

# Washington University Global Studies Law Review

---

Volume 10 | Issue 3

---

2011

## Heritage in Peril: A Critique of UNESCO's World Heritage Program

Elizabeth Betsy Keough

*Washington University School of Law*

Follow this and additional works at: [https://openscholarship.wustl.edu/law\\_globalstudies](https://openscholarship.wustl.edu/law_globalstudies)



Part of the [International Law Commons](#)

---

### Recommended Citation

Elizabeth Betsy Keough, *Heritage in Peril: A Critique of UNESCO's World Heritage Program*, 10 WASH. U. GLOBAL STUD. L. REV. 593 (2011),  
[https://openscholarship.wustl.edu/law\\_globalstudies/vol10/iss3/5](https://openscholarship.wustl.edu/law_globalstudies/vol10/iss3/5)

This Note is brought to you for free and open access by the Law School at Washington University Open Scholarship. It has been accepted for inclusion in Washington University Global Studies Law Review by an authorized administrator of Washington University Open Scholarship. For more information, please contact [digital@wumail.wustl.edu](mailto:digital@wumail.wustl.edu).

# HERITAGE IN PERIL: A CRITIQUE OF UNESCO'S WORLD HERITAGE PROGRAM

## I. INTRODUCTION

In the wake of the 2001 bombing of the Bamiyan Buddhas in Afghanistan by the Taliban<sup>1</sup> and, more recently, the United States' military presence at Babylon in Iraq,<sup>2</sup> the world has become increasingly aware of the dangers facing cultural heritage sites. However, awareness and action are not synonymous. The United Nations Educational, Scientific and Cultural Organization ("UNESCO") leads the world in acting to preserve the world's natural and cultural wonders through its World Heritage program. Nevertheless, in its involvement with heritage sites around the globe, the World Heritage program may have created a culture of economic and political quagmires rather than cooperation and preservation.<sup>3</sup> This Note will address the problematic effects of the program and identify ways in which some of those effects can be mitigated, thereby restoring some of the noble ideals upon which the World Heritage program was founded.

## II. BACKGROUND

### A. UNESCO

UNESCO was founded as a specialized agency of the United Nations (UN) on November 16, 1945,<sup>4</sup> a mere twenty-four days after the UN

---

1. W.L. Rathje, *Why the Taliban are Destroying Buddhas*, USA TODAY, Mar. 22, 2001, <http://www.usatoday.com/news/science/archaeology/2001-03-22-afghan-buddhas.htm>.

2. *U.S. Troops Accused of Damaging Babylon's Ancient Wonder*, CNN.COM, July 31, 2009, <http://edition.cnn.com/2009/WORLD/meast/07/31/iraq.babylon.damage/index.html>.

3. See *World Heritage at Risk*, AL-AHRAM WKLY. ON-LINE, Dec. 5, 2002, <http://weekly.ahram.org.eg/2002/615/hr1.htm> ("Pollution, looting, war, unchecked tourism, uncontrolled urban development and natural catastrophes", had in many cases significantly increased threats to sites since their inscription on the UNESCO list . . ."); see also David Harrison, *Introduction: Contested Narratives in the Domain of World Heritage*, in *THE POLITICS OF WORLD HERITAGE: NEGOTIATING TOURISM AND CONSERVATION* 1, 8 (David Harrison & Michael Hitchcock eds., 2005) ("[A]pplications for World Heritage Status are neither made nor received in a global vacuum . . . [A]n international imbalance has been recognised by the World Heritage Committee, and there is now a political imperative to . . . find more sites."); *id.* at 7 ("[O]utcomes will depend on the balance of status and power at any one time and on who among the numerous stakeholders . . . has the loudest voice.").

4. United Nations Educ., Scientific & Cultural Org. [hereinafter UNESCO], *UNESCO: What Is It? What Does It Do?*, 2, 33, UNESCO Doc. ERI/2010/WS/2 (2010), available at <http://unesdoc.unesco.org/images/0018/001887/188700e.pdf>.

Charter came into force.<sup>5</sup> UNESCO's Constitution enshrines the goals of the organization: "to contribute to peace and security by promoting collaboration among the nations through education, science and culture in order to further universal respect for justice, for the rule of law and for the human rights and fundamental freedoms which are affirmed . . . by the Charter of the United Nations."<sup>6</sup> UNESCO's mission is to foster cooperation among its Member States<sup>7</sup> in promotion of these goals.<sup>8</sup> However, more than a decade passed before UNESCO began delving into the issues of natural and cultural preservation.

In the late 1950s, construction began on the Aswan High Dam along the Nile River in Egypt.<sup>9</sup> Once constructed, the dam would create a lake that would forever submerge hundreds of archaeological sites.<sup>10</sup> "[T]he plight of these [sites] captured the public imagination" and appeals from the Egyptian and Sudanese governments, among others, inspired UNESCO to launch a campaign in 1960 to save the ancient structures.<sup>11</sup>

5. The Charter of the United Nations came into force on October 24, 1945. See *Charter of the United Nations: Introductory Note*, UNITED NATIONS, <http://www.un.org/en/documents/charter/intro.shtml> (last visited May 16, 2011). UNESCO's Constitution entered into force on November 4, 1946, after twenty countries had ratified it: Australia, Brazil, Canada, China, Czechoslovakia, Denmark, Dominican Republic, Egypt, France, Greece, India, Lebanon, Mexico, New Zealand, Norway, Saudi Arabia, South Africa, Turkey, United Kingdom, and United States. *The Organization's History*, UNESCO, <http://www.unesco.org/new/en/unesco/about-us/who-we-are/history/> (last visited Feb. 13, 2010).

