

The World Heritage Convention Legal Framework and Obligations

Thirty years after ratification of the UNESCO Convention Concerning the Protection of the World Cultural and Natural Heritage by the Federal Republic of Germany (acting within the borders valid at that time), issues surrounding the agreement's legal framework and obligations are more relevant than ever. Current problems, particularly those involving urban design, infrastructure and planning at World Heritage sites and in their surroundings, form the background for these issues.

The dispute concerning construction of the Waldschlösschen Bridge in the Dresden Elbe Valley, now pending in the Saxon Higher Administrative Court (Sächsisches Oberverwaltungsgericht) in Bautzen, has made the legal framework and obligations that are tied to ratification of the World Heritage Convention judicially relevant. The World Heritage site Dresden Elbe Valley in Saxony was placed on the List of World Heritage in Danger in the summer of 2007 because, on the basis of a consultation report prepared by RWTH Aachen University, the World Heritage Committee feared that realization of the bridge construction project would cause "irreversible damage".¹ The committee's request to halt the project and seek alternatives, directed to the Federal Republic of Germany, was fulfilled by the Dresden City Council insofar as it reached a majority decision to suspend the awarding of already tendered work. The legality of this resolution by the City Council was criticized by the Dresden Regional Administrative Authority (Regierungspräsidium Dresden), which imposed indemnity payments and made reference to the binding effect of a public referendum in the spring of 2004 that had favored the bridge. When the Dresden Administrative Court (Verwaltungsgericht Dresden) confirmed the resolution's legality, the Dresden Regional Administrative Authority appealed the decision to the Saxon Higher Administrative Court in Bautzen.²

The Convention Concerning the Protection of the World Cultural and Natural Heritage was passed by the General Conference of the United Nations Educational, Scientific and Cultural Organization on 16 November 1972 in Paris. The Federal Republic of Germany became a "State Party" to the Convention in 1976 – the ratification document was deposited with the general director of UNESCO on 23 November 1976 – but at the same time declared that it is not bound by the regulations of article 16 paragraph 1, i. e., that it is exempt from compulsory contributions to the World Heritage Fund. No other objections were raised, and thus all other regulations were accepted. The Proclamation of the Convention for the Protection of the World Cultural and Natural Heritage dates from 2 February 1977; it was printed on page 213 of the 1977 Federal Law Gazette (Bundesgesetzblatt), published in Bonn on 26 February. The World Heritage Convention went into effect in the Federal Republic of Germany with this legal notice. Within the framework of the Unification Treaty in 1990, it also became binding for the

Länder (states) in the former German Democratic Republic, which had become a State Party to the Convention in 1988 but had not attained any World Heritage listings in the final two years of its existence. The World Heritage Convention was not, however, converted into national law. Here the Foreign Office presumed that provisions already existing in the Federal Republic of Germany complied sufficiently with the aims of the Convention and its Recommendation Concerning the Protection, at National Level, of the Cultural and Natural Heritage, likewise passed by the General Conference of UNESCO on 16 November 1972.³ A glance at this recommendation, which has been given far too little attention and which is very closely linked to the World Heritage Convention not only in time but also in content, confirms that the framework described there regarding definitions, law, organization and procedures for monument and nature protection is in principle laid down in the German laws on monument and nature protection (many of which were amended at about the same time) as well as in numerous other federal and state laws, such as the building code, regional planning law and environmental impact assessment regulations.

In the legal dispute over the Waldschlösschen Bridge, the fact that the Convention was not converted into national law was the basis on which the Dresden Regional Administrative Authority determined that the Convention had no binding effect in Germany and that the World Heritage Committee therefore

1 Lehrstuhl und Institut für Städtebau und Landesplanung, RWTH Aachen, Gutachten zu den visuellen Auswirkungen des ‚Verkehrszuges Waldschlösschenbrücke‘ auf das UNESCO-Weltkulturerbe ‚Elbtal Dresden‘, Visual Impact Study, 3rd revised edition, Aachen, April 2006, p. 112 (www.welterbe-erhalten.de/pdf/0604gutachten.pdf – last accessed 21 March 2008).

