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STRENGTHENING CAPACITY FOR ENVIRONMENTAL LAW IN
THE ASIA-PACIFIC : DEVELOPING ENVIRONMENTAL LAW CHAMPIONS
Manila, June 1 to 5, 2015

Biodiversity and Heritage Law

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What are we protecting, and why?



Outline

1. Introduction: biodiversity and heritage
2. Protecting biodiversity
3. Protecting natural and cultural heritage
4. Protection mechanisms
 - a. Listing of species
 - b. Protected areas
 - c. Listing of natural and cultural heritage
 - i. World heritage
 - ii. National heritage
 - iii. Local heritage
5. National biodiversity and heritage laws

Biodiversity and heritage

Main International Conventions

Global

- Convention on Biological Diversity
<http://www.cbd.int/convention/convention.shtml>
- World Heritage Convention <http://whc.unesco.org/>
- Ramsar Convention:
http://www.ramsar.org/cda/en/ramsar-home/main/ramsar/1%5e7715_4000_0
- Convention on Migratory Species: <http://www.cms.int/>
- Intangible Heritage Convention
<http://www.unesco.org/culture/ich/index.php?pg=00006>

Regional Asian and Pacific Agreements and Declarations

Asia:

ASEAN Agreement on Nature and Natural Resources 1985
(not yet in force)

- **ASEAN DECLARATION ON HERITAGE PARKS 2003**
<http://www.aseansec.org/15524.htm>

- **Pacific:**

- Convention for the Protection of the Natural Resources and Environment of the South Pacific 1986

Some initial points

1. Natural and cultural heritage cannot easily be separated
 - a. What we *value* is culturally determined
 - b. Cultural items often reflect the natural environment; for example wood and stone to make buildings
 - c. Heritage items can be listed for both cultural and natural values; for example 'cultural landscapes' under the World Heritage
2. Intangible heritage concepts can relate to both the natural and the cultural environment
3. Biodiversity conservation and heritage are closely related and often overlap

Protection mechanisms for biodiversity and heritage

1. Listing of species under Convention on International Trade in Endangered Species <http://www.cites.org>
2. and Convention on Migratory Species <http://www.cms.int>
3. Establishment of protected areas under Biodiversity Convention <https://www.cbd.int>
4. Listing of wetlands under the Ramsar Convention <http://www.ramsar.org>
5. Listing of marine protected areas under the Law of the Sea Convention Article 136 The Area and its resources are the common heritage of mankind
Article 149 Archaeological and historical objects

Listing of natural and cultural heritage

- i. World heritage <http://whc.unesco.org/en/list/>
- ii. Intangible heritage <http://www.unesco.org/culture/ich/index.php?pg=00002>
- iii. China: Intangible Cultural Heritage Law http://www.wipo.int/wipolex/en/text.jsp?file_id=336577
- iv. National heritage
 - Philippines: <http://nhcp.gov.ph>
 - Vietnam: <http://tuoitrenews.vn/lifestyle/28021/centuriesold-trees-in-northern-vietnam-recognized-as-national-heritage>
- i. Local heritage: local government protection schemes

Protecting biodiversity

Biodiversity Convention Article 8:

In-situ Conservation

Each Contracting Party shall, as far as possible and as appropriate:

- (a) Establish a system of protected areas or areas where special measures need to be taken to conserve biological diversity;**
- (b) Develop, where necessary, guidelines for the selection, establishment and management of protected areas or areas where special measures need to be taken to conserve biological diversity;**
- (c) Regulate or manage biological resources important for the conservation of biological diversity whether within or outside protected areas, with a view to ensuring their conservation and sustainable use;
- (d) Promote the protection of ecosystems, natural habitats and the maintenance of viable populations of species in natural surroundings;
- (e) Promote environmentally sound and sustainable development in areas adjacent to protected areas with a view to furthering protection of these areas;

Definitions of Protected Areas

Convention on Biological Diversity Article 2 : "Protected area" means a geographically defined area which is designated or regulated and managed to achieve specific conservation objectives.

