

SITE OF ANCIENT SETTLEMENT TALGAR— THE WORLD HERITAGE IS IN DANGER!

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Looks like this incident has high chances to be described in textbooks and international studies on the World Heritage.

—*N.Dushkina, ICOMOS expert*

Grandiose Prospects

We constantly hear appeals to preserve our cultural and natural heritage from the highest podiums. Debates on tourism development and its big significance for the economy are held at all levels. For example, the “Concept of Cultural Policy of the Republic of Kazakhstan” says: “Kazakhstan can become one of the centres of development of the world culture and art, historical science, archaeology and art history, leading international school of enhancing professional mastery and creative growth.”¹

Let us try and estimate what Almaty oblast, for example, can offer to foreign tourists? Pyramids, aqueducts, temples, fortresses, majestic ruins of once prospering cities? Unfortunately, there is none of that here. But there are burial mounds, petroglyphs, barely noticeable sites of ancient settlements. Not many, but some still exist.

Some of the most remarkable monuments are small settlements once located along the Great Silk Road. Unfortunately, majority of them are almost completely destroyed and barely seen on the ground. But among them, there are sites which were given the honour to stand alongside with the most remarkable creations of humankind.

In 2014, China, Kazakhstan, and Kyrgyzstan prepared a joint nomination “Chang’an-Tianshan Silk Road Corridor” and submitted it to the World Heritage Committee. That is how the site of ancient settlement Talgar located close to the city of Almaty, was included into the UNESCO World Heritage List.

The “Concept of Cultural Policy...” says: “A special interest is presented by the unique archaeological landscape Tamgaly with petroglyphs, mountain chain of Zhetysu Alatau with petroglyphs Yeshkiolmes included into the UNESCO World Heritage Tentative List of Sites in the Republic of Kazakhstan, and also Issyk burial mounds and sites included into the serial trans-national nomination

“Silk Road” (Boraldai Sak burial mounds, sites of ancient settlements Talgar, Kayalyk, Karamergen).”²

Seems like such documents demonstrate the most serious intentions and responsible attitude to protection of the remarkable monuments of history and nature. However...

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In fall 2014, a Chinese delegation came to Talgar with an intention to inspect the sites located in Kazakhstan, and was extremely surprised. Across the archaeological monument, there were markings for construction of an autoroad to the mountain ski resort “Ak-Bulak.” In a few meters from the site’s rampart, construction of a bridge across Talgar River was already completed, so that mountain-skiers going to the resort could save 30 or 40 minutes of their invaluable time! What a truly state-wide need! For its realization, funds were allocated from the state and local budgets. According to the official information, construction and reconstruction of the autoroad “Birlik-Almalyk-Ryskulov-Kazstroy-Ak-Bulak” will total up in 3.8672 billion tenge.³

Chinese experts understood everything right away and noted that the construction was conducted in violation of the Articles 18, 33, 35, 36 of the Law of the Republic of Kazakhstan “About Protection and Utilization of Sites of Historical and Cultural Heritage.” They drew attention to the contradictions between the land and heritage legislations, pointed out a lack of proper coordination between the relevant state organs. The delegates specifically highlighted a lack of awareness among the officials at almost all levels of what “World Heritage” is, what its legal status is, and what guarantees must be provided by the state, in order to secure its integrity.⁴

After that, there was a huge scandal. The construction was stopped, it was promised to do everything according to the law, build the road bypassing the site, and provide security to protect the monument... But in early June 2016, the construction works resumed. A private archaeological company conducted excavation works trying to prove that the site did not contain anything valuable and the scientists of Kazakhstan, China, and the World Heritage Committee knew nothing about archaeology!

Unfortunately, it is not the first time when our officials and businessmen demonstrate such attitude to the monuments of culture and nature. If we recall recent deeds of primitive market extremists, the list will go for dozens of pages. The oldest Central Park of Culture and Recreation in Almaty was brought to a pitiful state. Tens of thousands of trees in cities and towns of Kazakhstan were cut in favour of parking lots, gas stations, business-centres, banal advertisement. Once blossoming alpine meadows of Chymbulak natural landmark was turned into a rocky desert after reconstruction of the international mountain ski resort.