2 The appeal was successful. In expedited proceedings on 13 March 2007 the Saxon Higher Administrative Court determined that the public referendum had priority and, with reference to the ultimate decision to be made in the main process, questioned the binding effect of the World Heritage Convention because of the failure to convert it into national law. This decision was confirmed by the Federal Constitutional Court (Bundesverfassungsgericht) insofar as that court did not accept the city of Dresden's constitutional appeal and made reference to the fact that, independent of its conversion into national law, the World Heritage Convention does not offer, in its conception or its wording, absolute protection against every change. The court further stated that the fulfilment of the protection mission is first and foremost a function of the sovereign State Parties. It is possible under constitutional law that the will of the citizens, as expressed in a formal vote, can prevail in a conflict concerning plans for the further development of a cultural landscape. In consequence the possible disadvantages arising from the decision – for instance, the loss of World Heritage status and the concomitant loss of prestige – must be accepted (according to the court).

3 UNESCO, Recommendation Concerning the Protection, at National Level, of the Cultural and Natural Heritage (1972) (www.icomos.org/unesco/national72.html – last accessed 10 May 2008).

could not make binding decisions regarding the State Parties. Further, according to the Dresden Regional Administrative Authority no direct relationship exists between the city of Dresden and UNESCO, and the Convention's legal obligations are binding only for the Federal government. In its decision from 30 August 2006 the Dresden Administrative Court ruled that the Regional Administrative Authority's determinations did not apply. The court conceded that in terms of international law the Convention is directly valid only for the State Parties that have ratified or accepted it in accordance with article 31 paragraph 1; although the city of Dresden is not a State Party, according to the principles of loyalty to the Federal government and in order to interpret the Basic (Constitutional) Law in a manner compatible with international law, the city is obliged in its discretionary decisions also to consider whether the federal government might run into danger of infringing upon an international legal agreement. Such a danger is to be assumed on the basis of the Committee's declarations. The Dresden Administrative Court further declared that, in regard to the World Heritage Convention, in its discretionary decisions regarding immediate legal action the city's obligation to consider the possibility of the Federal government violating international law commitments seems all the more obvious because the Free State of Saxony participated in the procedure to acquire World Heritage status for the Dresden Elbe Valley and did not oppose the intention of the city of Dresden or the Federal Republic of Germany of attaining the title. Moreover, the respondent also participated in the promotion of the Muskauer Park to World Cultural Heritage status. The Free State of Saxony would be behaving inconsistently if it – as a state with cultural sovereignty (article 1 sentence 2, article 11 paragraph 3 of the Saxon Constitution) – on the one hand supports the designation of cultural properties within its borders as World Heritage sites, but on the other hand completely ignores the obligations that come with designation. The binding effect of the World Heritage Convention for the listed World Heritage sites in Germany is thus legally confirmed (according to the Dresden Administrative Court).⁴

The UNESCO Recommendation Concerning Protection, at National Level, of the Cultural and Natural Heritage also makes clear that an integrative approach with a set of legal protective tools on a national level is the basis for the World Heritage Convention's preservation demands and maintenance obligations; they should be valid not only for sites of extraordinary universal value but also for heritage that does not fulfill the criteria of the Convention. In this respect it can be assumed that legislation directed purely at World Heritage sites was not the intention at all, in order to avoid a two-class system in nature and monument preservation. Given this background it is also futile to ask whether an action took place before or after the listing of a World Heritage site: an action that is not compatible with monuments and nature is also not compatible with the World Heritage. The signing of the Convention Concerning the Protection of the World Cultural and Natural Heritage is thus above all a self-commitment for the signing country to obey and apply all the legal regulations and procedures that exist in that country. The purpose and the necessity of the Convention, ensuing from the aims of UNESCO's statutes, are justified in its preamble (as relevant as ever), which notes that

– “the cultural heritage and the natural heritage are increasingly threatened with destruction not only by the traditional causes of decay but also by changing social and economic conditions [...],

