



HISTORICAL PERSPECTIVE OF HERITAGE LEGISLATION.
BALANCE BETWEEN LAWS AND VALUES





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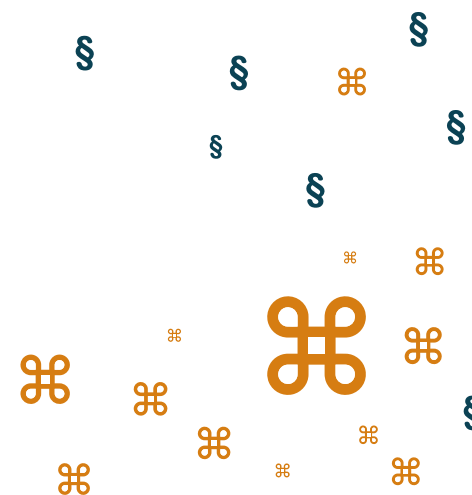
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HISTORICAL PERSPECTIVE ON THE TRANSPOSITION OF THE 1972 UNESCO WORLD HERITAGE CONVENTION IN THE NATIONAL LEGISLATIONS OF ITS STATES PARTIES

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As of August 2017, the 1972 UNESCO World Heritage Convention counts 193 States Parties and can be consequently considered as one of the most universal treaties. This Convention aims to protect the cultural and natural heritage of humankind at the international level. To do so, the World Heritage Committee – a body of 21 States Parties to the World Heritage Convention elected for 4 years – decides yearly to inscribe new sites on the World Heritage List. The World Heritage Committee also reviews the state of conservation of the World Heritage Sites when they are endangered by threats such as armed conflicts, natural disasters, development projects, etc. It can decide to place a site on the List of World Heritage in Danger or to delist a site if it considers that the site has lost its Outstanding Universal Value, authenticity and integrity, based on which it had originally been inscribed on the World Heritage List. At the national level, the States Parties to the World Heritage Convention have rights but also obligations and responsibilities towards the Convention. After ratifying it, how do the States Parties transpose the World Heritage Convention in their national legislations? What are the direct and indirect legal effects? Is there a difference between centralised states and federal states? 45 years after the adoption of the 1972 UNESCO World Heritage Convention, this paper presents a historical perspective on the interpretation of this Convention in the national legislations of its States Parties. First, an analysis of the rights, obligations and responsibilities of the States Parties to the World Heritage Convention is elaborated. Then, a selection of case studies from different political systems permits to enlighten the similarities and differences among the States Parties. Finally, based on these results some perspectives for the future use of the World Heritage Convention are elaborated upon.

Introduction

In order for a state to be part of an international treaty, it has to adopt it via a certain type of instrument. As table 1 shows, there are four different types of instrument to become a State Party to the World Heritage Convention: ratification, acceptance, accession, and notification of succession. The majority of the States Parties to the World

Heritage Convention has ratified it (105). Then, the second most popular type of instrument is the acceptance (71). Finally, only a very few States Parties to the World Heritage Convention have opted for the accession (3) and some States Parties have chosen the notification of succession (13).

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Type of instrument	Definition	States Parties
Ratification	<p>Ratification defines the international act whereby a state indicates its consent to be bound to a treaty if the parties intended to show their consent by such an act.</p> <p>[Arts.2 (1) (b), 14 (1) and 16, Vienna Convention on the Law of Treaties 1969]</p>	105
Acceptance	<p>The instruments of “acceptance” or “approval” of a treaty have the same legal effect as ratification and consequently express the consent of a state to be bound by a treaty.</p> <p>[Arts.2 (1) (b) and 14 (2), Vienna Convention on the Law of Treaties 1969]</p>	71
Accession	<p>“Accession” is the act whereby a state accepts the offer or the opportunity to become a party to a treaty already negotiated and signed by other states. It has the same legal effect as ratification. Accession usually occurs after the treaty has entered into force.</p> <p>[Arts.2 (1) (b) and 15, Vienna Convention on the Law of Treaties 1969]</p>	3
Notification of Succession	<p>Means in relation to a multilateral treaty any notification, however phrased or named, made by a successor State expressing its consent to be considered as bound by the treaty.</p> <p>[Art. 2 Para. 1.g., Vienna Convention on Succession of States in respect of Treaties 1978]</p>	13