6. Constitution of the United Nations Educational, Scientific and Cultural Organization, art. 1, § 1, Nov. 4, 1945, T.I.A.S. No. 1580, 4 U.N.T.S. 275, available at <http://unesdoc.unesco.org/images/0013/001337/133729e.pdf> [hereinafter UNESCO Const.]. The United Nations Charter organizes the UN as an international body. It was signed on June 26, 1945, and came into effect on October 24, 1945. See *Charter of the United Nations: Introductory Note*, supra note 5. Its goals were:

[T]o practice tolerance and live together in peace with one another as good neighbours, and to unite our strength to maintain international peace and security, and to ensure, by the acceptance of principles and the institution of methods, that armed force shall not be used, save in the common interest, and to employ international machinery for the promotion of the economic and social advancement of all peoples[.]

U.N. Charter pmbl., available at <http://treaties.un.org/doc/Publication/CTC/uncharter.pdf>.

7. As of October 2009, UNESCO boasts 193 Member States and seven Associate Members. *Member States—Communities*, UNESCO, [http://portal.unesco.org/en/ev.php-URL\\_ID=11170&URL\\_DO=DO\\_TOPIC&URL\\_SECTION=201.html](http://portal.unesco.org/en/ev.php-URL_ID=11170&URL_DO=DO_TOPIC&URL_SECTION=201.html) (last updated Sept. 10, 2010).

8. UNESCO Const., supra note 6, art. 1, § 1.

9. W. Erdelen, *Saving Lost Civilizations*, WORLD SCI. (UNESCO/Natural Sciences Sector, Paris, Fr.), July–Sept. 2006, at 1, available at <http://unesdoc.unesco.org/images/0014/001463/146393E.pdf>.

10. *Id.* These sites included Abu Simbel, a giant rock-hewn temple complex dedicated to Rameses II, one of Egypt's most illustrious pharaohs. *Nubian Monuments from Abu Simbel to Philae*, UNESCO WORLD HERITAGE CTR., <http://whc.unesco.org/en/list/88> (last visited Feb. 13, 2010).

11. Erdelen, supra note 9, at 1.

In 1959 the Egyptian and the Sudanese Governments requested UNESCO to assist their countries in the protection and rescue of the endangered monuments and sites. In 1960, the Director-General of UNESCO launched an appeal to the Member States for an International

The incredible success of the salvage and repositioning of priceless monuments<sup>12</sup> and the never-before-seen world support for preservation of ancient sites spurred UNESCO into further action. Member States began drafting a treaty in 1969,<sup>13</sup> and, by 1972, UNESCO generated the Convention Concerning the Protection of the World Cultural and Natural Heritage (“the Convention”).<sup>14</sup>

### *B. The World Heritage Program*

The Convention was drafted “to encourage the identification, protection and preservation of cultural and natural heritage around the world considered to be of outstanding value to humanity.”<sup>15</sup> To reach these

Campaign to Save the Monuments of Nubia. . . . Within the International Campaign, UNESCO played the role of a coordinator and intermediary between the donor States and the Egyptian and Sudanese Governments and facilitated their efforts to save the cultural heritage of Nubia.

*Monuments of Nubia-International Campaign to Save the Monuments of Nubia*, UNESCO WORLD HERITAGE CTR., <http://whc.unesco.org/en/activities/172/> (last visited Feb. 13, 2010).

12.

This appeal resulted in the excavation and recording of hundreds of sites, the recovery of thousands of objects, and the salvage and relocation of a number of important temples to higher ground, the most famous of them the temple complexes of Abu Simbel and Philae. The campaign ended on 10 March 1980 as a complete and spectacular success.

*Id.*

13. This draft treaty was called “International Protection of Monuments, Groups of Buildings and Sites of Universal Value.” Francesco Francioni, *The Preamble*, in *THE 1972 WORLD HERITAGE CONVENTION: A COMMENTARY* 11, 13 (Francesco Francioni ed., 2008). The International Union of Conservation of Nature (IUCN) was concurrently drafting a similar treaty involving natural sites. The two treaties were eventually combined. *Id.* at 13–14.

14. *Id.* at 15; *see also* Convention Concerning the Protection of the World Cultural and Natural Heritage, Nov. 16, 1972, 27 U.S.T. 37, 1037 U.N.T.S. 151, *available at* <http://whc.unesco.org/archive/convention-en.pdf> [hereinafter *World Heritage Convention*].

15. *World Heritage*, UNESCO WORLD HERITAGE CTR., <http://whc.unesco.org/en/about/> (last visited Feb. 13, 2010). UNESCO defines the World Heritage mission as to:

- encourage countries to sign the World Heritage Convention and to ensure the protection of their natural and cultural heritage;
- encourage States Parties to the Convention to nominate sites within their national territory for inclusion on the World Heritage List;
- encourage States Parties to establish management plans and set up reporting systems on the state of conservation of their World Heritage sites;
- help States Parties safeguard World Heritage properties by providing technical assistance and professional training;
- provide emergency assistance for World Heritage sites in immediate danger;
- support States Parties' public awareness-building activities for World Heritage conservation;

goals, the Convention calls upon each Member State to “do all it can to this end, to the utmost of its own resources and, where appropriate, with any international assistance and co-operation . . . which it may be able to obtain.”<sup>16</sup> And to support the States Parties, the Convention establishes the Intergovernmental Committee for the Protection of the Cultural and Natural Heritage of Outstanding Universal Value (“the Committee”).<sup>17</sup> “One of UNESCO’s mandates is to pay special attention to new global threats that may affect the natural and cultural heritage and ensure that the conservation of sites and monuments contributes to social cohesion.”<sup>18</sup>

The Committee consists of representatives from twenty-one Member States chosen from and by the General Assembly.<sup>19</sup> Its responsibilities include:

the implementation of the . . . Convention, defin[ing] the use of the World Heritage Fund<sup>20</sup> and allocat[ing] financial assistance upon

- 
- encourage participation of the local population in the preservation of their cultural and natural heritage; [and]
  - encourage international cooperation in the conservation of our world’s cultural and natural heritage.