IUCN World Commission on Protected Areas: 2008:

A protected area is: **"A clearly defined geographical space, recognised, dedicated and managed, through legal or other effective means, to achieve the long-term conservation of nature with associated ecosystem services and cultural values"**

Class question: **What is the difference between the two definitions?**

The IUCN definition specifically recognizes:

- ***Legal and other effective means (example: customary law)***
- ***Ecosystem services of protected areas***
- ***Cultural values represented by protected areas***

IUCN Classification of Protection Areas

Areas managed mainly for:

I Strict protection

[Ia) Strict nature reserve and

I(b) Wilderness area

II Ecosystem conservation and protection (i.e., National park)

III Conservation of natural features (i.e., Natural monument: rock formation, geological parks)

IV Conservation through active management (i.e., Habitat/species management area)

V Landscape/seascape conservation and recreation (i.e., Protected landscape/seascape)

VI Sustainable use of natural resources (i.e., Managed resource protected area)

- Some countries have incorporated the categories in national law (Example Australia)
- More explanation of IUCN Categories at http://www.iucn.org/about/work/programmes/gpap_home/gpap_quality/gpap_pacategories/

Intangible Heritage Convention

Convention for the Safeguarding of the Intangible Cultural Heritage
Paris, 17 October 2003

<http://www.unesco.org/culture/ich/index.php?pg=00006>

Article 1 – Purposes of the Convention

The purposes of this Convention are:

- (a) to safeguard the intangible cultural heritage;
- (b) to ensure respect for the intangible cultural heritage of the communities, groups and individuals concerned;
- (c) to raise awareness at the local, national and international levels of the importance of the intangible cultural heritage, and of ensuring mutual appreciation thereof;
- (d) to provide for international cooperation and assistance.

Intangible Heritage Convention :

Article 2 – Definitions

For the purposes of this Convention,

1. The “intangible cultural heritage” means the practices, representations, expressions, knowledge, skills – as well as the instruments, objects, artefacts and cultural spaces associated therewith – that communities, groups and, in some cases, individuals recognize as part of their cultural heritage. This intangible cultural heritage, transmitted from generation to generation, is constantly recreated by communities and groups in response to their environment, their interaction with nature and their history, and provides them with a sense of identity and continuity, thus promoting respect for cultural diversity and human creativity. For the purposes of this Convention, consideration will be given solely to such intangible cultural heritage as is compatible with existing international human rights instruments, as well as with the requirements of mutual respect among communities, groups and individuals, and of sustainable development.

Intangible Heritage Convention

- 2. The “intangible cultural heritage”, as defined in paragraph 1 above, is manifested inter alia in the following domains:
 - (a) oral traditions and expressions, including language as a vehicle of the intangible cultural heritage;
 - (b) performing arts;
 - (c) social practices, rituals and festive events;
 - (d) knowledge and practices concerning nature and the universe;
 - (e) traditional craftsmanship.

Regional Law: ASEAN Agreement 1985 (not yet in force)

- **ARTICLE 13 Protected Areas**

(1) The Contracting Parties shall as appropriate establish, in areas under their jurisdiction, terrestrial, freshwater, coastal or marine protected areas for the purpose of safeguarding (a) the ecological and biological processes essential to the functioning of the ecosystems of the Region;

(b) representative samples of all types of ecosystems of the Region;

(c) satisfactory population levels for the largest possible number of species of fauna and flora belonging to those ecosystems; .

(d) areas of particular importance because of their scientific, educational, aesthetic, or cultural interests; and taking into account their importance in particular as:

-

ASEAN Agreement

Areas of particular importance

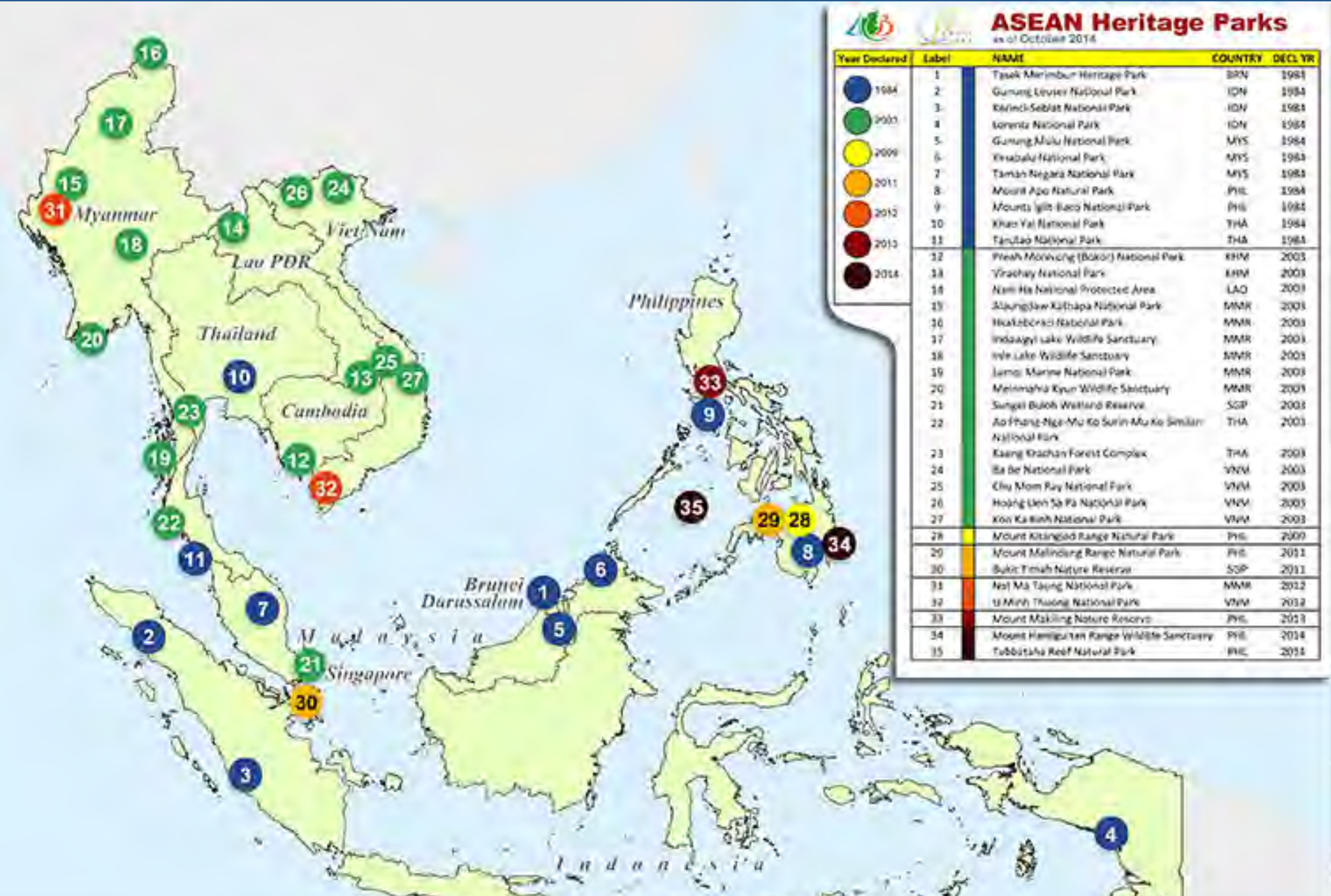
S 13 (1)(d)

- the natural habitat of species of fauna and flora; particularly rare or endangered or endemic species;
- zones necessary for the maintenance of exploitable stocks of economically important species
- pools of genetic material and said refuge for species, especially endangered ones
- sites of ecological, aesthetic or cultural interest
- reference sources for scientific research; (f) areas for environmental education.