In the sake of what great goals or bright future does this total war against cultural heritage and nature take place? What is the reason for violation of laws and international obligations? The reason is to gain profit. And the most importantly, to do it at the state's expense! That is why so many one-day enterprises circle around the state orders. They collect fortune "pollen" from budget "flowers" and then disappear. After that, they could not care less.

And What about Requirements of the Law?

The dry juridical language of the law "About Protection and Utilization of Sites of Historical and Cultural Heritage" stipulates: "Monuments of history and culture in the Republic of Kazakhstan are subjected to obligatory protection and preservation" (Article 5).

In the paragraph 1, Article 203 of the Criminal Code, it is clearly indicated: "Intentional destruction or damage of monuments of history, culture, natural complexes or sites, which are under the state protection ... shall be punished by imprisonment for the period of three to seven years."

According to the Article 26 of the law "About Protection and Utilization of Sites of Historical and Cultural Heritage," in our country, monuments are classified into three categories of significance: international, state-wide, and local. Talgar site is a monument of international significance, included into the UNESCO World Heritage List.

On behalf of the Republic of Kazakhstan, the authority of a proprietor of the monuments of history and culture of international significance belongs to the authorized organ, i.e. the Ministry of Culture and Sports (Article 11). And of course, who if not the proprietor must "undertake measures to ensure integrity of monuments of history and culture" (Article 13).

The Ministry must execute control, management of the World Heritage site, and monitoring its condition. But the monitoring did not take place and the management system developed by the Convention, was not applied at the site.

Situation with popularization of the world heritage is deplorable. Not only the Ministry failed to organize public hearings in Talgar before nomination of the site into the World Heritage List. It even did not inform the local population about it after it was included into the List.⁵ Majority of the local residents completely do not understand what is happening at the "wasteland" where it is so convenient to graze livestock and play football.

But apparently, not only the public was unaware of the happenings at the site. In 2015, Kazakhstan presented a report about conditions of monuments protection in the country to the World Heritage Committee.⁶ The report mentioned nothing about construction of the bridge and the road; nothing was said about construction of new residential homes in the protection zone of the site of the ancient settlement.⁷

Expert of the International Council on Monuments and Sites (hereafter—ICOMOS), N.O.Dushkina says: “If we are talking about settlements of the Great Silk Road in Kazakhstan, studies about them should be a part of the school history program. So that the people understood that it is not a football field, nor a place to graze livestock. That this is a national history and culture which is very easy to destroy and impossible to restore. It is necessary to realize that when such destruction happens, traces of memory and cultural identity of the country are erased. And if we are talking about the World Heritage, then not only Kazakhstanis, but the world as a whole loses the values which we are possessing right now.”⁸

We tried to make the Ministry of Culture remember about the authorities given to it and addressed to a court. Passed all instances, including the Supreme Court. But the attempt of the Ecological Society Green Salvation to receive comprehensive information about what was happening and to raise a question about the factual lack of action on part of the Ministry failed.

Courts of all instances... “approved” the inaction of the authorized organ! It turns out that the construction of the road, destroyed rampart, torn apart banner with a description of the world heritage site, roaring heavy machinery, grazing sheep, and residential homes in the buffer zone—all of that is legal?!

ICOMOS Experts Dotted the i’s and Crossed the t’s

In order to untangle these legal wires, with an official request from the Republic of Kazakhstan, the ICOMOS mission visited the country on March 21-23, 2016. One of its goals was to determine the impact from construction of the road on the outstanding universal value, integrity, and authenticity of Talgar site of ancient settlement.

Indeed, a credit should be given to the ICOMOS experts, they dotted the i’s and crossed the t’s, identifying the causes of the unsightly situation.

In their opinion, what caused such confusion, to put it softly? The reason is a lack of coordination between different state organs, both on the state-wide and local levels.⁹

Provisions of the national legislation and requirements of the Convention were violated.

