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CONVENTION FOR THE PROTECTION
OF THE ARCHITECTURAL HERITAGE OF EUROPE

Explanatory report

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A. INTRODUCTION

The Convention for the Protection of the Architectural Heritage of Europe is both a culmination and a starting point. It is the legal confirmation at international level of twenty years of European co-operation in architectural heritage matters and, at the same time, constitutes a new framework for co-operation for the member states of the Council of Europe and, where appropriate, other states.

a. Origins of the Convention in the context of the Council of Europe's work programme

In 1963 the Parliamentary Assembly of the Council of Europe took the initiative in promoting European intergovernmental co-operation for the safeguarding and development of the cultural heritage of monuments and sites. Soon after the first European Conference of Ministers responsible for this sector held in Brussels between 25 and 27 November 1969, the Assembly adopted Recommendation 589 (1970) drawing the attention of the Committee of Ministers of the Council of Europe to the desirability of setting up a standing committee on co-operation, preparing a European Charter setting forth the "general principles of the preservation and rehabilitation" of the heritage and then, in the light of the Charter, preparing a European Convention.

A great deal of work was done in the 1970s under the Organisation's auspices and resulted in the adoption by the Committee of Ministers in September 1975 of the European Charter of the Architectural Heritage. The Charter's principles, which are incorporated in the Declaration made at the Congress of Amsterdam, the crowning event of European Architectural Heritage Year (1975), are an important landmark in European thinking about the conservation of the built heritage. The need to "integrate" conservation in town planning, preserve groups of historic buildings and their environment and take the heritage into account as a part of economic and social life was thenceforth generally accepted.

The Council of Europe's intergovernmental programme has expanded co-operation since 1975. In 1976 the Committee of Ministers recommended, in Resolution (76) 28, that member governments adapt their national systems of law and regulations to the requirements of "integrated conservation". The idea of a convention carrying greater legal force than a declaration or recommendation and binding states with regard to public international law was, however, recalled in 1982 in CLRAE Resolution 127 on the 4th European Symposium of Historic Towns, which was organised by the Conference of Local and Regional Authorities of Europe and Europa Nostra and held in Fribourg (Switzerland). This resolution also requested the Committee of Ministers to organise, with the same end in view, a second European Conference of Ministers responsible for the Architectural Heritage.

It was in this context that, in September 1981, the Committee of Ministers gave terms of reference to the committee responsible for the heritage sector of the Intergovernmental Programme of Activities (Steering Committee for Urban Policies and the Architectural Heritage, CDUP) to give an opinion, based on a preliminary study to be carried out, on the possibility and desirability of preparing a European Convention for the protection of the Architectural Heritage.

At its plenary session in February 1983 the CDUP accordingly considered the preliminary study carried out in 1982, at the Secretariat's request, by the European University Centre at Nancy and declared in favour of the principle of a convention. On a proposal by the CDUP, the Committee of Ministers decided at its 360th meeting in 1983 to set up a Select Committee of Experts with specific terms of reference to prepare a draft European Convention for the protection of the Architectural Heritage within the framework of the Intergovernmental Programme of Activities.

The states represented on the Select Committee of Experts which prepared the draft convention were Austria, Belgium, Denmark, France, the Federal Republic of Germany, Greece, Ireland, Italy, Portugal, Spain, Switzerland and the United Kingdom. The committee met three times, in December 1983, June 1984 and November 1984, under the chairmanship of Mr Alfred Wacker, former Permanent Representative of Switzerland to the Council of Europe.

The starting point for the discussions was a preliminary draft prepared by the Secretariat in the light of the guidelines emerging from Recommendation 880 (1979) of the Parliamentary Assembly of the Council of Europe on the conservation of the European architectural heritage and from the conclusions of the study by the European University Centre in Nancy (doc. CDUP (83) 4). At its third meeting the Select Committee of Experts transmitted the text of the draft Convention to the CDUP, which considered it at its plenary meeting in February 1985 and thus submitted the draft to the Committee of Ministers.