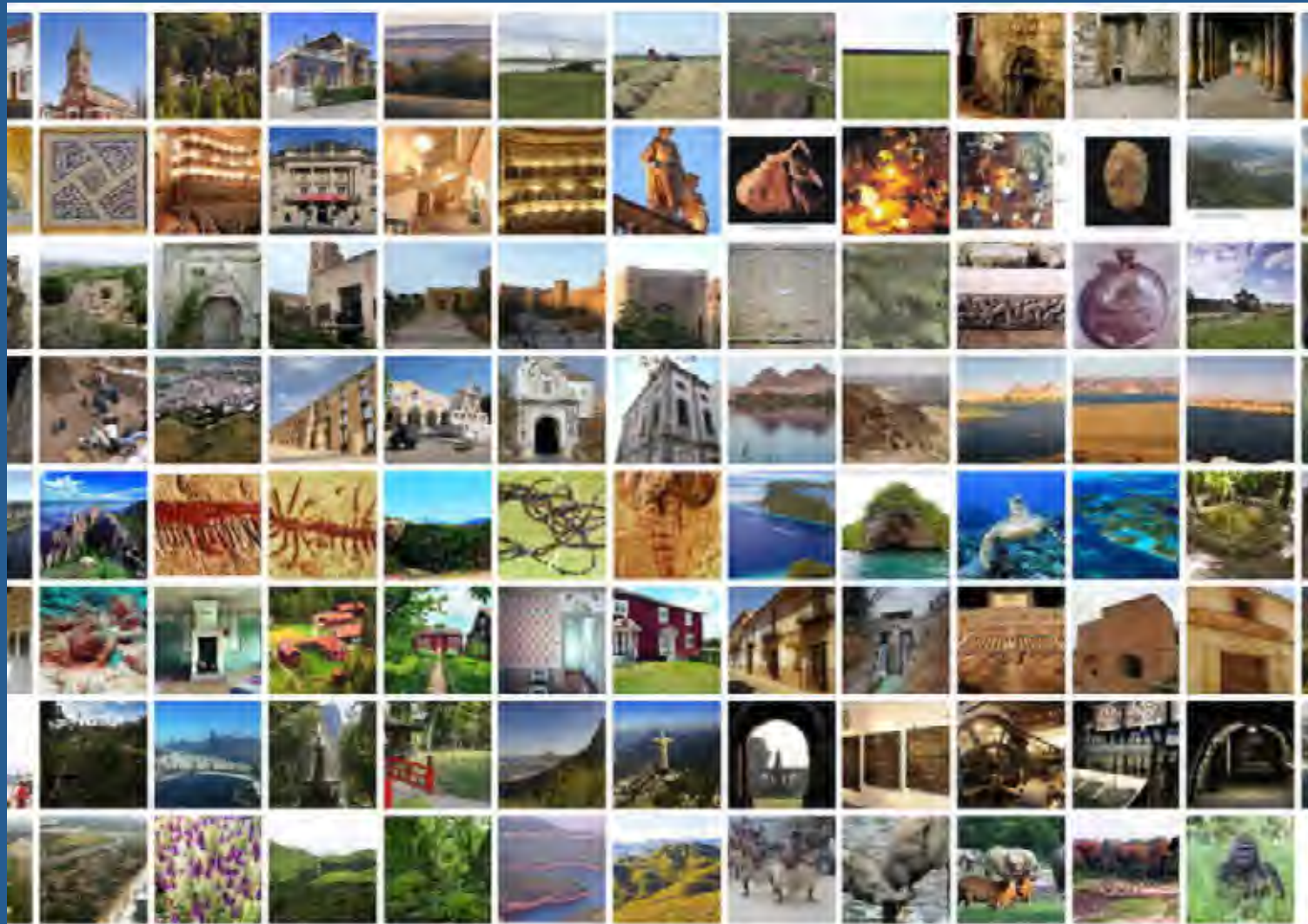
ASEAN DECLARATION ON HERITAGE PARK 2003.

- *AWARE of the uniqueness, diversity and outstanding values of certain national protected areas of ASEAN member countries, that deserve the highest recognition so that their importance as conservation areas could be appreciated regionally and internationally;*
- *DO HEREBY DECLARE the national protected areas listed in Appendix I as ASEAN Heritage Parks. The list of ASEAN Heritage Parks may be amended from time to time by written notification from the member country concerned to the ASEAN Secretariat based on a set of criteria developed by the ASEAN Senior Officials on the Environment; and*
- *AGREE that common cooperation is necessary to conserve and manage ASEAN Heritage Parks for the development and implementation of regional conservation and management action plans as well as regional mechanisms complementary to and supportive of national efforts to implement conservation measures.*
- *Note: this is a non-legally binding or 'soft law' Declaration*

ASEAN Heritage Parks 2014



Focus on World Heritage



Convention Concerning the Protection of the World Cultural and Natural Heritage



- The most significant feature of the *1972 World Heritage Convention* is that it **links together** in a single document the concepts of **nature conservation** and the **preservation of cultural properties**. The Convention recognizes the way in which people interact with nature, and the fundamental need to preserve the **balance between the two**.

History World Cultural Heritage Convention



The ruins of the library of the Catholic University of Leuven after it was burned in 1914.

- The idea of creating an international movement for protecting heritage emerged after **World War I**.
- The **1972 World Heritage Convention** developed from the merging of two separate movements:
 - the first focusing on the preservation of **cultural sites**, and
 - the other dealing with the **conservation of nature**.
- The idea of combining conservation of cultural & natural sites comes from the USA and later supported by the IUCN.
- A **single text was agreed upon** by all parties concerned was adopted by the General Conference of **UNESCO on 16 Nov 1972**.