*Id.*

16. World Heritage Convention, *supra* note 14, art. 4. In particular, the Convention asks for “financial, artistic, scientific and technical” resources from Member States. *Id.* However, the Convention also specifically says that “[w]hilst fully respecting the sovereignty of the States . . . , and without prejudice to property right provided by national legislation, the States Parties to this Convention recognize that such heritage constitutes a *world heritage for whose protection it is the duty of the international community as a whole to co-operate.*” *Id.* art. 6, ¶ 1 (emphasis added).

17. World Heritage Convention, *supra* note 14, arts. 7–8.

18. *World Heritage*, UNESCO, [http://portal.unesco.org/culture/en/ev.php-URL\\_ID=34323&URL\\_DO=DO\\_TOPIC&URL\\_SECTION=201.html](http://portal.unesco.org/culture/en/ev.php-URL_ID=34323&URL_DO=DO_TOPIC&URL_SECTION=201.html) (last updated Mar. 3, 2011).

19. World Heritage Convention, *supra* note 13, art. 8, ¶ 1. “Decisions of the Committee shall be taken by a majority of two-thirds of its members present and voting.” *Id.* art. 13, ¶ 8.

20. The World Heritage Fund was established by the Convention and acts as a trust fund, *id.* art. 15, ¶¶ 1–2, drawing from:

- (a) compulsory and voluntary contributions made by States Parties to this Convention,
- (b) contributions, gifts or bequests which may be made by:
  - (i) other States;
  - (ii) the United Nations Educational, Scientific and Cultural Organization, other organizations of the United Nations system, particularly the United Nations Development Programme or other intergovernmental organizations;
  - (iii) public or private bodies or individuals;
- (c) any interest due on the resources of the Fund;
- (d) funds raised by collections and receipts from events organized for the benefit of the fund; and
- (e) all other resources . . . .

requests from States Parties. It has the final say on whether a property is inscribed on the World Heritage List. The Committee . . . examines reports on the state of conservation of inscribed properties and asks States Parties to take action when properties are not being properly managed. It also decides on the inscription or deletion of properties on the List of World Heritage in Danger.<sup>21</sup>

The Convention empowers the Committee “to exercise the main collective responsibilities set forth in the Convention,”<sup>22</sup> as enumerated above.<sup>23</sup> This basic legislative framework “is established within the framework of UNESCO.”<sup>24</sup> With the support of advisory bodies,<sup>25</sup> and

*Id.*, art. 15, ¶ 3.

21. *The World Heritage Committee*, UNESCO WORLD HERITAGE CTR., <http://whc.unesco.org/en/committee/> (last visited Feb. 13, 2010). The List of World Heritage in Danger, as defined by the Convention, consists of

property . . . for the conservation of which major operations are necessary and for which assistance has been requested under this Convention. . . . The list may include only such property forming part of the cultural and natural heritage as is threatened by serious and specific dangers . . . . The Committee may at any time, in case of urgent need, make a new entry in the List of World Heritage in Danger and publicize such entry immediately.

World Heritage Convention, *supra* note 14, art. 11, ¶ 4.

22. Tullio Scovazzi, *Articles 8–11: World Heritage Committee and World Heritage List*, in *THE 1972 WORLD HERITAGE CONVENTION: A COMMENTARY*, *supra* note 13, at 147, 149; *see* World Heritage Convention, *supra* note 14, art. 8, ¶ 1.

23. The Committee’s Bureau—made up of one Chairperson, five Vice-Chairpersons, and one Rapporteur—is in charge of organizing and delineating the work for the Committee’s meetings. *Id.* at 151.

24. *Id.*

25. *Id.* at 152–53. Three Advisory Bodies serve as adjunct members of the World Heritage Committee: the International Centre for the Study of the Preservation and Restoration of Cultural Property (ICCROM), the International Council of Monuments and Sites (ICOMOS), and the World Conservation Union (IUCN). The Operational Guidelines of the Committee delineate the functions that the Advisory Bodies perform, which include:

- (a) advise on the implementation of the World Heritage Convention in the field of their expertise;
- (b) assist the Secretariat, in the preparation of the Committee’s documentation, the agenda of its meetings and the implementation of the Committee’s decisions;
- (c) assist with the development and implementation of the Global Strategy for a Representative, Balanced and Credible World Heritage List, the Global Training Strategy, Periodic Reporting, and the strengthening of the effective use of the World Heritage Fund;
- (d) monitor the state of conservation of the World Heritage properties and review requests for International Assistance;
- (e) in the case of ICOMOS and IUCN, evaluate properties nominated for inscription on the World Heritage List and present evaluation reports to the Committee; and
- (f) attend meetings of the World Heritage Committee and the Bureau in an advisory capacity.