At the same time as the Convention was being drawn up a Committee of Senior Officials was instructed in 1984 to prepare the second European Conference of Ministers responsible for the Architectural Heritage, which the Spanish Government had offered to host in Granada in 1985, with the twofold purpose of reviewing European co-operation since the first such conference in 1969 and deciding new areas of co-operation. In order to mark the renewed impetus being given to the European heritage conservation programme and emphasise fully its political dimension, it was considered most appropriate that the Convention should be opened to signature on the occasion of the Ministerial Conference in Granada.

The Convention for the Protection of the Architectural Heritage of Europe was adopted by the Committee of Ministers of the Council of Europe on 14 May 1985 and opened to signature on 3 October 1985 at the second European Conference of Ministers responsible for the Architectural Heritage in Granada.

b. Objectives and structure of the Convention

Europe's architectural heritage is infinitely rich and diverse. The nature of this heritage, the problems raised by its conservation and official attitudes to it may differ considerably from one European region to the next. The Convention could not but take this complexity into account; equally, it could not but reflect Europe's underlying unity, which finds expression not only in its cultural traditions but also in the similarity of the problems and challenges facing it at the present time.

The conservation of the heritage is a desirable objective for two main reasons:

- Conservation of the heritage has an eminently cultural purpose.

The World Conference on Cultural Policies in Mexico City in 1982 noted that "the cultural heritage of a people includes the works of its artists, architects, musicians, writers and scientists and also the work of anonymous artists, expressions of the people's spirituality and of the system of values which give meaning to life. It includes both tangible and intangible works through which the creativity of that people finds expression: languages, rites, beliefs, historic places and monuments, literature, works of art, archives and libraries".

The architectural heritage is the most immediately perceptible part of the cultural heritage. The awareness, protection and development of Europe's varied - and, in many instances, transfrontier - cultures are so many reasons for Europeans to live and work creatively together. It was important for the Convention to stress whenever necessary the role which the architectural heritage should play in cultural development at the regional, national and European levels alike.

- Integrated conservation of the heritage is an important factor in the improvement of the quality of life.

The Convention properly takes account of the Council of Europe's essential achievement regarding the inclusion of the heritage in town planning and development policies. It rightly stresses the need for co-operation at all levels between town planners, developers and conservationists and for the public to participate and be informed.

Furthermore, the conservation of the heritage can contribute to economic development.

The best hope for the future of the heritage lies in its being used. Whilst the conservation of properties costs money, it is also a source of revenue and job creation. The Convention had to make clear reference to investment, public and private financing arrangements and vocational training.

In this context the Convention clearly had to satisfy a twofold purpose:

- the reinforcement and promotion of policies for protecting and enhancing the heritage within the territories of the Parties;
- the affirmation of European solidarity with regard to the protection of the heritage and the fostering of practical co-operation between states and regions.

The text of the Convention is so structured as to reflect these two purposes and is in two parts.

The first part covers the minimum protection arrangements needed and the conservation policies to be implemented in keeping with the spirit of earlier work by the Council of Europe and other specialised international

institutions. It is divided into the following sections: "Definition of the architectural heritage"; "Identification of properties to be protected"; "Statutory protection procedures"; "Ancillary measures"; "Sanctions"; "Conservation policies"; "Participation and associations"; "Information and training".

The purpose of the second part is to foster closer European co-operation in defence of the heritage. It lays down the principles of "European co-ordination of conservation policies" covering consultations between the parties over the formulation of policies geared to contemporary needs and a stepping up of exchanges of experience and persons. The Convention's evolutionary nature is apparent in the provision for the setting up of a committee to monitor its application and in the fact that this committee may not only propose amendments to the Convention but also make recommendations for coping with changing situations and needs.

The text ends with final provisions consistent with those customarily used in conventions drawn up under Council of Europe auspices.

Furthermore, the title of the Convention contains the expression "the architectural heritage of Europe" in order to confirm that the objective for the Parties to the Convention is to protect the historic heritage common to all and situated on European territory. In this respect, the text does not concern the expressions of European culture created in other continents.

B. COMMENTARY ON THE ARTICLES OF THE CONVENTION

PREAMBLE

The Preamble to the Convention has three purposes:

- It sets the Convention in the context of the Council of Europe's work over a period of some thirty years on the cultural heritage in general and the built heritage in particular.
- It solemnly recalls the Convention's underlying purpose and expresses a European philosophy of conservation. The aim is both to bequeath to Europeans a system of cultural references and to improve their environment, while at the same time fostering balanced economic and social development in states and localities.
- It affirms the need for active solidarity among the Parties, which, by underlining their agreement on common principles, commit themselves to effective co-operation in the implementation of conservation and rehabilitation policies.