- deterioration or disappearance of any item of the cultural or natural heritage constitutes a harmful impoverishment of the heritage of all the nations of the world [...]
- protection of this heritage at the national level often remains incomplete because of the scale of the resources which it requires and of the insufficient economic, scientific and technical resources of the country [...]
- the existing international conventions, recommendations and resolutions concerning cultural and natural property demonstrate the importance, for all the peoples of the world, of safeguarding this unique and irreplaceable property, to whatever people it may belong [...]
- in view of the magnitude and gravity of the new dangers threatening them, it is incumbent on the international community as a whole to participate in the protection of the cultural and natural heritage of outstanding universal value, by granting of collective assistance which, although not taking the place of action by the State concerned, will serve as an efficient complement thereto”.⁵

If these arguments were to be continued, it could be added that mankind's national and global heritage is increasingly also endangered by:

- deregulation and the withdrawal of the state in the field of planning and building,
- reduction and relaxation of standards and norms,
- weakening of laws,
- the integration of specialized offices into an administrative hierarchy and their concomitant loss of independence,
- observable disadvantages for cultural heritage in communal infrastructure projects,
- the privatization of tasks that were formerly government responsibilities, and
- the generally observable capitulation of politicians to investment projects.

When the World Heritage Convention was ratified by the Federal Republic of Germany in 1976, appreciation and awareness of the cultural heritage and its preservation was at a peak. The experience of loss in connection with post-war reconstruction and the ignorant clearance-oriented redevelopment of the 1960s and early 1970s had led to a change in thinking. There was a shift of values, and the belief in growth and progress was ques-

⁴ A final legal decision has not yet been reached. Various expert opinions, position papers and technical reports have produced differing results. Whereas for example the *Gutachten der Bundesregierung betreffend die innerstaatliche Bindungswirkung des UNESCO-Übereinkommens zum Schutz des Natur- und Kulturerbes der Welt* confirmed the binding effect of the World Heritage Convention, this was rejected by the *Gutachterliche Stellungnahme – Innerstaatliche Verbindlichkeit des Übereinkommens zum Schutz des Kultur- und Naturerbes der Welt in Deutschland*, which was drawn up by the Lower Saxony state government under commission from the heads of state of all the *Länder*. As a result, the heads of state of the *Länder* have confirmed the opinion held already at the time of ratification of the World Heritage Convention, namely that the purpose of the Convention Concerning the Protection of the World Cultural and Natural Heritage is attained through the existing legal and administrative regulations in Germany and an administrative agreement is not necessary.

⁵ UNESCO, Convention Concerning the Protection of the World Cultural and Natural Heritage (1972) (whc.unesco.org/archive/convention-en.pdf – last accessed 19 September 2008); see also International Cultural Heritage Conventions, *US/ICOMOS Scientific Journal*, vol. 2, no. 1, 2000, p. 19.

tioned, criticized and increasingly scrutinized. The European Architectural Heritage Year in 1975 marked this turning point. The protection and preservation of historic buildings was no longer considered an impediment but rather was seen as a motor for urban development and as an urban economic attraction.

In the meantime, however, we are light years away from the political and social acceptance that heritage conservation enjoyed at that time. In view of the empty public tills, it is now costs, short-term savings and quick profits that are determining criteria – not cultural “added value” and sustainable effects. Unemployment and the political desire for “new growth” and “rapid action” weaken strategies for cautious renewal and support a mentality that favors new buildings. Preservation and maintenance are again threatened by misuse as the embodiment of anti-progressiveness and as obstacles to investment. Votes are won with promises to curtail monument and nature protection. If one was to compare the political support, the social sensitivity and the legal, organizational and operational standards for monument and nature protection at the end of the 1970s with the situation at the beginning of this century, it would probably come as no surprise that the peaceful situation regarding World Heritage sites in Germany has been disrupted since the 1990s. Registration of Cologne Cathedral and of the Dresden Elbe Valley on the List of World Heritage in Danger in 2004 and 2006 respectively reflects the general situation in cultural heritage conservation in Germany today. The obligation that ensues from article 5 of the World Heritage Convention – “to adopt a general policy which aims to give the cultural and natural heritage a function in the life of the community and to integrate the protection of that heritage into comprehensive planning programmes” – is no longer being fulfilled even for our World Heritage sites.