*Id.* 152–53 (footnote omitted).

with cooperation from the global community, the Convention endeavors to make “[t]he World Heritage seal . . . a guarantee of preservation.”<sup>26</sup>

Other than the Committee, the “defining elements of the world heritage framework”<sup>27</sup> are the World Heritage Fund and international assistance.<sup>28</sup> The potential for pecuniary aid has been significant in creating support for the program among states.<sup>29</sup> The World Heritage Fund is the main avenue for supporting the activities that are submitted to and approved by the Committee.<sup>30</sup> However, it falls far “short of covering the whole cost of implementing the Convention.”<sup>31</sup>

In addition to the World Heritage Fund, assistance may be called forth from “international and national governmental and non-governmental organizations . . . [and] private bodies and individuals.”<sup>32</sup> Requests for funding may be made to the Committee “to secure the protection, conservation, presentation or rehabilitation” of World Heritage sites.<sup>33</sup> The Committee has complete control over how the requests will be handled, including acceptance, implementation, sources of funding, and operational priorities.<sup>34</sup>

### *C. The Committee’s Power to Effect Preservation of Cultural and Natural Heritage*

Such a complicated organization raises questions about the effectiveness of the Committee and the Convention. There certainly have

26. Simon Osborne, *Is UNESCO Damaging the World’s Treasures?*, THE INDEPENDENT, Apr. 29, 2009, <http://independent.co.uk/travel/news-and-advice/is-unesco-damaging-the-worlds-treasures-1675637.html>.

27. Ana Filipa Vrdoljak, *Article 13: World Heritage Committee and International Assistance*, in THE 1972 WORLD HERITAGE CONVENTION: A COMMENTARY, *supra* note 13, at 219, 221.

28. *Id.* at 220–21. The relevant provisions are laid out in Article 13 (international assistance) and Articles 15–16 (World Heritage Fund) of the Convention. *See* World Heritage Convention, *supra* note 14, arts. 13, 15–16.

29. Vrdoljak, *supra* note 27, at 220–21 (“While the World Heritage List raises the profile of the properties in the public eye, it is the possibility of financial and technical assistance which has proved an additional incentive for states to sign up to the Convention.”).

30. *See, e.g., id.* at 238.

31. Federico Lenzerini, *Articles 15–16: World Heritage Fund*, in THE 1972 WORLD HERITAGE CONVENTION: A COMMENTARY, *supra* note 13, at 269, 271. Even though each State Party is required to provide funds every two years, those funds cannot constitute more than one percent of a State Party’s payout for UNESCO’s budget. World Heritage Convention, *supra* note 14, art. 16, ¶ 1. For a discussion on the *travaux préparatoires* of Article 16, *see* Lenzerini, *supra*, at 273–80.

32. World Heritage Convention, *supra* note 14, art. 13, ¶ 7.

33. *Id.* art. 13, ¶ 1. “Requests . . . may also be concerned with identification of cultural or natural property . . .” *Id.* art. 13, ¶ 2.

34. *Id.* art. 13, ¶¶ 3–8.

been success stories, such as the prominent success of Abu Simbel.<sup>35</sup> However, it has become more and more apparent that these successes are dwindling, replaced by bureaucratic wrangling and underhanded deals for money and influence between the Committee and the Member States.<sup>36</sup> Commentators have begun to question whether UNESCO's position in international preservation has diminished significantly from the "gold standard."<sup>37</sup> Indeed, the World Heritage program has garnered considerably less regard in recent years, and is seen as more concerned with economic and political influence than the stated goals of the Convention.

At its best, the program is characterized as "teetering on its once sound foundations as its principles and priorities crumble under the weight of bureaucracy and outside influence. The World Heritage emblem has come to represent a grandiose marketing tool—fodder for 'things to see before you die' coffee-table books."<sup>38</sup> At its worst, the program has left its original aims in the dust in favor of materialism and pacification, and is now "incapable of protecting the world's truly endangered places."<sup>39</sup> Even the International Union for Conservation of Nature ("IUCN"), an advisory body to the Committee, believes the program is in need of "radical change if [it] is to remain an effective conservation tool."<sup>40</sup>

Indeed, the World Heritage program is in desperate need of an overhaul. Unfortunately, the level of entrenchment of the issues the program faces casts serious doubt on whether there is any realistic hope that the program can resurrect itself. The remainder of this note will focus on these issues, specifically problems with the Committee, the structure of the program, and implementation, using concrete examples of problems at various World Heritage sites, and offering viable solutions to jumpstart the reform process.

---

35. See *supra* notes 8–11 and accompanying text.

36. Osborne, *supra* note 26.

37. *Id.*

38. *Id.*

39. *Id.*

40. Press Release, Int'l Union for Conservation of Nature, World Heritage in Danger—IUCN (June 29, 2009), available at <http://www.iucn.org/knowledge/news/events/worldheritage/all/?3451/World-Heritage-in-Danger---IUCN>. More specifically, the IUCN is concerned with the use of the List of World Heritage in Danger, which "is intended to be a constructive conservation tool," but "needs to be re-established as a way to ensure and maintain credible standards for protecting the world's . . . treasures." *Id.*

### III. WORLD HERITAGE—“A LAME DUCK IN A STRAITJACKET”<sup>41</sup>

In order to tackle the problems that the World Heritage program is facing, the Convention, which attempted to create a machine for protection and preservation of the world’s most important natural and cultural treasures, must begin the inquiry. The motives were noble; the need desperate. However, the goals embedded in the text of the Convention were not given room to thrive. Instead, the broad language allows for the proliferation of greed and power-hungry politics, and the document now exists as a manifestation of the program’s problems in print.