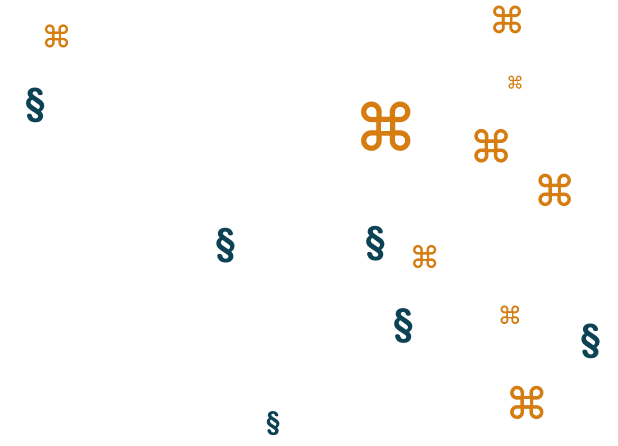


Table 1: Definition of the four types of instrument and their repartition among the States Parties to the World Heritage Convention. Source: B. Gaillard

Consequently, the aim of this article is (1) to analyse the rights, obligations and responsibilities of the States Parties to the World Heritage Convention; (2) to compare the transposition of the World Heritage Convention in the national legislations of centralised vs. federal states with the cases of France, Germany and Spain; and (3) to develop perspectives for the future use of the World Heritage Convention.

Rights, obligations and responsibilities of the States Parties to the World Heritage Convention

Table 2 summarises the rights (Article 3, WHC), obligations (Article 4, Article 7, Article 11 paras. 1, 2, 3, 4, WHC) and responsibilities (Article 5, Article 6 paras. 1, 2, 3, WHC) of the States Parties to the World Heritage Convention. For a detailed legal analysis of the articles of the World Heritage Convention, see Francioni & Lenzerini (2008), Gaillard (2014) and Albrecht and Gaillard (2015).

World Heritage Convention (WHC)	Purpose of the Article
Article 3, WHC	States Parties identify the cultural and natural heritage as defined in Articles 1 and 2, WHC located on their territory
Article 4, WHC	Duty of ensuring the identification, protection, conservation, presentation and transmission to future generations of the cultural and natural heritage situated on its territory, belongs primarily to the States Parties. They do all they can to this end, to the utmost of their own resources.
Article 5, WHC	To ensure that effective and active measures are taken for the protection, conservation and presentation of the cultural and natural heritage each State Party shall endeavour: <ul style="list-style-type: none"> ⌘ to adopt a general policy ⌘ to set up within its territories services for the protection, conservation and presentation of the cultural and natural heritage ⌘ to develop scientific and technical studies and research ⌘ to take appropriate legal, scientific, technical, administrative and financial measures ⌘ to foster the establishment or development of national or regional centres for training
Article 6 para. 1, WHC	Cooperation of the international community to protect the heritage defined in Articles 1 and 2, WHC while respecting the sovereignty of the States Parties

Article 6 para. 2, WHC	The States Parties undertake, in accordance with the provisions of this Convention, to give their help in the identification, protection, conservation and presentation of the cultural and natural heritage referred to in paragraphs 2 and 4 of Article 11 if the States on whose territory it is situated so request.
Article 6 para. 3, WHC	The States Parties do not take measures which could damage the heritage defined in Articles 1 and 2, WHC
Article 7, WHC	International protection of the world cultural and natural heritage shall be understood to mean the establishment of a system of international co-operation and assistance designed to support States Parties to the Convention in their efforts to conserve and identify that heritage.
Article 11 para. 1, WHC	Submission of a Tentative List by the States Parties
Article 11 para. 2, WHC	The World Heritage Committee “establish[es] keep[s] up to date and publish[es]” the World Heritage List
Article 11 para. 3, WHC	The consent of the States Parties is required for the inclusion of a site on the World Heritage List
Article 11 para. 4, WHC	The World Heritage Committee “establish[es], keep[s] up to date and publish[es]” the List of World Heritage in Danger

Table 2: Description of the purpose of the relevant articles of the World Heritage Convention concerning the rights, obligations and responsibilities of the States Parties. Source: B. Gaillard

Case studies

In order to compare the transposition of the World Heritage Convention in different political systems, three case studies have been selected: (1) France because it is a centralised state; (2) Germany because it is a federal state, that has been reunified from a federal state (Federal Republic of Germany) and a centralised state (German Democratic Republic); and (3) Spain because it is a federal state whose federated states have the legislative competence regarding heritage protection and nature conservation.