The World Heritage Committee has become more and more like a “Security Council” which is no longer dealing almost exclusively with endangered sites in the developing countries, as in the early years of the Convention, but rather is increasingly concerned with sites in Western and Eastern Europe. UNESCO’s sharpest weapon for the protection and care of World Heritage sites that are seriously threatened by natural and other disasters, war, urban planning or large-scale private development projects is worldwide public attention. So far the registration of a site on the List of World Heritage in Danger has not been enough by itself to dispel the threats or to minimize them through increased deployment of personnel and funding. The World Heritage Committee has not yet made use of the possibility of striking a site from the World Heritage List. Incidentally, it is not possible to avoid action by the World Heritage Committee by giving back the title: only the World Heritage Committee can disallow World Heritage status once it has been given.

Continuous monitoring of the condition of listed World Heritage sites is one of the most important tools of the World Heritage Convention. Its basis is the obligation (accepted upon ratification of the Convention) to submit reports, as regulated in § 29 of the World Heritage Convention and in paragraphs 169-176, 190, 191 and 199-202 of the revised Guidelines that went into effect on 1 February 2005.⁶ The State Party is to provide information on the condition of its World Heritage sites within the framework of “regular reporting”. Independently of these regular reports, the World Heritage Center is to be informed of any unusual conditions or work that could lead to a threat to a particular World Heritage site, as part of the “Reactive Monitoring” process. The Guidelines are specific on this point in § 172:

“The World Heritage Committee invites the States Parties to the Convention to inform the Committee, through the Secretariat, of their intention to undertake or to authorize in an area protected under the Convention major restorations or new constructions which may affect the outstanding universal value of the property. Notice should be given as soon as possible (for instance, before drafting basic documents for specific projects) and before making any decisions that would be difficult to reverse, so that the Committee may assist in seeking appropriate solutions to ensure that the outstanding universal value of the property is fully preserved.”

The procedures regarding submission of information are also regulated (§ 174) in the Guidelines:

“When the Secretariat receives information that a property inscribed has seriously deteriorated, or that the necessary corrective measures have not been taken within the time proposed, from a source other than the State Party concerned, it will, as far as possible, verify the source and the contents of the information in consultation with the State Party concerned and request its comments.”

As a rule it is not “self-denunciation” by those responsible for World Heritage sites or by the heritage conservation offices, but rather petitions from citizens, associations and initiatives that bring major conflicts to the attention of the World Heritage Committee. The situation was no different in Cologne than in Dresden. Petitions get the administrative apparatus going; in Germany this leads to the following course of events: the World Heritage Center asks Germany as the State Party to the Convention for a position paper via Germany’s Permanent Mission at UNESCO; the Permanent Mission passes the request on to the Foreign Office, which sends it to the Conference of Ministers of Culture (Kultusministerkonferenz); the Conference of Ministers of Culture in turn gives it to the relevant state ministry, which finally informs the responsible authority and the affected World Heritage site and asks for a position paper. The report prepared in response follows the reverse process to reach the World Heritage Center, which then passes it on to the advisory organizations for evaluation. A presentation based on the report and the evaluation is prepared for a vote by the World Heritage Committee. Because “State of Conservation” has now become the largest point of order for meetings of the Committee, the presentations are now classified into the categories “for adoption requiring no discussion” or “for adoption requiring discussion” according to the gravity of the case. However, members of the World Heritage Committee can put forward a motion at any time that a presentation in the category for adoption requiring no discussion be discussed in the plenum.