The World Heritage Committee, in its structure and function, is not very well controlled by the Convention’s Member States. The Committee has complete control over who gets funding for which projects,<sup>42</sup> and while no projects are accepted outright, none are technically banned either, so long as they fall within certain broad criteria.<sup>43</sup> Nor is there any provision in the Convention for a balancing of resources between states<sup>44</sup> to which the Committee must adhere—some states may not receive assistance at all. The Committee decides whether a state merits funding for a project, and each decision can be made according to whatever criteria the Committee decides is relevant in that instance.<sup>45</sup> In addition, since a seven-member Bureau heads the Committee, setting the agenda,<sup>46</sup> power is consolidated within a small group, making it very easy for the Committee to effectively “prefer” some projects over others for ideological, political, or pecuniary reasons.

The identification and delineation of World Heritage sites is one of the most important functions of the Convention and the Committee.<sup>47</sup> However, it is the responsibility of Member States to submit properties for

41. Usborne, *supra* note 26.

42. World Heritage Convention, *supra* note 14, art. 13, ¶¶ 3–8.

43. *See id.* art. 13, ¶¶ 1–2.

44. In 1994, the World Heritage Committee adopted the Global Strategy for a Balanced, Representative and Credible World Heritage List. Ben Boer, *Article 3: Identification and Delineation of World Heritage Properties*, in *THE 1972 WORLD HERITAGE CONVENTION: A COMMENTARY*, *supra* note 13, at 85, 101. “The Operational Guidelines encourage the States Parties, the World Heritage Committee, and the Advisory Bodies to participate in the implementation of the Global Strategy . . . [and] indicate that all efforts should be made to maintain a ‘reasonable balance’ between cultural and natural heritage on the List.” *Id.* at 101–02 (referring to paragraphs 54–58 of the Operational Guidelines). However, no additional guidelines define what a “reasonable balance” means. *Id.* at 102. Nor does the Global Strategy specifically require a balancing of sites between the Member States; rather, it simply encourages the Committee to take balancing into account. *Id.*

45. *See* World Heritage Convention, *supra* note 14, art. 13, ¶¶ 1–4.

46. *The World Heritage Committee*, *supra* note 21.

47. Boer, *supra* note 44, at 86.

consideration.<sup>48</sup> Neither the Committee nor the Member States can, under the Convention, force a State Party to nominate a site, regardless of the need for preservation.<sup>49</sup> However, most States Parties are eager to submit sites for consideration—whether truly of “outstanding universal value”<sup>50</sup> or not—because of the funding for which they can apply.<sup>51</sup>

Selecting which sites merit World Heritage recognition does not seem particularly difficult. However, “identification and delineation of properties can involve a range of legal and financial implications, as well as technical complexities, and can potentially raise a number of cultural, social, political, economic, human rights, and religious issues in certain cases.”<sup>52</sup> In order to be inscribed on the World Heritage List, a site must be “of outstanding universal value.”<sup>53</sup> This definition is vague, but the Operational Guidelines of the Committee define the term as “cultural and/or natural significance which is so exceptional as to transcend national boundaries and to be of common importance for present and future generations of all humanity.”<sup>54</sup> However, since the final arbiter of this identification is the Committee, little exists to actually rein in this definition. Indeed, the selection criteria are broad enough to include almost any site that comes across the Committee’s desk.<sup>55</sup> Thus, on its face, the

---

48. *Id.* at 98 (“[I]t is the responsibility of the State Party to identify and delineate properties under Article 3, to submit inventories, and to prepare and submit nominations (Article 11(1) and Operational Guidelines paragraphs 120–142).”).

49. See *World Heritage List Nominations: Nomination Process*, UNESCO, <http://whc.unesco.org/en/nominations/> (last visited May 16, 2011). The UN Charter explicitly protects the principles of national sovereignty, such that the UN cannot force a State Party into action unless it becomes necessary “to maintain or restore international peace and security.” U.N. Charter art. 39.

50. World Heritage Convention, *supra* note 14, art. 11, ¶ 2.

51. Lenzerini, *supra* note 31, at 271. Once a site is given the World Heritage seal of approval, the host country can apply for funding for various projects in connection with that site, including preservation and tourism. *Id.*

52. Boer, *supra* note 44, at 86.

53. World Heritage Convention, *supra* note 14, pmb1.

54. Boer, *supra* note 44, at 88 (quoting UNESCO Intergovernmental Comm. for the Prot. of the World Cultural & Natural Heritage, Operational Guidelines for the Implementation of the World Heritage Convention, ¶ 49, WHC.05/02 (Feb. 2, 2005), available at <http://whc.unesco.org/archive/opguide05-en.pdf>). The Operational Guidelines were revised in January 2008, but the substance of the provisions discussed in this note remained the same as the 2005 version. See UNESCO Intergovernmental Comm. for the Prot. of the World Cultural & Natural Heritage, Operational Guidelines for the Implementation of the World Heritage Convention, WHC.08/01 (Jan. 2008) [hereinafter Operational Guidelines], available at <http://whc.unesco.org/archive/opguide08-en.pdf>.

55. To be of “outstanding universal value,” a site must meet at least one of the following criteria:

(i) represent a masterpiece of human creative genius;

(ii) exhibit an important interchange of human values, over a span of time or within a cultural area of the world, on developments in architecture or technology, monumental arts, town-planning or landscape design;

Convention gives incredible latitude to the Committee in terms of choosing which sites are suitable for inclusion in the World Heritage List. As a practical matter, this leaves open an equally incredible opportunity for misuse of this latitude, as there are no sequential criteria that a site must pass through on the journey to inscription.