ARTICLE 1

The architectural heritage to be protected by this Convention has to be defined. The text adopts three classifications for the component parts of the heritage in keeping with the definitions contained in the 1972 Convention for the Protection of the World Cultural and Natural Heritage and in Resolution (76) 28 of the Committee of Ministers of the Council of Europe concerning the adaptation of laws and regulations to the requirements of integrated conservation of the architectural heritage. The definitions given reflect the current trend towards enlargement of the concept of the "heritage".

In most countries ever wider categories of building are considered to merit protection. Integrated conservation resulted in the concept of the heritage, previously confined to individual monuments (religious buildings, castles, fortifications etc), being broadened to include groups of historic buildings in towns and works of vernacular architecture. The concept has been further enlarged to include civil engineering works, certain iron constructions, private houses and "art nouveau", the industrial heritage in its various forms, certain contemporary architectural works etc.

The qualitative criteria applied to the three component parts of the architectural heritage are similar.

a. Qualitative criteria

Under the Convention, protection of a property (or group of properties) is conditional not on age but on compliance with a set of criteria whereby it may be deemed an outstanding feature of the built environment. Properties qualify if they are of historical, archaeological, artistic, scientific, social or technical interest.

Compliance with one or more of these criteria, or all of them, means that the property concerned may be deemed a part of the architectural heritage. The relevant departments of each Party are, of course, responsible for deciding whether or not the criteria are met.

b. Categories of properties to be protected

i. Monuments: This term covers architectural works, works of art which are permanent and situated in either urban or rural areas. They may be not only intentional creations designed to commemorate people or events but also, more generally, any structure to which society attributes a value in keeping with the aforementioned qualitative criteria.

The scope of the Convention extends to fixtures and fittings which form an integral part of the protected building(s). This may be taken to include works of art and engineering found in, and designed for, the structure(s) in question (eg woodwork, sculptures, frescoes, stained glass windows, technical equipment etc).

The Convention is concerned with buildings and sites. However, in recognition of the importance of the movable objects which have a particular historical association with the protected buildings, further consideration might be given to the possibility of extending the protection to these objects.

ii. Groups of buildings: This expression covers groups of buildings in urban or rural areas which must not only be homogenous but also comply with the criteria laid down in paragraph (a) and be sufficiently coherent to form geographically definable units. Examples of this concept include complexes of buildings, historic town centres, groups of industrial premises and villages.

iii. Sites: This term covers areas where man has left his mark and which are partially built upon, are distinct from areas of purely unspoiled nature and sufficiently homogenous to be geographically definable and are of value under the criteria listed in paragraph (a).

The categories may naturally overlap: monuments, for instance, may be found within groups of buildings or sites. Landscaped areas and historic gardens may fall within one of these categories.

ARTICLE 2

This provision establishes the principle of a scientific survey of the component elements of the heritage and the preparation of documentation identifying and assessing properties as the first step towards subsequent legal protection. There are many different types of inventory, as a study commissioned by the Council of Europe shows (see the study about "Inventories of the artistic, architectural and cultural heritage in European countries" by Mr Knoepfli, Strasbourg, 1984).

The article refers not only to scientific inventories but also to appropriate simplified documentation, the result of, for instance, rapid surveys. Their purpose would be to provide information on properties which are not yet protected or included in an inventory but which are threatened by development schemes or by proposals for their demolition or serious alteration. This evidence might pave the way for the opening of protection proceedings.

ARTICLE 3

Whilst Article 1 defines the architectural heritage, Article 3 concerns the statutory measures to be taken for protecting the properties in question. These measures may vary according to the political, legislative and administrative systems of the Parties. Responsibilities in this field may be discharged at national, regional or local level, and protection arrangements may be embodied either in town and regional planning legislation or in architectural heritage legislation or in both at once. Such legislation may afford protection to particular structures or fix the boundaries (and hence extent) of protected areas.