But what was especially surprising to the ICOMOS representatives—the conclusions made on the basis of the excavations conducted at the Talgar site by a private archaeological firm. The firm’s employees stated that they “did not find proves of presence of a cultural archaeological layer.”¹⁰

Probably, shocked by what they saw and heard, the ICOMOS experts were adamant with their conclusions.

They recommended to immediately declare a moratorium over construction of the road to the mountain ski resort and develop an option which would not

affect the settlement and its buffer zone, take a decision about dismantling of the bridge over Talgar River.

The mission indicated that it was necessary to:

- enhance control over compliance with the law “About Protection and Utilization of Sites of Historical and Cultural Heritage” and bring it in accordance with the terminology and mechanisms of the Convention;
- enhance the mechanism of compliance of the Convention in the country;
- introduce amendments to the Land Code, in order to prevent destruction of monuments;
- urgently create an effective system for coordination between state organs of all levels;
- stop the reconstruction on the territory of the settlement which is not founded on comprehensive and detailed documentation. Present the project of reconstruction to the World Heritage Centre;
- conduct archaeological research using methods which do not destroy sites;
- announce a moratorium over construction in the buffer zone and review a question about removal of the new constructions;
- develop a master plan of the buffer zone, in order to stop individual construction and development. Master plan shall be presented to the World Heritage Centre.

It should be noted that in its report, the ICOMOS mission specifically reminded that according to the Article 1 of the law “About Protection and Utilization of Sites of Historical and Cultural Heritage,” international agreements ratified by the Republic of Kazakhstan have a priority over the national legislation.¹¹

But the ICOMOS mission left, and spring came. Construction works, like Phoenix bird, revived after the withering report. Again, dump trucks scurry about, construction machinery rumbles. By August, the dumping of fill dirt for the road bed reached the southeast end of the settlement; a huge pile of gravel was dumped on the settlement, probably, to continue the works. Fencing was broken in several places. The rampart was subjected to another “modernization.” Its base was trimmed by bulldozers, and dirt was dumped on its top.

Decision of the World Heritage Committee

The 40th session of the World Heritage Committee took place in Istanbul in July, 2016.¹² One of the points on the agenda was related to the failure to implement the requirements of the Convention by Kazakhstan. The country which in 2013, was selected to be a part of the World Heritage Committee¹³ cannot provide safeguarding of its own monuments! Decision about Kazakhstan’s compliance with the Convention requirements was adopted during a meeting on July 13th.

The Committee agreed with the main conclusions of the ICOMOS mission and indicated that it was necessary:

- for the authorities to address the recommendations of the ICOMOS with regard to protection, management and awareness-raising and to take all necessary actions to ensure the safeguarding of the authenticity and integrity of the Talgar component site of the serial property;

- to invite, as soon as possible, a joint World Heritage Centre/ICOMOS Reactive Monitoring mission to the Talgar component site and other sites of the serial property in Kazakhstan, to consider the implementation of the recommendations of the Advisory mission and the progress accomplished with the development of management plans for all components sites in Kazakhstan;

- to submit to the World Heritage Centre, by 1 December 2017, a joint updated report on the state of conservation of the property and the implementation of the above stated, for examination by the World Heritage Committee at its 42nd session in 2018.¹⁴

The public concerned by the development on the territory of the Talgar site addressed various instances. On July 11, 2016, a letter was sent to the General Prosecutor's Office.

The Prosecutor's Office decided not to delve into the matter, did not conduct its own research with an on-site visit, but instead, took on trust the information received from the Ministry of Culture. When the construction of the road already went in full speed right at the site of the ancient settlement itself, we received a reply of the following content: "According to the letter of the Ministry of Culture and Sports, the project of construction is modified; the autoroad is built bypassing the site of ancient settlement. Borders of the site's conservation zone are defined; a state land act is prepared, renewed construction documents passed the archaeological assessment."¹⁵

The developers explain that the reason for the rushed construction of the road is that it should connect Almaty with the mountain ski resort "Ak-Bulak" and "Alatau" cross country skiing and biathlon stadium. World Student Games starting January 29, 2017, were planned to be held there. The developers tried to convince that huge funds were already invested in this project, and alternative projects were not considered.¹⁶

On October 3, 2016, concerned by this situation, our organization addressed the International University Sports Federation and the Directorate of Preparation and Conducting of the 28th World Winter Student Games 2017 in the city of Almaty with a request to help with preservation of the ancient settlement Talgar and stop its destruction.