On the other side of the World Heritage process, a site is rarely subject to the Committee's harshest punishment: deletion from the World Heritage List. As the "ultimate sanction"<sup>56</sup> that the program can mete out, the Committee should understandably be cautious in using this method as a penalty. Still, since the Convention's ratification, "during which [the Committee] has inscribed almost 900 sites, the organisation has only pulled the trigger once."<sup>57</sup> Instead, the Committee resorts to inclusion in

(iii) bear a unique or at least exceptional testimony to a cultural tradition or to a civilization which is living or which has disappeared;

(iv) be an outstanding example of a type of building, architectural or technological ensemble or landscape which illustrates (a) significant stage(s) in human history;

(v) be an outstanding example of a traditional human settlement, land-use, or sea-use which is representative of a culture (or cultures), or human interaction with the environment especially when it has become vulnerable under the impact of irreversible change;

(vi) be directly or tangibly associated with events or living traditions, with ideas, or with beliefs, with artistic and literary works of outstanding universal significance. (The Committee considers that this criterion should preferably be used in conjunction with other criteria);

(vii) contain superlative natural phenomena or areas of exceptional natural beauty and aesthetic importance;

(viii) be outstanding examples representing major stages of earth's history, including the record of life, significant on-going geological processes in the development of landforms, or significant geomorphic or physiographic features;

(ix) be outstanding examples representing significant on-going ecological and biological processes in the evolution and development of terrestrial, fresh water, coastal and marine ecosystems and communities of plants and animals;

(x) contain the most important and significant natural habitats for in-situ conservation of biological diversity, including those containing threatened species of outstanding universal value from the point of view of science or conservation.

Operational Guidelines, *supra* note 52, ¶ 77. "The protection, management, authenticity and integrity of properties are also important considerations." *The Criteria for Selection*, UNESCO WORLD HERITAGE CTR., <http://whc.unesco.org/en/criteria/> (last visited Feb. 13, 2010). The Convention itself states: "The fact that a property belonging to the cultural or natural heritage has not been included in either of the two lists [defining cultural and natural heritage] shall in no way be construed to mean that it does not have an outstanding universal value for purposes other than those resulting from inclusion in these lists." World Heritage Convention, *supra* note 14, art. 12.

56. Osborne, *supra* note 26.

57. *Id.* The Arabian Oryx Sanctuary was taken off the World Heritage Sites List after the discovery of oil and the subsequent drilling destroyed 90 percent of the reserve. *Id.* In this case, the World Heritage in Danger designation did little, if anything, to save the site from human devastation. *See id.*

the World Heritage in Danger List when it wishes to make a point about how a site is being managed.<sup>58</sup> However, neither action is going to influence a Member State to change the way the site is run if the financial or political gain outweighs any scare factor that UNESCO can muster. Additionally, the Committee itself has used the World Heritage in Danger List for ideological reasons, making the List suspect in many ways.<sup>59</sup>

If a submission is able to jump the Committee's various hurdles and is added to the World Heritage List, the monitoring and policing of the site become issues. The Convention expressly recognizes the autonomy of its Member States, but also binds those States to compliance with obligations established in the Convention.<sup>60</sup> However, neither the Committee nor UNESCO has any real power to ensure that these states properly use funding and administer sites.<sup>61</sup>

The World Heritage Fund<sup>62</sup> is another source of problems and contention for the program. Some safeguards have been put in place to fight against misuse of funds, including those in paragraph 4 of article 15 of the Convention, which states that “[t]he Committee may accept

58. See World Heritage Convention, *supra* note 14, art. 11, ¶ 4.

59. One example is the Dresden Elbe Valley in Germany. The Committee tried to stop the building of a bridge across a part of the valley because the bridge would “damage the integrity of the valley, which is dotted with palaces and remnants of the industrial revolution.” Osborne, *supra* note 26. When Germany allowed construction to begin over UNESCO's complaints, the Valley was placed on the World Heritage in Danger List in 2006 and ultimately removed from the World Heritage List in 2009. *Dresden Is Deleted From UNESCO's World Heritage List*, WORLD HERITAGE CTR. (June 25, 2009), <http://whc.unesco.org/en/news/522/>. Such a measure has been heavily scrutinized, as countless sites around the world are much more endangered than the Valley but have not made the List, which currently contains around thirty sites. Osborne, *supra* note 26; see also Josh Ward, *The World From Berlin: 'Dresden Will Survive' UNESCO's Decision*, SPIEGEL ONLINE INT'L, June 26, 2009, <http://www.spiegel.de/international/germany/0,1518,632845,00.html>; *World Heritage Revocation: Germany's Elbe Valley Loses UNESCO Status*, SPIEGEL ONLINE INT'L, June 25, 2009, <http://www.spiegel.de/international/germany/0,1518,632637,00.html>.

60.

Legally, States Parties implement treaties. It is not the Convention which “protects” the heritage, but States Parties who “protect” the heritage on their territory by acting in compliance with the Convention at national level. More indirect language used at times in official texts, whereby the Convention “ensures the protection”, is undesirable and instead focus should be put on the key role and effective action of States Parties for the purposes of this protection.

Guido Carducci, *Articles 4–7: National and International Protection of the Cultural and National Heritage*, in THE 1972 WORLD HERITAGE CONVENTION: A COMMENTARY, *supra* note 13, at 103, 106 (footnote omitted).

61. Francesco Bandarin, the director of the World Heritage Centre, concedes that UNESCO “only ha[s] moral power. We advise and recommend action, but these are light guns,” which do little to scare governments into taking the actions that the program seeks. Osborne, *supra* note 26.