ARTICLE 4

This article describes the legal arrangements applicable to the protected heritage. These arrangements establish the general principle that protected properties must not be disfigured, dilapidated or demolished. They provide, regardless of the competent authority and the legal framework in which they apply, for a system of prior authorisation for the various types of work liable to affect the architectural heritage. Such work includes:

- proposals for altering or demolishing protected monuments or monuments in respect of which protection procedures have been instituted and plans which affect the immediate environment (2 (a) and (b)) or are within sight of such monuments;
- proposals for demolition work, the erection of new buildings or major alterations that could adversely affect a group of buildings or a site (2 (b)).

The essential purpose of these provisions is to ensure that work affecting protected properties is supervised and thereby to prevent deliberate disfigurement and dilapidation and, of course, demolition inconsistent with the protection measures taken. Under these arrangements the competent authority retains responsibility for assessing which schemes and alterations are acceptable.

Paragraph (c) refers to the possibility for the competent authorities either to require an owner who is negligent to effect such maintenance work as is necessary or, should the owner fail to do so, to carry out the work themselves. Because the various countries' legislation may differ on this point, the paragraph does not indicate whether, in the event of the work being done by the public authorities, such authorities would be entitled to claim against the owner.

Paragraph (d) deals with the possibility of compulsory purchase of a protected property.

Because of the constitutional problems and problems of domestic law which they raise for certain countries, paragraphs (c) and (d) are mentioned in Article 25 concerning reservations which may be made.

ARTICLE 5

The wording is based on Article 7 of the International Charter for the Conservation and Restoration of Monuments and Sites, adopted by the International Council of Monuments and Sites (ICOMOS) in 1966: "The monument is inseparable from the history to which it bears witness and from the setting in which it occurs. The moving of all or part of a monument cannot be allowed except where the safeguarding of that monument demands it or where it is justified by national or international interests of paramount importance".

Should there be compelling reasons for moving a protected structure, the Convention stipulates that adequate technical precautions must be taken for the dismantling and reinstatement of such structure.

ARTICLE 6

This article concerns the various types of financial support which public authorities may give to ensure or encourage the maintenance and restoration of protected properties.

Paragraph 1 covers the financing from state or decentralised authority budgets of some or all of the work done on properties belonging to public bodies or private citizens. In the case of privately owned properties, it refers to the different types of grant awarded by public authorities.

Paragraphs 2 and 3 refer to indirect measures to foster conservation, which include maintenance, restoration, rehabilitation and management of properties. Such measures may include granting private owners special concessions in respect of property taxes or death duties. They might also extend to the tax arrangements applying to enterprises and associations.

The text covers the solutions introduced in the various member States in the light of the means available and the general economic situation. The article urges measures to expand the role of private citizens and associations. The burden of conserving an ever more extensive heritage should be shared by the community as a whole ; it cannot be borne by public authorities alone.

ARTICLE 7

This provision concerns the various measures to be taken in respect of public spaces: street furniture, signs, improvements to squares and public gardens etc.

ARTICLE 8

This article recognises the problems arising from pollution and provides for the Parties not only to encourage scientific research in this field with a view to discovering ways of combating the effects of pollution but also to take account of heritage conservation requirements in general policies for controlling pollution.

ARTICLE 9

Infringements of the law protecting the heritage are, in practice, dealt with differently depending on the country concerned. The relevant responsibilities may rest with the state or with decentralised authorities. The measures which could be taken may fall within the scope of either criminal law or administrative law. The article has been so worded as to avoid implicit conflict between the Convention and the domestic law of the Parties.

ARTICLE 10

The 5 paragraphs of this article reflect the principles of integrated conservation of the heritage developed in the course of the Council of Europe's earlier work.

Paragraph 1 emphasises the need to include the conservation of protected properties among town and regional planning objectives, and this both when plans are being drawn up and when work is being authorised.

Paragraph 2 underlines the importance of implementing restoration and maintenance programmes especially in the context of wider integrated conservation policies.

Paragraph 3 emphasises the importance of establishing and maintaining the evident links between the protection of the architectural heritage and cultural, environmental and planning policies.

Paragraph 4 recalls the value, in the planning process, of conserving certain structures which are not protected but which are clearly assets in their particular settings.