France

Acceptance of the World Heritage Convention	26 June 1975
Centralised State	18 "régions" and 101 "départements"
LAW n° 2016-925, dated 7 July 2016 concerning freedom of creation, architecture and heritage modified Heritage Code, Legislative Part, Book VI, Title I, Chapter II, Art. L. 612-1 Heritage Protection	Mention of World Heritage
Environmental Code, last modified on 1 October 2016 Nature Conservation	No mention of World Heritage

Table 3: Relevant information on the case of France as a State Party to the World Heritage Convention. Source: B. Gaillard

Germany

Ratification of the World Heritage Convention 23 August 1976 (FRG) 12 December 1988 (GDR)	Accession of the GDR to the Basic Law of the FRG, with effect from 3 October 1990 Union of the two German States to form one Sovereign State.
Federal State	16 "Länder" with exclusive legislative competence of the <i>Länder</i> for heritage protection and concurrent legislative competence of the Federation and the <i>Länder</i> for nature conservation
Mention of the WHC Nature Conservation	Federal Nature Conservation Act, dated 29 July 2009
No mention of the WHC (11) Heritage Protection	Bremen (1975), North-Rhine Westphalia (1980), Baden-Württemberg (1983), Hessen (1986), Saxony (1993), Berlin (1995), Mecklenburg Western-Pomerania (1998), Brandenburg (2004), Saarland (2004), Thuringia (2004), Bavaria (2009)
Mention of the WHC (5) Heritage Protection	Hamburg (1973), Lower Saxony (1978), Rhineland-Palatinate (1978), Saxony-Anhalt (1991), Schleswig-Holstein (1996)
No mention of the WHC (16) Nature Conservation	Saxony-Anhalt (1992), Lower Saxony (1994), Hessen (1996), Thuringia (1999), North-Rhine Westphalia (2000), Mecklenburg Western-Pomerania (2002), Brandenburg (2004), Baden-Württemberg (2005), Saarland (2006), Schleswig-Holstein (2007), Saxony (2007), Hamburg (2007), Berlin (2008), Bremen (2010), Bavaria (2011), Rhineland-Palatinate (2015)

Table 4: Relevant information on the case of Germany as a State Party to the World Heritage Convention. Source: B. Gaillard

Spain

Acceptance of the World Heritage Convention	4 May 1982
Federal State	17 " <i>comunidades autonomas</i> " Competence for heritage protection and nature conservation to the <i>comunidades autonomas</i>
No mention of the WHC Heritage Protection	Law 16/1985, dated 25 June, on the Spanish Historical Heritage
Mention of the World Heritage Sites Nature Conservation	Law 42/2007, dated 13 December, on the Natural Heritage and Biodiversity
Mention of the WHC (1) Heritage Protection	Aragon (1999)
No mention of the WHC (16) Heritage Protection	Basque Country (1990), Catalonia (1993), Valencia (1998), Cantabria (1998), Balearic Islands (1998), Canary Islands (1999), Extremadura (1999), Asturias (2001), Castilla y Leon (2002), La Rioja (2004), Navarre (2005), Murcia (2007), Andalusia (2007), Castilla-La Mancha (2013), Madrid (2013), Galicia (2016)
Mention of the WHC (1) Nature Conservation	Aragon (2015)
No mention of the WHC (16) Nature Conservation	Asturias (1991), Murcia (1992), Valencia (1994), Madrid (1995), Navarre (1996), Extremadura (1998), Castilla La Mancha (1999), Canary Islands (2000), Galicia (2001), La Rioja (2003), Balearic Islands (2005), Catalonia (2005), Cantabria (2006), Andalusia (2007), Basque Country (2014), Castilla y Leon (2015)

The comparison of these three case studies shows that while France and Spain have accepted the World Heritage Convention, Germany has ratified it. The three states have become States Parties to the World Heritage Convention at a rather early stage (1975 for France, 1976 for the Federal Republic of Germany, and 1982 for Spain).