The Cloth Hall at Ypres, Belgium 1914

Before



© Albany

After



© Popperfoto/Getty Images

163 THE CLOTH HALL
YPRES.

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St Martin's Cathedral-Belgium



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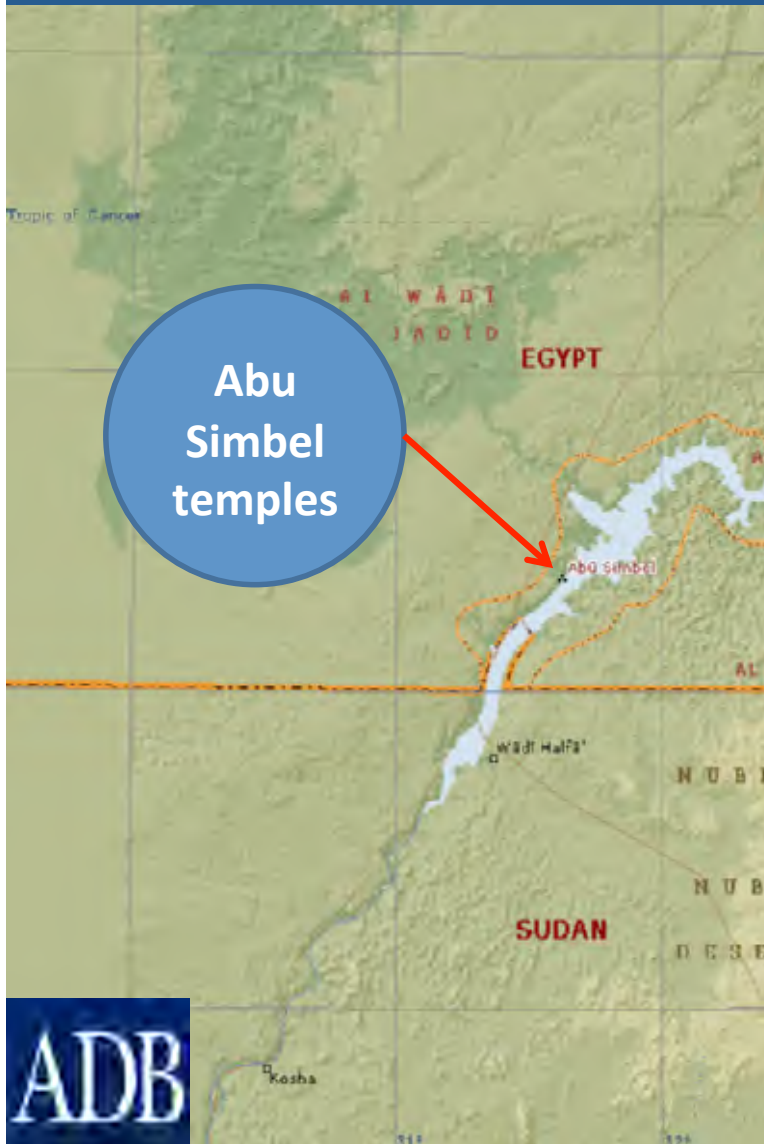
After the Bombing



© Central Press Photo



Abu Simbel Temple: As a Turning Point of Cultural Heritage Protection



Turning Point of Cultural Heritage Protection



- The event that aroused particular international concern was the decision to build the **Aswan High Dam in Egypt**, which would have **flooded the valley containing the Abu Simbel temples**, a treasure of ancient Egyptian civilization.
- In 1959, after an appeal from the governments of Egypt and Sudan, UNESCO launched an international safeguarding campaign.
- The **Abu Simbel and Philae temples** were **dismantled**, moved to **dry ground and reassembled**.
- The campaign cost about US\$80 million, half of which was donated by some 50 countries. Its success led to other safeguarding campaigns, such as saving **Venice and its Lagoon (Italy)** and the **Archaeological Ruins at Moenjodaro (Pakistan)**, and restoring the **Borobudur Temple Compounds (Indonesia)**.
- UNESCO initiated, with the help of **the International Council on Monuments and Sites (ICOMOS)**, the preparation of a **draft convention on the protection of cultural heritage**.

