

Influence of International Agreements on National Heritage Policies

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The origin of this conference lies in the 2005 fact-finding mission to European heritage organisations by the Chief Executive of English Heritage, Dr Simon Thurley. During his travels, he noted the growing impact of UNESCO and Council of Europe Conventions and proposed bringing together the heads of European heritage bodies to discuss the issue. I have framed my opening remarks to address the influence of international agreements on national heritage policies. The context is a world which has become, in the words of the famous Canadian writer, Marshall McLuhan, a global village, thanks to instant communication and accessible international travel. The diagnosis is clear. In the heritage field, national governments are increasingly being affected by a robust international regulatory and advisory framework.

Setting the Stage

There are many international heritage agreements. Some are State Party agreements -- international treaties, in fact -- that are binding on governments, if and when they choose to sign on. Other less formal agreements are created by professional heritage associations like the International Council for Monuments and Sites known as ICOMOS. ICOMOS charters and declarations are not binding on governments, nor for that matter are they binding on individuals within any country, though they are quite influential.

Today, I will focus on the inter-governmental agreements in order to determine the degree of influence they might have on national heritage policies and practices.

Most of the official agreements among governments have been negotiated through the leadership of UNESCO. In the heritage field, these so-called normative instruments have been created over an extended period – from 1954 to the present -- and therefore reflect a shift in focus and approach to take account

of changing concepts of heritage and a growing understanding of the field. During its sixty years of existence, UNESCO has created 35 Conventions, 31 Recommendations and 13 Declarations, in all its spheres of activity: science, education, culture and heritage. Conventions are international treaties that are legally binding on governments should they choose to join them. Recommendations and Declarations are not legally binding and are intended as guidance for best practice.

There are five UNESCO Conventions closely related to the identification and protection of cultural heritage. They are:

- 1954 Convention on the Protection of Cultural Property in the Event of Armed Conflict and First Protocol (1954) and Second Protocol (1999);
- 1970 Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property;
- 1972 Convention concerning the Protection of the World Cultural and Natural Heritage (World Heritage Convention);
- 2001 Convention on the Protection of Underwater Cultural Heritage;
- 2003 Convention on the Protection of Intangible Cultural Heritage.

Over the years, UNESCO has also developed a number of Recommendations and Declarations of interest to the heritage field. In spite of the considerable effort invested in producing them, these Recommendations and Declarations are not generally well-known or used. They cover specific topics like archaeology (1956), safeguarding landscapes (1962), preserving heritage that is endangered by public or private works (1968), cultural and natural heritage (1972) and historic areas (1976). I will not go on with the list. Suffice it to say, there is a large and expanding – some might say, unmanageable -- corpus of professional guidance coming from international bodies.

Last month, at a symposium on “UNESCO: Sixty Years of Standard-Setting in Education, Science and Culture”, the Director General of UNESCO acknowledged that it is time to pause and assess the situation. “I believe that at this stage UNESCO needs to concentrate not only on the implementation of existing normative instruments but also ... on the ratification of those adopted in order to ensure their widest possible application.”¹

Challenges

National governments and their professional staff face some challenges in dealing with this plethora of guidance. The process for creating these

international instruments is telling. They have emerged over half a century through discussion and participation of people of diverse cultural backgrounds. They reflect an evolving understanding of what may be considered to be cultural heritage and what constitutes good conservation practice. So we should not be surprised to realize that they contain overlaps, duplications, contradictions and inconsistent terminology.

At the official celebration of UNESCO's 60th anniversary in November 2005, a conference session on "Discovering the Heritage of Humanity" brought forth three recommendations, including one that addresses precisely this issue. The recommendation calls for an in-depth reflection on the many normative instruments affecting heritage, with a view to stream-lining and harmonizing them.

Relationship of intergovernmental agreements to National Heritage Policies

How do national governments and heritage practitioners adapt this international framework to their own laws and policies? If we take the official agreements created under the auspices of UNESCO, one common element is the fact that they were all negotiated among governments in a multilateral environment. The theory is simple. If a State Party or government signs on to a UNESCO convention, the State Party is accountable for implementing it. That is the theory. The reality is a bit more complex. The assumption that countries have the political will and professional capacity to implement UNESCO agreements is not necessarily true.

