

The Role and Impact of the ICOMOS Activity and Statutes as a Contributor to the Public Governance of the World Heritage Protection

Abstract: It is considered a role and impact of the activity and statutes of the International Council of Monuments and Sites (ICOMOS). It is given the proofs that for the States Parties to the UNESCO Convention Concerning the Protection of World Cultural and Natural Heritage - it is possible to exactly comply with their international commitments, observing ICOMOS regulations. It is illustrated that ICOMOS activity can be considered as an integral part of the Good Governance, executed together with official institutions (state authorities) and non-governmental actors (business, community). The administrative and legal nature of the ICOMOS documents is analyzed.

Keywords: UNESCO; ICOMOS; cultural heritage; natural heritage; Convention Concerning the Protection of World Cultural and Natural Heritage; public governance; ICOMOS statute; Operational Guidelines for the Implementation of the World Heritage Convention.

The preservation of cultural heritage and finding solutions to global environmental problems are basics of human civilization's life and development. Historically, the protection of cultural heritage was a state's domestic jurisdiction. The international community acknowledgement of the utmost importance of these aspects is giving rise to the international legal regulation of the cultural objects protection and environment preservation [12, p. 1]. The report [13] mentioned the fact that at the end of XXth century the international law contained more than 100 international statutes, regulating the discovery, preservation, protection, study and promotion of cultural property. The system of these statutes is so extensive, that it

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gives ground to talk about an international law of cultural property protection [7]. The thesis work [15] places special emphasis on a fact, that cultural property is to be protected both by domestic and international law. Every state keeps its cultural property safe, following a certain policy: establishment and maintenance of museums, registration of cultural objects, funding of restoration works etc. At the same time high priority is placed on the international cooperation in cultural property protection. The international cooperation is essential for communication of experience, mutual assistance, prevention of the destruction and misappropriation of cultural objects. The international cooperation of states in the sphere of cultural property protection is a part of the international legal relations, regulated by modern international law.

One of the key international documents, regulating monuments protection is UNESCO Convention Concerning the Protection of World Cultural and Natural Heritage [1] (hereinafter – the Convention). The Convention is meant for the development of international cooperation in the sphere of historical and cultural sites protection [16]. The States Parties to the Convention declare that the objects of cultural and natural heritage, located on their territories, belong to the world, thus the responsibility of states for the objects' safety is a responsibility to the world community.

In addition, from the date of its approval the Convention relied in its implementation not only on state authorities and intergovernmental organizations, but also on public sector of NGO. In paragraph 3, article 8 of the Convention it is mentioned that the sessions of the Intergovernmental Committee for the Protection of the World Cultural and Natural Heritage (World Heritage Committee – see par. 1 article 8 of the Convention) can be attended in a consultative capacity by one representative of the International Centre for the Study of the Preservation and Restoration of Cultural Property (ICCROM), of the International Council of Monuments and Sites (ICOMOS) and of the International Union for Conservation of Nature (IUNC). At the request of the States Parties to the Convention, which are taking part in the general assembly at the next regular UNESCO session, the above

mentioned session of the World Heritage Committee can also be attended by representatives of the intergovernmental and non-governmental organizations with relative purposes. The Paragraph 4, article 13 of the Convention stipulates that the Committee in the execution of its projects has the right to fall back upon the help of (among others) the ICCROM, ICOMOS, IUNC, and also of state authorities and private institutions and private actors. The paragraph 2, article 14 of the Convention entitles the UNESCO Director-General to largely use the services and relative resources of the ICCROM, ICOMOS, IUNC for the preparation of the Committee documents, agendas of its meetings and implementation of its decisions.

The special role of the ICCROM, ICOMOS, and IUNC is underlined in the Operational Guidelines for the Implementation of the World Heritage Convention [2]. The Paragraph 35 of the Guidelines states that the specific role of the above mentioned institutions includes: evaluation of properties nominated for inscription on the World Heritage List, monitoring the state of conservation of World Heritage cultural properties, reviewing requests for International Assistance submitted by States Parties, and providing input and support for capacity-building activities. According to the Paragraph 144 of the Guidelines evaluations of cultural heritage nominations will be carried out by ICOMOS. The Paragraphs 32, 35 of the Guidelines [2] provide that the ICCROM is an intergovernmental organization, established by UNESCO, while ICOMOS is a non-governmental organization. Thus, the Convention-based activity [1] on the world cultural heritage protection is shared by governmental and non-governmental organizations.