The Few First Projects of UNESCO



Moenjodaro-Pakistan



Borobodur Temple Compounds-Indonesia



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Venice-Italy





Qutab Minar
is a soaring,
73 m-high tower of
victory, built in 1193
by Qutab-ud-din Aibak
Delhi-India

World Heritage Definition of Cultural Heritage

- **monuments:** architectural works, works of monumental sculpture and painting, elements or structures of an archaeological nature, inscriptions, cave dwellings and combinations of features, which are of outstanding universal value from the point of view of history, art or science;
- **groups of buildings:** groups of separate or connected buildings which, because of their architecture, their homogeneity or their place in the landscape, are of outstanding universal value from the point of view of history, art or science;
- **sites:** works of man or the combined works of nature and man, and areas including archaeological sites which are of outstanding universal value from the historical, aesthetic, ethnological or anthropological point of view. **(Article 1)**

World Heritage Definition of Natural Heritage



- **Natural features** consisting of physical and biological formations or groups of such formations, which are of outstanding universal value from the aesthetic or scientific point of view;
- **Geological and physiographical formations** and precisely delineated areas which constitute the habitat of threatened species of animals and plants of outstanding universal value from the point of view of science or conservation;
- **Natural sites** or precisely delineated natural areas of outstanding universal value from the point of view of science, conservation or natural beauty. **(Article 2)**

Natural Heritage: Ha-Long Bay Vietnam



Cultural landscapes: Rice Terraces of the Philippines Cordilleras



Rice Terraces: Ubud-Bali



Main Objectives of 1972 World Heritage Convention

Photo: UNESCO Website



- *To identify world cultural and natural heritage*
- *To protect world cultural and natural heritage*

WHC Protection strategies



Bam-Iran: largest mud brick structures in the world, about **2000 years** old. (WH in Danger)



- Listing of heritage sites (World Heritage List)
- Listing of heritage sites in danger (List of World Heritage in Danger)
- Assistance to states in maintenance and restoration of sites (World Heritage Fund)