The Directorate replied that "realization of this project is not a part of the program of preparation of sports venues of the 28th World Winter Student Games ... But if the road "Birlik-Almalyk-Ryskulov-Bereke-Ak-Bulak" is transitioned to operation stage by the time when the Games take place, this road

will be used as an alternative way of transporting participants of the Students Games to the “Alatau” Cross Country Skiing and Biathlon Stadium.”¹⁷

And only on October 27, when the south part of the settlement was already destroyed, the Deputy Prime-Minister of Kazakhstan, Imangali Tasmagambetov, conducted an on-site visit to the construction site. Akim of Almaty, B.Baybek, and the Minister of Culture, A.Mukhamediuly, participated in the meeting.

“Tasmagambetov noted that it is necessary to undertake a number of measures, in order to keep the medieval settlement in the UNESCO Cultural Heritage List, and to continue archaeological research.”

He instructed “to stop all types of construction works at the territory of the Talgar ancient settlement ... design and implement construction of a new bypass road outside of the conservation zone.”¹⁸

In early November, 2016, an international monitoring mission came to Kazakhstan again. The world heritage sites were inspected by the Chief of Asia and Pacific Unit of the World Heritage Centre, Mr. Feng Jing, and ICOMOS expert, Natalya Olegovna Dushkina. On November 8, they visited the Talgar site accompanied by representatives of the Ministry of Culture, National Commission for UNESCO, local officials, the construction project developers, archaeologists, public and media representatives.

By that time, the construction workers managed to practically fully cover up a huge trench dug through the south part of the settlement. Informational stands were urgently installed at the territory of the monument from four sides. However, construction of a bridge over Talgar River was continued even in presence of such a respectable commission. Experts of the World Heritage Centre and ICOMOS expressed their extreme astonishment regarding the situation.

Traditional Questions: Who Is Guilty and What Is Next?

On the basis of the collected material, the experts will prepare a comprehensive report, but even a preliminary evaluation of the situation demonstrates their serious concern.

In her interview to Almaty architects, N.O.Dushkina said: “As a result, [the mission] came to a conclusion that construction of the road was an action planned long time ago and registered at the city’s master plan, that there were governmental decrees taken at the highest level, that financing was allocated for the project development and construction. But at the same time, a full disconnection with the Ministry of Culture and the National Commission for UNESCO took place. Until the present moment, interests of preservation of this site as the World Heritage are in conflict with what happened and is still happening there.”¹⁹

The Ministry of Culture and Sports is doing everything to seem not to be involved in the above described events. But specifically the Ministry, as a proprietor, is responsible to “undertake measures for safeguarding historical and cultural monuments.”²⁰ But all accusations fall on the local executive organs. But can the local executive organs afford having on-staff archaeologists, restaurateurs, experts in world heritage, in order to conduct the most complex assessments, restoration works, drawing of archaeological maps?!

In short, while the investigation of who is responsible for what, our primitive market extremists are using the state money to destroy the national property, paying attention neither to the national legislation, nor the international conventions. As a result—millions of wasted public funds, disfigured site of the world heritage, spoiled international reputation, and additional budget expenses to “fix” the situation. And what is next? Will the strict decision of the World Heritage Committee teach them something?

Conclusions

Which problems in the system of the world heritage conservation were exposed during the events described above?

1. Barbaric destruction of the monument became a result of the inaction of the governmental authorities who gave in to the violators of the law. Neither the Prosecutor’s Office, nor the law enforcement organs, nor the courts, nor the ministries, nor the government made enough effort, in order to protect the world heritage site. Destruction of the monument was stopped only after intervention from the Convention agencies!