62. The World Heritage Fund is established in Article 15 of the Convention, and assets are collected from various sources. World Heritage Convention, *supra* note 14, art. 15, ¶¶ 1, 3. For a list of sources of funding, see *id.* art. 15, ¶ 3.

contributions to be used only for a certain programme or project . . . . No political conditions may be attached to contributions made to the Fund.”<sup>63</sup> But this section is only facially strict: it also provides that “[c]ontributions to the Fund and other forms of assistance made available to the Committee may be used only for such purposes as the Committee shall define.”<sup>64</sup> If the Committee has the power to determine for which purposes funding can be used, there is little to stop the Committee from allocating funds wherever it pleases, as long as there is some project in place to which the funding can be funneled.

In addition, while the Committee is prohibited from accepting contributions to the Fund that have political over- (or under-) tones, ideological and financial conditions are not specifically barred from attachment.<sup>65</sup> From eco-radicals to governments with economic and ideological interests, those who donate to the Fund do not always do so for purely benevolent reasons. Also, this “trust fund” is managed as a “Special Account” under the Financial Regulations of UNESCO.<sup>66</sup> While the Regulations undoubtedly have ethics parameters, it is not much of a leap to say that the lack of strict accounting standards at UNESCO and the World Heritage program may make the funds subject to mishandling, especially given the record of handling funds at the UN.<sup>67</sup>

The World Heritage program presents itself as a united organization, intent on preserving the world’s treasures for posterity. The reality is that

63. *Id.* art. 15, ¶ 4.

64. *Id.*

65. *See id.*

66. Lenzerini, *supra* note 31, at 271.

67. *See* Claudia Rosett, *The Deepening Mysteries of U.N. Financial Disclosure*, FORBES BLOG (Nov. 15, 2010, 10:54 AM), <http://blogs.forbes.com/claudiarosett/2010/11/15/the-deepening-mysteries-of-u-n-financial-disclosure/>; Claudia Rosett, *Magic With U.S. Money for the United Nations*, FORBES BLOG (Apr. 8, 2011, 2:42 PM), <http://blogs.forbes.com/claudiarosett/2011/04/08/magic-with-u-s-money-for-the-united-nations/>; *see also* Under-Secretary-General for Internal Oversight Services, *Evaluation of the Integrated Global Management Initiative of the Department for General Assembly and Conference Management: Rep. of the Office of Internal Oversight Servs.*, Dep’t for Gen. Assembly & Conference Mgmt., U.N. Doc. A/64/166 (July 23, 2009) (by Inga-Britt Ahlenius), available at <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/N09/421/65/PDF/N0942165.pdf?OpenElement>. This report on the progress of a reform program designed to flush out “the plumbing of the U.N. system”—the U.N. Secretariat’s Department of General Assembly and Conference Management (DGACM)—showed that records had often been “‘compromised’ through ‘retrospective adjustment.’ Translation: someone apparently fiddled with the books.” George Russell, *‘Reform’ Is Just a Word at the U.N., Its Own Investigation Shows*, FOXNEWS.COM, Oct. 22, 2009, <http://www.foxnews.com/story/0,2933,562382,00.html>; *see also* Press Release, General Assembly, Under-Secretary-General for Management Presents “Mixed Picture” of United Nations Financial Situation, in Briefing to Budget Committee, U.N. Press Release GA/AB/3921 (Oct. 16, 2009), available at <http://www.un.org/News/Press/docs/2009/gaab3921.doc.htm>.

the interests of the Member States are much more fragmented.<sup>68</sup> Often, states' interests are at odds with one another, making the process of identifying and protecting valuable sites fraught with necessary political finagling.<sup>69</sup> This has been the source of some strong criticism, as the philanthropic goals of the Convention have been pushed aside in order to make room for "complicated organizational" and political processes.<sup>70</sup>

An even stronger barrier to united action is the concept of cultural nationalism.<sup>71</sup> This ideology puts states at odds with one another, as each considers its own sites more valuable and more worthy of preservation than others' sites. Cultural nationalism also puts states at odds with UNESCO itself, as any criticism of a state's actions with regard to its sites can be taken as criticism of the state's expression of its culture.<sup>72</sup>

68. These various motivations for investment in the program include political, economic, and cultural gains. See, e.g., *The Benefits of World Heritage Status in Russian Practice*, NAT. HERITAGE PROTECTION FUND, <http://www.nhpfund.org/world-heritage/benefits.html> (last visited May 16, 2011). Even considering purely cultural interests, however, it must be asked whether these are global, nation-state, or insular in nature. A state's outward interests may be altruistic (global) in its dedication to World Heritage, but it is likely that other motivations, whether gain for the state itself (nation-state) or for those who are pushing for certain sites' adoption (insular), are easily discernable.

69. For example, the Australian government wants to mine uranium in and around Kakadu National Park, a World Heritage site. Critics say the government has "offer[ed] its vote for internationally elected jobs in return for countries supporting its position—and future support on similar projects in World Heritage areas elsewhere." Andrew Nette, *Australia Using "Dirty Tricks" to Block Criticism of Controversial Uranium Mine*, ALBION MONITOR, Mar. 8, 1999, <http://www.albionmonitor.com/9903a/copyright/ozdirtytricks.html>.