Paragraph 5 stresses the positive effect of conservation policies from the point of view both of undertakings and of the survival of traditional techniques and materials. The continued existence of these skills and availability of materials are, moreover, prerequisites for the maintenance of the heritage.

ARTICLE 11

This article establishes the principle that using the heritage can contribute to its maintenance. The essence of this text should be compared with Article 5 of the Venice Charter (ICOMOS, 1966):

"The conservation of monuments is always facilitated by making use of them for some socially useful purpose. Such use is therefore desirable but it must not change the lay-out or decoration of the building. It is within these limits only that modifications demanded by change of function should be envisaged and may be permitted".

Not only may certain alterations be made inside buildings which have retained their initial function but also buildings may be adapted to new uses. The criteria to be applied obviously depend on the nature of the buildings, their setting and the use assigned to them. The article's fundamental principle is fidelity to a building's architectural and historical character. This implies, in the event of a protected building being adapted to serve entirely new purposes, the choice of solutions which are not irrevocable.

ARTICLE 12

The article covers improved public access and reception and the protection of the environment of protected properties. The aim is to strike a balance between opening to visitors and conserving the architectural and historical character of the premises which justified protection.

ARTICLE 13

The principles of integrated conservation of the heritage imply effective co-operation between the various administrative departments concerned in order to put the desired policy into effect. The article recalls the need for such co-operation to be implemented between departments and officials of often different central and local government authorities.

ARTICLE 14

The article emphasises the need to involve the public authorities, the private organisations and the wider general public in the decision process especially in the context of the need for protecting the architectural heritage.

Paragraph 1 accordingly refers to the establishment of structures to facilitate co-operation between the various parties involved: the state, local authorities, associations and the public. Paragraph 2 refers to the fostering of non-profit-making associations and different types of sponsorship. Public authority measures will increasingly have to be backed up by assistance from private persons or authorities. The new forms of sponsorship include the discharge by certain industrial or commercial undertakings of responsibility for the conservation of their own historic heritage and the provision by them of support for a number of conservation activities.

ARTICLE 15

Awareness and understanding are prerequisites for participation. If the population as a whole is to appreciate the heritage, an understanding of the concepts of architecture, history and environment must be developed from a very early age.

Paragraph 1 indicates the purpose of fostering awareness, namely to make everyone realise the deep cultural roots shared by states and, of course, regions throughout Europe. A fuller understanding of the past and the present is thereby possible.

Paragraph 2 refers not only to the discovery subjects to be included in school curricula but also to the substance of policies for developing an awareness of the heritage. If conservation is to be more than the preservation of a structure whose meaning has been lost, it is important to explain the links between architecture, the arts, popular traditions and ways of life. From the point of view of European construction, it is particularly interesting to consider the regional cultural units which are taking shape astride state frontiers and reflect common cultures spread over wide areas.

ARTICLE 16

This article concerns the necessary development of training systems for the various occupations and trades involved in conservation work.

ARTICLE 17

This article is the first in the section devoted to European co-ordination of conservation policies. It gives a restrictive list of sectors in which the regular pooling of information would help to advance knowledge. Such pooling should lead to the elaboration of concerted heritage policies common to the Parties.

Paragraph 1 relates to methods for the survey, legal protection and material conservation of protected properties. It is particularly valuable to pool information on a Europe-wide basis and to carry out joint studies of the very concept of heritage and of the criteria for the proper legal protection thereof.

Paragraph 2 concerns ways and means of integrating the heritage of buildings and sites into economic, social and cultural life.

Paragraph 3 refers to the use of new technologies in the identification, maintenance, restoration and promotion of the heritage.

Paragraph 4 refers to the contemporary architecture which will be the heritage of the future. The problems raised by inserting contemporary architecture in existing groups of buildings and sites and in the vicinity of protected monuments calls for a wider exchange of information between the Parties.

ARTICLE 18

A system of technical assistance already operates under Council of Europe auspices: it involves the dispatch of delegations of experts to towns in respect of which the governments of the countries concerned have made application. As a matter of fact, "Rules for the technical assistance relating to the integrated conservation of the cultural heritage of monuments and sites" have been adopted by the Committee of Ministers of the Council of Europe since 28 May 1979.