2. Absolute ignoring of the international obligations of Kazakhstan. Neglect of the decision of the World Heritage Committee adopted in July 2016 at the 40th session.²¹

3. The situation could not be resolved fast because of imperfections and contradictions in the national legislation. Provisions of the Convention are not adapted into the national legislation, despite of the fact that Kazakhstan became a party of the Convention in 1994.

4. Nobody was punished, in spite of the paragraph 1, Article 203 of the Criminal Code, which states that intentional destruction of monuments of history can lead to a prosecution of the persons found guilty.

5. Issuance of licenses to private enterprises to conduct surveys and excavations at archaeological monuments lead to partial destruction of the settlement. Their assessment was used as a legal base for illegal construction.

6. The state budget means were used on research of the site, preparation of its nomination into the World Heritage List, and its destruction simultaneously!

7. Damage occurred by the world heritage site was covered by the state budget, and not by the persons who let the destruction of the monument.

8. Persistent neglect of the legislation and international obligations suggests that there was a place for corruption here. This suspicion is supported by the recent corruption scandal which engaged the management of the Republic State Enterprise “Kazakhavtodor.”²²

9. Flagrant disregard of the opinion of the public, Kazakhstan scientists, international experts by the state official and the project developers.

As a result, damage was brought to the economy, rule of law, culture, and international image of Kazakhstan.

The Latest Events and Our Actions

Summing up the visit, the experts set up a goal for the National Commission for UNESCO to prepare propositions before December 20, 2016, on changing the legislation, in order to bring it into compliance with the norms of the World Heritage Convention. A working group was created and the Ecological Society Green Salvation was invited to participate in its work.

Earlier, in October and November 2016, our organization sent comments to the both Chambers of the Parliament on the draft law “About Introduction of Amendments and Additions to Some Legal Acts of the RK Regarding Flora and Fauna” brought for a review by the Majilis of the Parliament. In its comments, the organization indicated that it was necessary to bring the nature protection legislation in compliance with the requirements of international conventions, including the World Heritage Convention.

Participating in the working group, the organization once again prepared propositions on improvement, in the first place, the law “About Specially Protected Natural Territories.” They were sent to the Ministry of Culture, Committee of Forestry and Wildlife, both Chambers of the Parliament.

On December 7, 2016, we received a reply from the Ministry of Agriculture regarding the first set of comments. The reply indicated that the proposition about bringing the legislation in compliance with the requirements of the international conventions is not accepted. The reason: “the current legislation does not contradict to the norms of the international law and ensures their compliance.”²³

The draft law was conceptually approved by the Majilis “in the first reading on December 7, 2016.” A preparation for its review in the second reading began.²⁴

Judging by the report of the Majilis of the Parliament for the second half of 2016, a question about development of legal mechanisms to ensure strict compliance with the Convention on the World Heritage Protection was not raised at all²⁵.

The events unfolded at the Talgar site, clearly demonstrated how far has gone the process of destruction of the governmental apparatus created for protection of monuments of culture and nature.

1 Concept of Cultural Policy of the Republic of Kazakhstan. Adopted by a Decree of the President of the Republic of Kazakhstan dated on November 4, 2014, No.939.

