

# The UNESCO Regime for the Protection of World Heritage

*Comment by Ute Mager\**

The elaborate description and legal analysis of the UNESCO regime documents a rather developed international administration and cooperation in the field of the protection of cultural and natural sites of outstanding value. Therefore it serves very well as an example for proving the value of the international composite administration model.

First of all, the UNESCO regime is a good and convincing example for the existence and exercise of international public authority. The heart of the regime, governed by the World Heritage Convention, concerns the relations between an organ of an international organisation, the World Heritage Committee, and the State Parties. In substance, the protection of cultural and natural sites is a concern which the States themselves regard as their responsibility. The World Heritage Committee offers its assistance under the condition that, first, the site is of sufficient importance for mankind and second, the State requests such assistance.

The instruments used to reach the goal of the convention are:

- substantive and procedural norms in the convention itself as well as regulations or guidelines,
- binding decisions,
- financial or technical assistance,
- reporting duties, and
- the involvement of expert committees.

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The modes of action are formed by cooperation between the World Heritage Committee, States and expert committees. This is true for the development of guidelines as well as for the decision-making process. A site is only included on the World Heritage list and financial or technical assistance are only granted at the request of the State and after evaluation of experts. Only the decision of delisting is a unilateral decision, though it should be noted that this decision is taken with the participation of experts.

I agree with the author's view that the modes of action are similar to public services (*Leistungsverwaltung*) provided on the domestic level. In particular, there is no contradiction between the decision to list a site being coupled with the imposition of obligations and conditions; benefits granted by national public authorities are also never granted unconditionally.

Guidelines are a very interesting phenomenon, bearing similarities to instruments in national administrative law. Their function is to ensure the uniform application of the convention. This objective implies that they are a mixture of administrative regulation with purely internal effects (*Verwaltungsvorschriften* in German law) binding only the international organization, as well as executive order law with external effects (*Rechtsverordnungen* in German law), which have external effects. Perhaps it does not make sense to differentiate too strictly between internal and external effects because, even more than in the domestic situation, it is difficult to maintain a sharp distinction between an international organization's mode of action having purely internal effects and it having "external effects" on the members.

However, I disagree with the author's view that the relationship between the international and the national level is hierarchical. The existence of legally binding decisions is not enough for the use of the term of hierarchy. Even the fact of subordination would not be sufficient. There is subordination if one person or organisation has to accept the unilaterally taken decision of another person or organisation. There is hierarchy if the competences of one person or organisation are of overriding importance and encompass the competences of another person or organisation. In the case of the UNESCO regime the powers of the World Heritage Committee and the State Party involved are not the same. The State has no power to list a cultural or natural site on its territory on the World Heritage list. It has no competence to grant itself international assistance for the protection. On the other hand, the World Heritage Committee has no power to protect the site in the territory of a State. Taking into account the fact that the World Heritage

Committee can only act on the request of the State, I doubt very much that there is any subordination in the relation between the World Heritage Committee and a State Party; in any event, there is surely no hierarchy. Furthermore, the author speaks only of hierarchy under the subtitle of Multilevel Dimensions, whereas in the rest of the very convincing legal analysis the aspect of cooperation in the relations between the World Heritage Committee and the State Parties is stressed. This fact can be regarded as evidence for the misleading effects of the concept of "multilevel-administration", as is pointed out in the contribution of Armin von Bogdandy and Philipp Dann.<sup>1</sup> In any event, in my opinion, it is of eminent relevance for the establishment of the concept of international composite administration that the notions taken from the language of national administrative law are used in their specific sense.

The weaknesses of the UNESCO Regime enumerated by the author seem to be the typical weaknesses in international composite administration: action only on request, no adjudicatory powers, no sanctions beyond delisting. A comparison with the instruments of national protection of cultural and natural sites and especially with the European Flora-Fauna-Habitat-Regime could deepen the understanding of the differences between national, European and international administration and perhaps enhance some ideas for further development of the international regime.

Finally the UNESCO-Regime shows an amazing variety of sources of legitimacy and therefore enjoys a high level of legitimacy for its actions. In this sense it is a good model for other areas of international composite administration.

To conclude: The UNESCO-Regime is a very well chosen example for the value of the concept behind the term international composite administration. Whereas the concept of multilevel-relations is misleading and the term network is not helpful in understanding the relation between the World Heritage Committee and State Parties, the concept of international composite administration opens the way for enlightening and innovative legal analysis.

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<sup>1</sup> See Armin von Bogdandy & Philipp Dann, *International Composite Administration*, in this volume.