is still unanswered, but it is certain that this question will move into the national and international court systems in the near future.

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