A similar approach is taken in specific states. In accordance with the article 49 of the Cultural Heritage Protection Law of Ukraine the presentation of nominations for the World Heritage List is effected by the Cabinet upon recommendations of the central authority of the Executive Branch in the area of the cultural heritage protection and of the ICOMOS National Committee of Ukraine.

Thus, the evidence suggests that in the area of the Convention-based monuments and sites protection [1] the Good Governance principle is implemented, which has become a dominant tendency in modern public management. The United Nations

Development Program (UNDP) can be considered to be a source of this concept [17, 20]. The Good Governance is a special culture of consensus in the system of governmental and non-governmental organizations, which interact on basis of resources dependence in some political issues with purpose to reach consensus in a common problem.

The participants of the World Conference on Governance (Philippines, Manila, 1999) rejected a conventional view on Governance as an exclusive competence of governments. The concept of Governance was considered as a component of both the state (state apparatus) and civil society and private sector (cited by [17]). In the opinion of Laurence Lynn, Carolyn Heinrich, Carolyn Hill (USA) the concept of Governance united values and interests of people, activity of legislative, executive and judicial authorities in a cooperating way, and this may have great consequences for national policy ([22], cited by [17]).

Thus, ICOMOS represents a public sector in the cultural and natural heritage protection system. If that is the case a thorough study of the related ICOMOS activity is needed. This subject is topical for Azerbaidzhan as far as on April 18, 2014 a meeting on establishment of the ICOMOS National Committee of Azerbaidzhan was held.

It should be noted that only few system studies [11, 14, 16, 19] of ICOMOS activity were pursued. The most detailed historical context of ICOMOS activity was represented in [10], however, among all the ICOMOS Charters only the Venice Charter [3] was analyzed in greater detail. As noted in [14] in academic literature there is neither generalized review of modern system of international cultural heritage protection, nor popularized publication of the relevant statutes' texts. That's why this empty space should be filled.

The International organization ICOMOS was established in 1965 as a non-governmental public organization and it is a key player in the world sites and monuments protection [21]. According to its Statute the ICOMOS is concerned with furthering the conservation, protection, rehabilitation and enhancement of monuments, groups of buildings and sites, on the international level. The Guidelines

[2] points out one aspect of ICOMOS activity, and that is to promote the application of theory, methodology and scientific techniques to the conservation of the architectural and archaeological heritage.

The ICOMOS practical activity focuses on the study and promotion of world cultural heritage, furthering of protection and use of sites and monuments, applying restoration and protection theory and practice, developing cooperation in related technologies, assisting in training of cultural objects protection and restoration personnel. The organization is comprised of experts from more than 110 states. The ICOMOS system is structured into professional committees, which deal with sites and monuments protection issues, in particular with the protection of stone buildings, wooden architecture, historical cities, archeology monuments, national historic parks and gardens, rock art, stained-glass artwork, along with personnel training, cultural tourism etc. Since its establishment the organization has produced many charters and other documents on the protection and restoration of cultural objects [21].

In its rule-making and practical activities the ICOMOS relies above all on the guidelines of the Venice Charter [3], which was passed a year before the ICOMOS establishment and is now a fundamental document in cultural heritage protection. As noted in [10] the Venice Charter pointed out 5 guidelines, which summed up its 16 articles: the concept of a historic monument was defined broadly and it embraced not only the single architectural work but also the urban or rural setting; the guidelines on conservation were approved and were to be applied both for a monument and its setting; the idea of a monument conservation in situ was stressed; the restoration was considered to be a last resort. ***Meanwhile the reconstruction was declared unacceptable:*** “All reconstruction work should however be ruled out "a priori.” The total respect for original construction and authentic material was a priority (monuments should be handed on “in the full richness of their authenticity”). The same approach was due for the contributions of all periods to the monument. Any interference should not falsify the artistic and historic evidence of the monument; all works on conservation of archeological monuments should be entrusted only to

qualified experts. The restoration work should not damage the monument and distort its meaning; all the works should be precisely documented, reported and published.