In addition, in the three cases, if the World Heritage Convention is mentioned in the national legislations it is more likely to be mentioned in the legislation regarding heritage protection than in the legislation regarding nature conservation.

For example, in France the law concerning heritage protection mentions World Heritage but the law concerning nature conservation does not mention World Heritage.

In Germany, the legislations concerning heritage protection of only five *Länder* mention the World Heritage Convention whereas the eleven others do not mention it. Although the federal legislation concerning nature conservation mentions the World Heritage Convention, none of the 16 legislations of the *Länder* concerning nature conservation mention the World Heritage Convention.

In Spain, the federal legislation concerning heritage protection does not mention the World Heritage Convention, but the federal legislation concerning nature conservation mentions the World Heritage Sites. In the cases of both legislations of the *comunidades autonomas* concerning heritage protection and concerning nature conservation only the legislations of Aragon mention the World Heritage Convention, whereas the legislations of the 16 other *comunidades autonomas* do not mention it.

Perspectives for the future use of the World Heritage Convention

Based on the analysis of the rights, obligations and responsibilities of the States Parties to the World Heritage Convention and on the comparative analysis of the transposition of the World Heritage Convention in France, Germany and Spain, some perspectives for the future use of the World Heritage Convention can be elaborated.

First of all, the World Heritage Convention should be transposed in the national legislation of its States Parties. In the case of centralised states, the World Heritage Convention should be transposed in the legislation concerning heritage protection and concerning nature conservation. In the case of federal states, the World Heritage Convention should be transposed in the legislation of both the federal and federated levels concerning heritage protection and concerning nature conservation.

Second, the World Heritage concepts should be adopted in the national legislations of the States Parties to the World Heritage Convention, including at federal and federated levels for federal states, concerning heritage protection and nature conservation. Indeed, the definition of cultural sites (monuments, groups of buildings, sites) and

of natural sites (natural features, geological and physiographical formations, natural sites) as well as mixed sites and cultural landscapes as described in the World Heritage Convention and in its Operational Guidelines should serve as a reference for the national legislations of the States Parties to the World Heritage Convention.

Third, a harmonisation of the regional legislations in the case of federal states should take place. The encouragement and assistance of the federated states to harmonise the legislation across the territory would ensure an equal protection of the World Heritage Sites independently from the federated state they are located in.

Conclusion

This historical perspective on the 1972 World Heritage Convention has enabled to describe the different types of instrument a state can use to be part of an international treaty and to analyse the rights but also the obligations and responsibilities at the national level of the States Parties to the World Heritage Convention.

The study of the cases of France, Germany and Spain as States Parties to the World Heritage Convention has revealed a great disparity in the legislations regarding heritage protection and nature conservation. It has been observed that if the World Heritage Convention is mentioned in the national legislations, it is then rather mentioned in the legislations regarding heritage protection than in the legislations regarding nature conservation. This means that the States Parties to the World Heritage Convention have solely partly understood it. Thus, there is a misunderstanding of the purpose of the World Heritage Convention, which is dedicated to the protection of both the cultural and the natural heritage. Another observation concerns the difference between centralised and federal states. In a centralised state, a single legislation regarding heritage protection and a single legislation regarding nature conservation are applied on the whole territory, which ensures an equal protection of all the World Heritage Sites. On the contrary, in federal states there exist as much legislation regarding heritage protection and nature conservation as federated states in addition to the legislation regarding heritage protection and regarding nature conservation at the federal level. In this context, all the World Heritage Sites located on the federal territory are not necessarily equally protected.

Finally, although the World Heritage Convention can be considered as the most universal treaty looking at the high number of its States Parties (193 as of August 2017), it is rather differently transposed in the national legislations of its States Parties according to their political systems. Subsequently, in order for the universalisation of the World Heritage Convention to take place also within the States Parties, the Convention and its concepts should be transposed in the national legislations regarding heritage protection and nature conservation.

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