The reality of some World Cultural Heritage sites

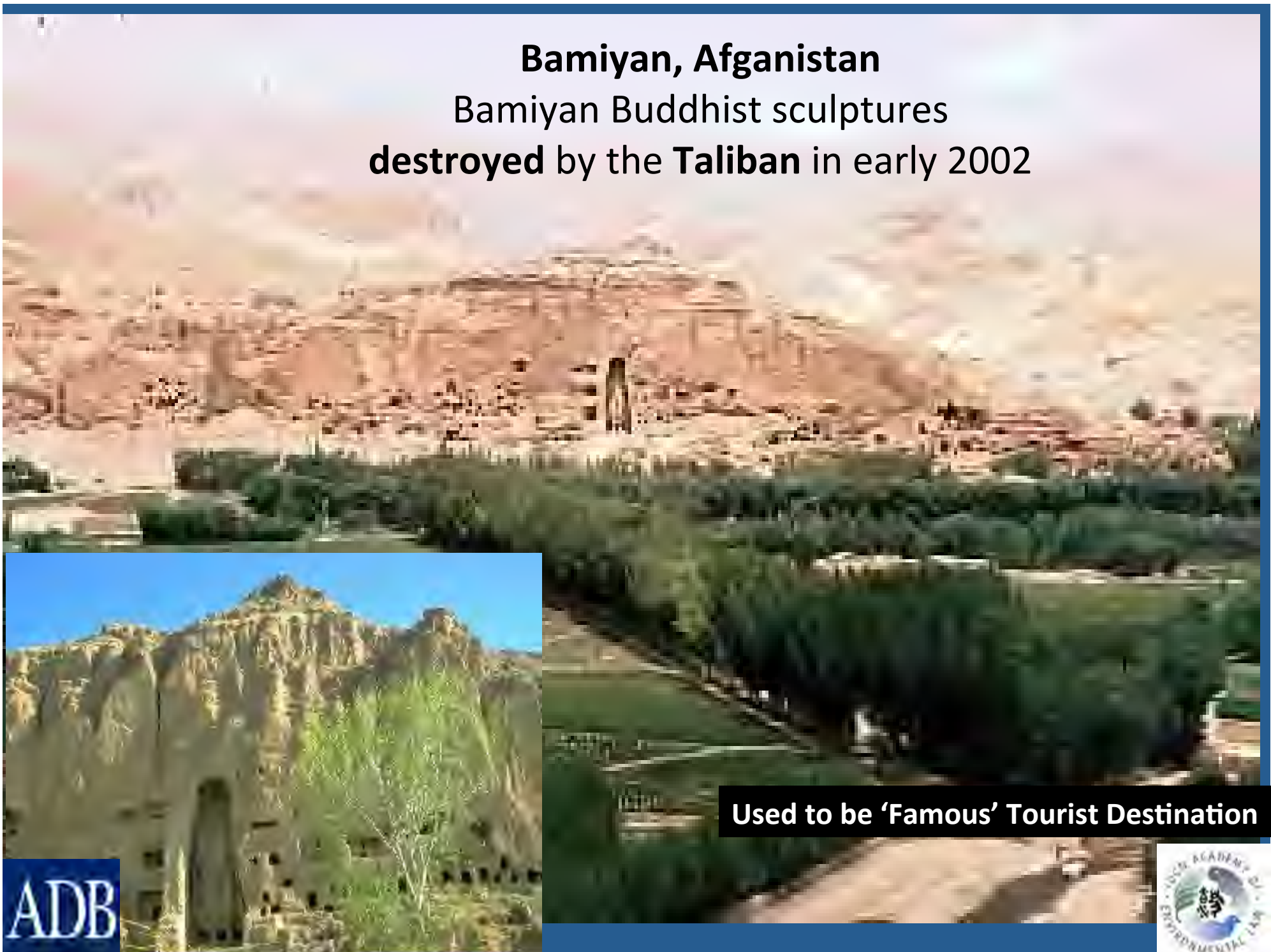


The Deputy Director of Ahmed Baba
Institute in Timbuktu, Mali, 2013

- Most cultural/natural heritage are not protected and vulnerable to 'unsustainable development' and War/Conflict;
- **Many countries no adequate legal framework to protect their cultural/natural heritage;**
- Most government, especially in the developing countries have no capacity and expertise to preserve their cultural/natural heritage;
- **Most developing countries considered cultural heritage has nothing to do with 'natural heritage' etc....**

Bamiyan, Afghanistan

Bamiyan Buddhist sculptures
destroyed by the **Taliban** in early 2002



Used to be 'Famous' Tourist Destination



Most Parts were Destroyed in 2002

State Parties Duties: Articles 4-7



- The WHC has been ratified by **191 States** parties.
- “**State parties has the DUTY** of ensuring the **identification, protection, conservation, presentation and transmission** to future generations of the **cultural and natural heritage** and situated on its territory, belongs primarily to that State. It will do all it can to this end, to the **utmost of its own resources** and, where appropriate, with any **international assistance and co-operation**, in particular, financial, artistic, scientific and technical, which it may be able to obtain”. (**Article 4**)



State Parties Duties (Cont...)

- ... Each State Party to this Convention shall endeavor, in so far as possible, and as appropriate for each country:
- **(a) to adopt a general policy** which aims to give the cultural and natural heritage a function in the life of the community and to integrate the protection of that heritage into comprehensive planning programmes;
- **(d) to take the appropriate legal, scientific, technical, administrative and financial measures necessary for the identification, protection, conservation, presentation and rehabilitation of this heritage;** (Article 5)



Prambanan Temple
Indonesia



Benefits of Ratification

- State becomes a member of international community that has **similar concern and values** in the protection of cultural/natural heritage.
- State parties can ask assistance from other member States.
- States, especially developing countries are have access to the **World Heritage Fund** (about US\$4 million/year)
- Preserved cultural/natural heritage can boost national economy from international and domestic tourism.
- The inscription of a site on the World Heritage List brings an **increase in public awareness** of the site and of its outstanding values.



World Heritage Committee



- **21 State Parties elected for 6 years**, with a third of seats elected at each General Assembly
- Approves applications to **WH List**
- Established the **annual budget** for the WH Fund [Art.13(6)]
- **Examines requests** for international assistance (Art.13)
- **Develops policy** related to the Convention



Selection criteria

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NATURAL

- Exemplifies a major stage of the earth's history
- Representing ongoing ecological and biological processes
- Natural habitat of endangered animals
- Scene of exceptional beauty

INTEGRITY

CULTURAL

- Masterpiece of human genius
- Exerted great architectural influence
- Associated with ideas or belief of universal significance
- Outstanding example of a traditional way of life of a particular culture

AUTHENTICITY





Regional Arrangements on Cultural Heritage Protection

ASEAN Cultural Heritage Declaration 2000

"Cultural heritage" means:

- (a) significant cultural values and concepts;
- (b) structures and artifacts**
- (c) sites and human habitats;
- (d) oral or folk heritage:**
- (e) the written heritage;
- (f) popular cultural heritage**