ARTICLE 19

This article deals with the desirable expansion of exchanges of persons in the various occupations and trades involved in the conservation of the heritage. It refers specifically to those responsible for training in the various occupational sectors.

The possibilities offered by in-service training would seem to facilitate occasional or prolonged mobility of this kind. It would be expedient for national or regional in-service training regulations to be adjusted where necessary. In addition to training courses, vocational regulations should make provision, if they do not already do so, for the reception of specialists who wish to practise their occupation or trade in countries other than their country of origin.

ARTICLE 20

In order to ensure that the Convention is implemented as efficiently as possible, the creation of a committee to monitor its application was deemed desirable.

a. Functions of the committee

- The committee will be required to report, at such intervals as it shall decide, to the Committee of Ministers of the Council of Europe on:

- . the position regarding the heritage policies practised in the States Parties to the Convention;
- . the application by the Parties;
- . its own activities.

- The committee will further be required to propose to the Committee of Ministers measures to facilitate the Convention's application. These measures may be proposals for recommendations to member States, proposals regarding the Council of Europe's intergovernmental work programme, and any other proposals concerning multilateral international co-operation and the information and motivation of states, local authorities and the European public.

- The committee will also be required to make recommendations to the Committee of Ministers regarding invitations to non-member States of the Council of Europe to accede to the Convention.

b. Status of the committee

Article 17 of the Statute of the Council of Europe provides that the Committee of Ministers may set up advisory and technical committees or commissions for such specific purposes as it may deem desirable.

The status of either Committee is fixed by the Committee of Ministers. The committee may be an ad hoc committee of experts directly responsible to the Committee of Ministers or the Steering Committee for the "architectural heritage" sector, or some other appropriate arrangement might be made.

During its meeting the Selected committee of experts considered that the status of the committee responsible for the follow-up of the Convention should be decided upon when the Convention enters into force.

ARTICLE 21

The wording of this article is based on model provisions already included in other international conventions in order to resolve any difficulties arising out of the interrelationship between conventions covering similar fields.

This Convention differs in both form and substance from the Convention for the Protection of the World Cultural and Natural Heritage adopted by the General Conference of Unesco on 16 November 1972. The purposes of the two Conventions are quite distinct, as are the Organisations under whose aegis they were prepared. One is regional in scope, the other worldwide. The Council of Europe Convention supplements the Unesco Convention and, although

conforming to the general spirit of the latter, presents a set of provisions conceived for, and adapted to, European requirements. The material scope of the Council of Europe Convention does not extend to natural sites, unlike the Unesco text. Moreover, it makes no provision for the listing of properties of outstanding international interest; instead, it sets forth minimum general arrangements for the protection of properties and lays down a set of principles for European conservation policies. The Council of Europe Convention further refers to technical assistance and a pooling of skills but does not set up a mutual support fund. Each text thus has its own special characteristics.

A distinction also needed to be drawn between the European Convention for the Protection of the Architectural Heritage of Europe and the European Convention on the Protection of the Archaeological Heritage drawn up within the Council of Europe in 1969. Article 1 of this latter Convention provides that "... all remains and objects, or any other traces of human existence, which bear witness to epochs and civilisations for which excavations or discoveries are the main source or one of the main sources of scientific information, shall be considered as archaeological objects".

Certain elements of the archaeological heritage within the meaning of the 1969 Convention may be movable and others immovable. In certain instances, the boundary between the architectural heritage and the archaeological heritage may accordingly be blurred.

Article 21 therefore needed to forestall any difficulties by stating that the provisions of this Convention shall not prejudice the application of such specific and, in some cases, more favourable provisions regarding the protection of properties as are embodied in the above-mentioned Conventions.

ARTICLES 22 to 27

The final clauses contained in Articles 22 to 27 are based on the model final clauses for Council of Europe Conventions and Agreements.

Article 25 provides for the entering of reservations at the time of signature or of deposit of the instrument of ratification, acceptance, approval or accession with regard to :

- the possibility for public authorities to require the owner of a protected property to carry out work or to carry out such work itself if the owner fails to do so (Article 4 (c))
- the possibility of compulsory purchase of a protected property (Article 4 (d)).

No other reservations may be made by Parties.