The Hague Convention

Let us take the first important international instrument spearheaded by UNESCO to protect cultural heritage. This is the 1954 Hague Convention for the Protection of Cultural Property in the Event of Armed Conflict and First Protocol, now amended by a 1999 Second Protocol. The initial agreement was developed in response to concern over the destruction during World War II of cultural property, including monuments, museums, libraries and archives, especially the illegal export of cultural property from occupied territories. The 1999 protocol was introduced to update provisions and in particular to respond to changes in the nature of the threats, particularly the increased incidence of deliberate targeting of the cultural property of ethnic groups – a form of cultural ethnic cleansing.

Accession to the Hague Convention and its protocols has been slow. Fewer than half the world's countries have joined the original convention; only one-fifth have acceded to the 1999 protocol. Indeed, my own country only acceded to the convention in March of this year. How does one explain this reluctance? I think it is a question of legislative burden and government priorities. Before a country can accede to the convention, it must pass legislation to enable it to prosecute criminal acts committed abroad, including theft, vandalism, arson or illicit export of cultural property. It must also create the professional capacity to carry out the obligations. And then there is the issue of competing government priorities. It is evident that certain sectors, the military in particular, are concerned that requirements to protect cultural property might impinge on their responsibilities and activities in times of conflict.

World Heritage Convention

Let us now turn to the World Heritage Convention, deemed to be UNESCO's most successful convention with a current membership of 181 countries. This Convention has had an important influence on national heritage policies. A clear example is the case of cultural landscapes. The work that was done by World Heritage experts in the 1990s to define categories for cultural landscapes and to propose appropriate management practices has influenced many national policies, including those of Canada, the United States and the Council of Europe.

On the other hand, national policies have had a direct impact on the interpretation of international agreements. A key example is the emerging concept of values-based management. Several countries including Canada have opted for a formal articulated statement of heritage values, as a key tool for making management decisions about heritage properties. It is only in the 2005 iteration of the World Heritage *Operational Guidelines* that the concept of a statement of values appears. Article 154 of the new *Operational Guidelines* requires the World Heritage Committee to "adopt a Statement of Outstanding Universal Value for the property." This is a clear example of national approaches influencing international standards.

The new requirement will create additional workload for most States Parties as well as for the World Heritage Committee and its Advisory Bodies. As those of us involved in the cyclical monitoring process know, most of the existing 812 World Heritage Sites have no statement of Outstanding Universal Value and hence no benchmark against which to measure the current state of the sites. In addition, while many have management plans in place, they are not necessarily

adequate, given that most plans are not rooted in the World Heritage values, since these remain to be articulated and approved by the Committee.

So ideas and concepts have gone in both directions. But what about the actual obligations in the World Heritage Convention? How have they been translated into national policy and legislation? I refer in part to articles 4 and 5 of the Convention, which require governments to equip themselves nationally to meet their obligations, particularly in terms of professional capacity and governance frameworks.

I would observe that not all countries that ratify the Convention are able to meet their obligations – even in terms of professional capacity and national policies. This has been made clear in the first cycle of periodic reports on the state of conservation of World Heritage Sites. It is rare to find the obligations of the Convention translated into national legislative instruments. One of the first to do so was Australia, motivated perhaps by the fact that international obligations permitted it to carve out a new federal role in a federation where state powers are so strong. Australia's Environment Protection and Biodiversity Conservation Act of 1999 gave increased powers to the Commonwealth to protect World Heritage Sites, including accreditation of State management plans and impact assessment processes. Few other countries have passed legislation specific to World Heritage.

Does it matter? The answer is that it probably does. The reason why it matters is that the World Heritage system is based on the notion of "Outstanding Universal Value". National legislation, however, does not typically address this idea, because national legislation is rooted in national heritage values. It has become apparent over the years that there is not necessarily a connection between Outstanding Universal Value (as determined by the World Heritage Committee) and other values attributed to the site, be they national values or indeed local values. This partitioning is a weakness in the global heritage framework. It certainly creates confusion for site managers and makes it difficult to engage local populations in protecting the sites. One need only look to the deliberate destruction of the Buddha statues in Bamiyan, despite pleas from UNESCO and the world community, to understand the problem of a lack of connection between universal values and national/local values.