Shwedagon Pagoda, Myanmar

Main Provisions of the 2000 ASEAN Cultural Heritage Declaration

| | |
|---|--|
| 1. NATIONAL AND REGIONAL PROTECTION OF ASEAN CULTURAL HERITAGE | 8. ADVANCEMENT OF CULTURAL HERITAGE POLICY AND LEGISLATION |
| 2. PROTECTION OF NATIONAL TREASURES AND CULTURAL PROPERTIES | 9. RECOGNITION OF COMMUNAL INTELLECTUAL PROPERTY RIGHTS |
| 3. SUSTENTATION OF WORTHY LIVING TRADITIONS | 10. PREVENTION OF THE ILLICIT TRANSFER OF OWNERSHIP OF CULTURAL PROPERTY |
| 4. PRESERVATION OF PAST AND LIVING SCHOLARLY, ARTISTIC AND INTELLECTUAL CULTURAL HERITAGE | 11. COMMERCIAL UTILIZATION OF CULTURAL HERITAGE AND RESOURCES |
| 5. PRESERVATION OF PAST AND LIVING POPULAR CULTURAL HERITAGE AND TRADITIONS | 12. INTEGRATION OF CULTURE AND DEVELOPMENT |
| 6. ENHANCEMENT OF CULTURAL EDUCATION, AWARENESS AND LITERACY | 13. DEVELOPMENT OF NATIONAL AND REGIONAL NETWORKS ON ASEAN CULTURAL HERITAGE |
| 7. AFFIRMATION OF ASEAN CULTURAL DIGNITY | 14. ALLOCATION OF RESOURCES FOR CULTURAL HERITAGE ACTIVITIES |
| 15. DEVELOPMENT AND IMPLEMENTATION OF AN ASEAN PROGRAM ON CULTURAL HERITAGE | |

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Advancement of Cultural Heritage Policy and Legislation

- ASEAN Member Countries **shall ensure the effectiveness of cultural policies and laws** for the preservation of cultural heritage, and the protection of communal intellectual property.
- **Cultures with global reach must not deprive local, national and regional cultures** of their own development dynamics and reduce them to relics of the past. Member Countries **shall ensure that cultural laws and policies empower all peoples** and communities to harness their own creativity towards human development.
- ASEAN Member Countries **shall cooperate closely** to ensure that their citizens enjoy the economic, moral and neighboring rights resulting from research, creation, performance, recording and/or dissemination of their cultural heritage.



Basic Cultural Heritage Law in China

1. **Vietnam:** Cultural Heritage Law 2001
2. **Cambodia:** Law on the Protection of Cultural Heritage 1996
3. **Myanmar:** Protection and Preservation of Cultural Heritage Regions Law 1998
4. **Thailand:** Act on Monuments, Ancient Objects, Art Objects and National Museum 1961 (as amended)
5. **Laos:** Law on National Heritage 2005
6. **China:** Law of the People's Republic of China on Protection of Cultural Relics 2007
Intangible Cultural Heritage Law 2011

National Cultural Heritage Law: other examples



- National Cultural Heritage Act, 2009
Philippines
- **National Heritage Act 2005, Malaysia**
- Cultural Heritage Act, 2010 Indonesia
- **Monuments and Antiquities Act, 1961
India**
- National Fund for Cultural Heritage Act,
1994 Pakistan

World Heritage Sites in China



China: Wudang Mountains, Ancient Building Complex



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Hue Monuments Vietnam



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Myanmar: Pyu Ancient Cities World Heritage Serial nomination



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Laos Luang Prabang



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Ayutthaya World Heritage Thailand



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Angkor Monuments, Siem Reap Cambodia



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Questions for discussion session



American Cemetery,
Intramuros
Manila

- Is the *World Heritage Convention* adequately implemented in your country?
- What is the main content of your Heritage Law?
- Did you include heritage law in your environmental law subject?
- Is so, how do you teaching Heritage subject?
- If not, do you plan to include cultural heritage law in your Environmental Law Class?

Electronic Sources

- World Heritage Convention
<http://whc.unesco.org/en/convention/>
- ASEAN Declaration on Cultural Heritage
<http://cultureandinformation.asean.org/wp-content/uploads/2013/11/ASEAN-Declaration-on-Cultural-Heritage.pdf>
- ASEAN Heritage Conference Proceedings
http://www.asef.org/images/docs/Hanoi_Proceedings_Digital_2010.pdf