Following these guidelines, the joint UNESCO and ICOMOS commission opposed the plans of the Ukrainian authorities (2011) for so called “renovation” of a church on the setting of the former Church of the Tithe. The Commission report runs: “The complete documentation for the original building, erected in XIth century and repeatedly rebuilt, doesn’t exist”. The UNESCO and ICOMOS experts also stressed, that the planned construction would change the skyline of the existing urban landscape and could affect the visual harmony and outstanding world value of the protected setting of the Cathedral of St. Sophia in Kiev [18].

In addition to the Venice Charter the ICOMOS passed a series of other charters, more specifically: Washington Charter [5], Lausanne Charter [6], Florence Charter [4] etc. The mentioned documents contain fundamental provisions for protection and preservation of cultural and archeological heritage in the context of international commitments of states. Observing to the charters’ provisions the states could easily find solutions for many controversial problems. The core provisions are as follows:

The conservation of a monument implies preserving a setting which is not out of scale. Wherever the traditional setting exists, it must be kept. No new construction, demolition or modification which would alter the relations of mass and colour must be allowed (the Venice Charter, article 6).

New functions and activities should be compatible with the character of the historic town or urban area (the Washington Charter, article 8).

If legislation affords protection only to those elements of the archaeological heritage which are registered in a selective statutory inventory, provision should be made for the temporary protection of unprotected or newly discovered sites and monuments until an archaeological evaluation can be carried out (the Lausanne Charter, article 3).

The overall objective of archaeological heritage management should be the preservation of monuments and sites in situ, including proper long-term conservation... Any transfer of elements of the heritage to new locations represents a

violation of the principle of preserving the heritage in its original context (the Lausanne Charter, article 6).

It is the task of the responsible authorities to adopt, on the advice of qualified experts, the appropriate legal and administrative measures for the identification, listing and protection of historic gardens (the Florence Charter, article 23).

The Ukrainian courts apply the ICOMOS statutes to evaluate to what extent the actions of the authorities correspond to the international requirements for cultural and natural heritage protection. For instance, in the decision of the Kiev administrative court of appeal dated 21.09.2010 with regard to the case # 2-a-1930/09, it was specified that following the ICOMOS guidelines 32 COM 7B.111; 32 COM 8B.68; 32 COM 8D; 33 COM 7B.125 and 34 COM 7B.103 the authorities of Ukraine failed to meet their commitments at the time of proceedings [8].

Bibliography

1. Convention Concerning the Protection of the World Cultural and Natural Heritage /UNESCO, 16.11.1972 – Original text: [Electronic resource] – URL: <http://whc.unesco.org/en/conventiontext>

2. Operational Guidelines for the Implementation of the World Heritage Convention. – Original text: [Electronic resource] – URL: <http://whc.unesco.org/archive/opguide13-en.pdf>

3. International Charter for the Conservation and Restoration of Monuments and Sites (the Venice Charter, 31.05. 1964) – Original text: [Electronic resource] – URL: http://www.international.icomos.org/charters/venice_e.pdf

4. Historic Gardens (The Florence Charter 1981) [21.05.1981] [Electronic resource] International Council on Monuments and Sites. — URL: http://www.international.icomos.org/charters/gardens_e.pdf

5. Charter for the Conservation of Historic Towns and Urban Areas (Washington Charter, 01.01.1987) – Original text: [Electronic resource] – URL: http://www.international.icomos.org/charters/towns_e.pdf

6. Charter for the protection and management of the archaeological heritage (1990). Prepared by the International Committee for the Management of Archaeological Heritage (ICAHM) and approved by the 9th General Assembly in Lausanne in 1990. – [Electronic resource, 26.04.2014] – URL: http://www.international.icomos.org/charters/arch_e.pdf

7. Akulenko V.I. Mizhdunarodne pravo okhoroni kul'turnikh tsinnostei / Yuridichni slovnik. – [Electronic resource, 26.04. 2014]. – Available at: <http://www.zakony.com.ua/juridical.html?catid=41696>