In addition to this issue about values, there is the question of buffer zones. I have not heard that any country has put into national legislation the requirement to protect World Heritage buffer zones, a new obligation in the updated *Operational*

Guidelines. They have introduced a requirement for legal restrictions to be placed on the use and development of buffer zones, including the immediate setting of World Heritage Sites and important views². Just how one defines “immediate setting” and “important views” is currently the subject of debate at the Committee. Development proposals near World Heritage Sites like Cologne Cathedral and historic Vienna come to mind.

Underlying the World Heritage Convention is the notion of international solidarity. It grows out of early UNESCO actions to save global heritage treasures like the temples of ancient Egypt which were threatened by the flooding of the Aswan Dam, and the Inca and Spanish Colonial capital of Cuzco in Peru which suffered earthquake damage. The 1972 Convention foresaw a system whereby wealthier countries would help less fortunate countries to protect heritage properties. This aspect of the Convention has been relatively successful. Some countries have succeeded in linking national aid programmes with cultural heritage. The Nordic countries have in fact institutionalized this approach through the creation of the Nordic World Heritage Office. Other countries have signed bilateral agreements with UNESCO to provide additional funds, including France, Italy, United Kingdom, Netherlands, Japan, Spain and Belgium. Australia sponsors the Asia-Pacific Focal Point for World Heritage managers. This level of international cooperation in the heritage field is a remarkable achievement of the Convention.

Underwater Cultural Heritage

A more recent international agreement is the 2001 Convention on the Protection of Underwater Cultural Heritage. This is a case where very few countries (only six to date) have signed the Convention. This does not mean that there has been no influence. At a policy level, many countries have endorsed and adopted the “Rules for activities directed at underwater cultural heritage” set out in the Annex. Again it is a question of the positioning of heritage conservation within the broad governmental picture. While the idea of protecting our underwater cultural heritage seems simple and laudable, the ability to do so requires the orchestration of other parts of government with other priorities. These other interests are well known. Departments of national defence have concerns about warships and the secrets they may contain. The international cable-laying consortia fear prosecution if they inadvertently damage underwater cultural heritage as they carry out their legitimate activity. Departments responsible for navigation want no encumbrance to the free flow of shipping traffic. Coast guards and enforcement agencies have more serious infractions to pursue than to

protect heritage. So while the Convention on the Protection of Underwater Cultural Heritage has been drafted by countries under the leadership of UNESCO, it may take years before national governments have taken the necessary steps to be able to accede to it.

A final observation on international heritage agreements. While they in theory bind national governments, they rarely have much impact on the local levels of government – where in fact the giant's share of heritage conservation occurs. A key issue for the implementation of international heritage conventions is local capacity, standards and expertise. This issue is further compounded in countries with federal structures, since normally property responsibility (including heritage) has been largely devolved to the state or provincial level. This is true in Canada, United States and Australia, for example. In Germany, cultural activities are reserved to the Lander. In Italy, considerable autonomy is granted to the regional superintendents.

This means that cultural heritage is a shared responsibility among a multitude of government departments and agencies, each operating from its own legal authority and policy perspective. In the absence of a single national plan, the approach taken is the sum of individual efforts, not a coherent single program. Shared responsibility by its very nature gives rise to differing approaches and priorities. This is the subject of another talk and I will only refer to it here as a challenge to achieving coherence in national heritage policies and practice.

Conclusion

I will conclude my remarks by underscoring the achievements to date and pointing to possible next steps. Under the auspices of UNESCO, a remarkable corpus of international instruments has been created in response to concerns about heritage. International conventions have influenced national heritage policies and vice versa. A side benefit has been the sustained dialogue and exchange of ideas among governments and professional staff from different countries and regions of the world. This rich and diverse international dialogue has resulted in a deeper understanding of the complex nature of heritage and conservation practices. It must be stated, however, that national policy and legislation are not necessarily aligned with the international conventions. As threats increase to heritage sites in general, and World Heritage Sites specifically, national governments will need to set down clear legal frameworks. As to the international normative instruments, it would be useful to examine whether

there might be opportunities for simplifying and harmonizing this large and sometimes unwieldy body of international guidance.

¹ UNESCO Flash Info no 036-2006, 9 March 2006.

² Operational Guidelines, 2005, art.104.