The three advisory bodies to the World Heritage Committee are the non-governmental organizations ICOMOS (International Council on Monuments and Sites, Paris) for cultural sites, IUCN (World Conservation Union) for natural sites and the intergovernmental organization ICCROM (International Centre for the Study of the Preservation and Restoration of Cultural Property, Rome). The expert participation of the Non-Governmental Organizations in carrying out the World Heritage Convention contributes substantially to the credibility of the World Heritage List. Their vote is of fundamental importance. The

⁶ Operational Guidelines for the Implementation of the World Heritage Convention (whc.unesco.org/archive/opguide08-en.pdf – last accessed 31 July 2008).

technical foundation for the Committee's work consists, in addition to the World Heritage Convention itself, of international resolutions, recommendations and charters (in particular those of the European Council, UNESCO and ICOMOS) regarding the protection of built, archaeological and garden monuments and historic ensembles. These have been incorporated in part into the German monument protection laws and play a determining role in heritage conservation ideas, positions and practice in Germany. Specifically these include the Venice Charter for the Conservation and Restoration of Monuments and Sites (1964), considered the founding document for ICOMOS, the Washington Charter for the Conservation of Historic Towns and Urban Areas (1987), the Lausanne Charter for the Protection and Management of the Archaeological Heritage (1990) and the Nara Document on Authenticity (1994).⁷

In essence these international principles establish that the authenticity of historic buildings and ensembles and their surroundings should be preserved; conservation should be given highest priority; restoration has narrow limits in regard to the preservation of aesthetic and historic values; renovation can be considered only if conservation and restoration are not possible; reconstructions are inadmissible; and all work must be prepared and documented in a scientific manner, should be carried out in a professional way, and must be reversible. Of great relevance moreover is the Declaration on the Conservation of Historic Urban Landscapes, passed in October 2005 by the General Assembly of the State Parties of the UNESCO World Heritage Convention, which also makes reference to "ensembles of any group of buildings, structures and open spaces".⁸ Although recognizing the need to develop perspectives in historic urban landscapes, it demands that contemporary architecture in World Heritage sites be "complementary to the values of the historic urban landscape and remain within limits that do not compromise the historic nature of the city". Regarding interventions and additions, "proportions and design should be adapted to the particular type of historic pattern and architecture" at the site. Gutting ("façadism") with its destruction of historic building fabric worthy of protection is classified as an inappropriate intervention. With regard to the historic urban areas already inscribed on the World Heritage List, the concept of the historic urban landscape and the recommendations expressed in this Memorandum need to be taken into account when reviewing any potential or ascertained impact on the integrity of a World Heritage property.

There is an extensive set of tools for the obligations that arise from the World Heritage Convention, regarding not only the legal foundation and procedures but also technical aspects. Deficits exist in terms of awareness, application and conversion into practice. Given the problems with large-scale developments and infrastructures that we are now experiencing in Germany, the development of a World Heritage Compatibility Check is to be recommended. This test would include a catalogue of problems that must be worked out and a list of the institutions that need to be involved. In this context it is important to note that only experts who are not from the State Party in question are accepted as independent consultants; the national institutes belonging to the World Heritage Committee's advisory groups (i. e., the national committees of ICOMOS) are not accepted as consultants in a case involving their own country. I am not able to give an answer now to the question of whether we must or should convert the World Heritage Convention into national law. Perhaps it would be sensible to simply add the term "World

Heritage" to the article of law drafted by the German National Committee that calls for monument care and protection to be taken into account in federal and state legislation. But in my opinion there is one thing that we cannot get around at all: culture and its protection must be given constitutional status, as animal protection and nature protection have. The fact that culture is missing in Germany's Basic Constitutional Law is an unbelievable cultural-political scandal.

⁷ See www.international.icomos.org/charters.htm (last accessed 21 March 2008); Michael Petzet, *Principles of Monument Conservation*, Munich 1999, pp. 67-94; see also ICOMOS Charters and Other International Doctrinal Documents, *US/ICOMOS Scientific Journal*, vol. 1, no. 1, 1999; and International Cultural Heritage Conventions, *US/ICOMOS Scientific Journal*, vol. 2, no. 1, 2000.

⁸ See whc.unesco.org/archive/2005/15ga-en.htm (document WHC-05/15.GA/7) (last accessed 19 September 2008). The declaration, which is based on the Vienna Memorandum (International Conference World Heritage and Contemporary Architecture – Managing the Historic Urban Landscape, Report, Vienna 2005) has come under criticism because it is increasingly being employed not as a hindrance but rather as a legitimization of problematic interventions in the historic building stock and the traditional urban landscape. It is to be revised by 2010.