- 2 Same as above.
- 3 State Administration “Department of Passenger Transportation and Autoroads of Almaty District.”
“On the construction (reconstruction) of the autoroad “Birlik-Almalyk-Ryskulov-Kazstroy-Ak-Bulak,” ... 2 242.850 million tenge were spent (including 866.264 million tenge from the state budget, 1 376.586 million tenge from the local budget). Terms of the project realization: 2014-2017. Total cost—3 867.2 million tenge. 2014—641.2 million tenge; 2015—779 million tenge; 2016—2 242.9 million tenge; 2017—909.8 million tenge,” <http://avtozhodary.zhetisu.gov.kz/pages/28/> (last visited January 12, 2017).
- 4 Report on the ICOMOS Advisory Mission to Kazakhstan. The Talgar component (S 01-KZ-01) within the serial World Heritage property Silk Roads: the Routes Network of Chang’an-Tianshan Corridor (China, Kazakhstan, Kyrgyzstan) (C 1442). 20 to 28 March 2016, pp.12-13, <http://whc.unesco.org/en/list/1442/documents>.
- 5 Report on the ICOMOS Advisory Mission to Kazakhstan..., p.19.
- 6 State of Conservation Report Republic of Kazakhstan. Silk Roads: the Routes Network of Chang’an-Tianshan Corridor (China, Kazakhstan, Kyrgyzstan), No.1442. Almaty, 2015, <http://whc.unesco.org/en/soc/3409>.
- 7 Report on the ICOMOS Advisory Mission to Kazakhstan..., p.23.
- 8 Natalya Dushkina, architect: “If the Public Is Indifferent, Nothing Can be Preserved,” <https://vlast.kz/life/20909-natala-duskina-arhitektork-esli-est-ravnodusie-v-obsestvenicego-sohranit-nevozmozno.html> (last visited November, 2016).
- 9 Report on the ICOMOS Advisory Mission to Kazakhstan..., p.26.
- 10 Report on the ICOMOS Advisory Mission to Kazakhstan..., p.19, pp.26-29.
- 11 Report on the ICOMOS Advisory Mission to Kazakhstan..., p.11.
- 12 World Heritage Convention, <http://whc.unesco.org/en/events/1257>.
- 13 Twelve new members elected to World Heritage Committee Wednesday, 20 November 2013, <http://whc.unesco.org/en/news/1082>.
- 14 Decision: 40 COM 7B.34 Silk Roads: the Routes Network of Chang’an-Tianshan Corridor (China / Kazakhstan / Kyrgyzstan) (C 1442), <http://whc.unesco.org/en/decisions/6699> (last visited September 2, 2016).
- 15 Reply of the General Prosecutor’s Office dated on September 13, 2016, to the request of the Ecological Society Green Salvation dated on July 11, 2016.
- 16 Protocol of a field meeting of a State Commission on construction of an autoroad passing through a buffer zone of the “Talgar Site of Ancient Settlement” under a chairmanship of Vice Minister of Culture and Sports of the RK, Mr. G.Akhmedyarov. January 10, 2015.
- 17 Reply of the Directorate of preparation and conducting of the 28th World Winter Student Games 2017 in the city of Almaty date on October 28, 2016 to the request of the Ecological Society Green Salvation dated on October 3, 2016.
- 18 Tasmagambetov Told to Stop Construction on the Territory of Talhiz, <https://www.nur.kz/1298306-tasmagambetov-velel-ostanovit-stro.html> (last visited October 28, 2016).
- 19 Natalya Dushkina...
- 20 Law of the Republic of Kazakhstan dated on July 2, 1992, “About Protection and Utilization of Sites of Historical and Cultural Heritage” (with amendments and additions as of March 29, 2016), Article 13, p.1.
- 21 Decision: 40 COM 7B.34 Silk Roads: the Routes Network of Chang’an-Tianshan Corridor (China / Kazakhstan / Kyrgyzstan) (C 1442), <http://whc.unesco.org/en/decisions/6699> (last visited September 2, 2016).
- 22 “Management of “Kazakhavtodor” Was Contained for Giving a Bribe in the Amount of 16 Million Tenge,” <https://www.nur.kz/1352715-rukovodstvo-kazakhavtodora-zaderzha.html> (last visited December 20, 2016).

- 23 Reply of the Ministry of Agriculture dated on December 7, 2016, to the request of the Ecological Society Green Salvation: dated on November 26, 2016.
- 24 Results of the Activity of the Majilis of the Parliament of the Republic of Kazakhstan of the VI Convening in the Second Session (September 1, 2016—December 30, 2016). Majilis of the Parliament of the Republic of Kazakhstan, <http://www.parlam.kz/ru/mazhilis/performance>, p.28 (last visited March 2, 2017).
- 25 Results of the Activity of the Majilis of the Parliament...