8. Opredefinie Kievskogo apellyatsionnogo administrativnogo suda ot 21.09.2010 po delu no. 2–a–1930/09 po isku OSOBA_4, OSOBA_5 ta OSOBA_6 k Kievskogo gorodskogo soveta o priznanii nedeistvitel'nim reshenie / Edini gosudarstvennii reestr sudebnikh reshenii. – [Electronic resource, 26.04.2014] – Available at: <http://www.reyestr.court.gov.ua/Review/11390920>

9. In Baku has been celebrated the International day of the monuments and historical places. – 18.04.2014 – [Electronic resource, 26.04.2014] – URL: <http://news.day.az/culture/483648.html>

10. Dushkina N.O. ICOMOS and national practice of cultural heritage preservation. – [Electronic resource, 26.04.2014] – URL: http://www.ifapcom.ru/files/Monitoring/dushkina_ikomos_otech_prakt.pdf

11. Melnichuk E.I. Particularities of development of the world heritage concept in the international law in the modern stage // The Heads Collection of the Addresses in Third International Scientific practical conference. “Juridical science as a base for legal provision of the innovation development of Russia” (Kutafin’s readings). Section for international public law. 28-29 November 2011. – M., 2012. – p. 150-155.

12. Mel'nichuk O.I. Status vsevitnoi kul'turnoi ta prirodnoi spadschini lyudstva v mizhdunarodnomu pravi: avtoref. dissert. kand. yurid. nauk. – K., 2006.

13. Molchanov S.N. On concepts' determination “immovable cultural values” and “immovable cultural heritage” / [Paper: Second Interregional scientific and practical conference “IRITOP-2000”, M., 25.04.2000] / [Electronic resource, 26.04. 2014].–

URL: <http://www.patrimony.ru/page4/page33/page192/-page105/page114/>

14. Morgachev V.B. Pact of Roerich and modern international and legal protection of the cultural heritage // Electronic library of Roerich international centre. – [Electronic resource, 26.04.2014] – URL: <http://lib.icr.su/node/953>

15. Potapova N.A. International and legal issues of protection of the cultural values and legislation of Russian Federation: Thesis Abstract of PhD in Law. – M., 2001. – [Electronic resource, 26.04.2014] – URL: <http://law.edu.ru/book/book.asp?bookID=102526>

16. Pribega L. Natsional'na normativno-pravova ta mizhdunarodna okhorona kul'turnoi spadshini. – [Electronic resource, 26.04.2014] – Available at: <http://www.spadshina.org.ua/File/Pribega.doc>.

17. Solovikh V.P. “GOOD GOVERNANCE” yak odna iz suchasnikh modelei derzhavnogo upravleniya // Naukovi visnik Akademii munitsipal'nogo upravleniya: Zbornik naukovikh prats'. Seriyay “upravleniya” / Za zag. Red. V.K. Prisyazhnyuk, V.D. Bakumenka. – 2010. – no. 1. – p. 112-121.

18. UNESCO acts against restoration of the Tithe Church / Lb.ua. – 24.06.2011 – [Electronic resource, 26.04.2014] – URL: http://society.lb.ua/position/2011/06/24/103094_yunesko_vistupaet_protiv_vosstano.html

19. Yurinetz Y.L. Znachennya aktiv ICOMOS dlya administrativno-pravovogo regulriovannya v sfere okhoroni kul'turnoi spadshini/ Universitetski naukovi zapiski [Khmel'nitski universitet upravleniya ta prava]. – 2012. – no. 3 (43). – p. 297-302.

20. A Decade of Measuring the Quality of the Governance: Governance Matters 2006. Worldwide Governance Indicators. – The World Bank, 2006. – p. 2.

21. ICOMOS-Ukraine. – Official site. – [Electronic resource, 26.04.2014] – URL: http://icomos-ua.blogspot.com/p/blog-page_5851.html

22. Lynn L.E., Jr. The Empirical Study of Governance: Theories, Models, Methods / L.E. Lynn, Jr, C. Heinrich, C.J. Hill // Paper presented at the Workshop for the Empirical Study of Governance / University of Arizona. – Tucson, 1999.