70. Caren Irr, *Article Summary: World Heritage Sites and the Culture of the Commons*, GLOBALIZATION & AUTONOMY ONLINE COMPENDIUM, [http://www.globalautonomy.ca/global1/summary.jsp?index=RS\\_Irr\\_Commons.xml](http://www.globalautonomy.ca/global1/summary.jsp?index=RS_Irr_Commons.xml) (last visited May 19, 2011) ("The heritage site program is routinely underfunded, bureaucratically complex, and vulnerable to domination and criticism by influential member states . . ."). See also Caren Irr, *World Heritage Sites and the Culture of the Commons*, in *GLOBAL ORDERING: INSTITUTIONS AND AUTONOMY IN A CHANGING WORLD* 85 (Louis W. Pauly & William D. Coleman eds., 2008). This has, according to some critics, corrupted the original philosophy on which the Convention was based. *Id.*

71. Cultural nationalism is an ideology that "assigns to each nation a special claim to cultural objects associated with its people or territory." Josh Shuart, Comment, *Is All "Pharaoh" in Love and War? The British Museum's Title to the Rosetta Stone and the Sphinx's Beard*, 52 U. KAN. L. REV. 667, 672 (2004) (internal quotation marks omitted). The priority of cultural nationalism "supersedes that of any other nation" and "advocates the retention and preservation of artifacts within the nation of origin." *Id.* at 672–73.

72. For example, in 2004 UNESCO placed Cologne's city cathedral on the World Heritage in Danger List after plans to build office buildings across the river from the cathedral were revealed. UNESCO officials cited the potential for a "harmful visual impact" on the distinctive skyline of Cologne as the reason for the designation. *Cologne Angered by UNESCO Criticism*, DEUTSCHE WELLE, July 10, 2004, <http://www.dw-world.de/dw/article/0,,1262885,00.html>. However, the residents of Cologne are "fiercely proud of their . . . cathedral" and took offense at UNESCO's move, angry that anyone would think that they would accept "any plans to detract from [the city's] most treasured landmark." *Id.* Indeed, the new towers are "well below the height of the cathedral, so the building[s] will not affect anyone's view." *Id.* City spokesman Ulrich Hoever claims that the cathedral is so important to the city's residents that "[e]very Cologner would give his last shirt to protect it." *Id.*

Therefore, despite an outward display of solidarity in identifying and delineating sites to preserve for posterity, the Member States and the organization itself are frequently vying for disparate interests.

#### IV. CASE STUDIES: THE INABILITY TO POLICE, PROTECT, AND PRESERVE

The effect of the procedural and practical issues discussed above on cultural and natural heritage sites around the world is quite harmful. Examples of ill-managed sites abound, and the World Heritage program seems reluctant to take effective action in response. This section details several significant sites that have been damaged—sometimes irreparably—by the program’s actions and inactions.

##### A. *The Bamiyan Buddhas: An Epic Failure in Global Preservation*

In 1983, UNESCO’s World Heritage Committee denied the Bamiyan Valley in Afghanistan entrance onto the list of World Heritage Sites.<sup>73</sup> Eighteen years later, many of the giant buddhas carved into the rock cliffs of Bamiyan were destroyed by the Taliban as part of a program to rid the country of non-Muslim influences.<sup>74</sup> Some have criticized that these

UNESCO has also been criticized for its treatment of Israel, a country that houses a treasure trove of important natural and cultural sites. Currently, Israel hosts only four World Heritage Sites: the walls of the Old City of Jerusalem (there are no sites within the city itself); Masada; the Old City of Akko; and Tel Aviv’s “White City” architecture, “one of the few UNESCO recognitions of a 20th century phenomenon as a world heritage site.” Press Release, Israel Ministry of Foreign Affairs, UNESCO Designates Tel Aviv as “World Heritage Site” (July 6, 2003), <http://www.mfa.gov.il/MFA/Government/Communiques/2003/UNESCO+Designates+Tel+Aviv+as+World+Heritage+Site.htm>.

The United Nations has strongly opposed many of Israel’s actions for most of the country’s existence, and once passed a resolution (since overturned) “equating Zionism [a form of cultural nationalism] with racism.” *Id.* The lack of World Heritage Sites in Jerusalem especially may be due to this difference in ideologies, which actually goes against the philosophical foundations of the Convention. *See id.*

73. *Cultural Landscape and Archaeological Remains of the Bamiyan Valley*, WORLD HERITAGE SITE, <http://www.worldheritagesite.org/sites/bamiyanvalley.html> (last visited Feb. 13, 2010). The explanation for denial of World Heritage status in this case was surprisingly vague: the nomination was “[d]eferred as conditions under which recommendation made not yet fulfilled.” *Id.*

74. In 2003, twenty years after the initial deferral and two years after the Taliban destroyed some of the largest buddhas on the site, the World Heritage Committee inscribed the Bamiyan Valley on the World Heritage Site List and the World Heritage in Danger List at the same time. *Cultural Landscape and Archaeological Remains of the Bamiyan Valley: Description*, UNESCO WORLD HERITAGE CTR., <http://whc.unesco.org/en/list/208> (last visited Feb. 13, 2010). The “Justification for Inscription” included five of the ten criteria upon which sites are evaluated for inclusion:

*Criterion (i):* The Buddha statues and the cave art in Bamiyan Valley are an outstanding representation of the Gandharan school in Buddhist art in the Central Asian region.

*Criterion (ii):* The artistic and architectural remains of Bamiyan Valley, and an important Buddhist centre on the Silk Road, are an exceptional testimony to the interchange of Indian,

priceless cultural landmarks might have been saved had UNESCO stepped in earlier.<sup>75</sup> But it is also possible that UNESCO could not have stopped the Taliban from unleashing their reign of cultural terror. Indeed, UNESCO's Western affiliations may have made the site even more of a target by its presence in the region. Either way, the buddhas were most likely doomed.

But what does this say about the World Heritage program, if either course of action had the potential for disaster? The program cannot work if it bows out based on hypothetical situations where its actions may do more harm than good.<sup>76</sup> This risk is ever-present, but the Convention is supposed to be a proactive measure to ensure preservation. Proactively ensuring preservation does not mean that UNESCO should have power over sovereign states; rather, as the ultimate goal of the Convention, it should guide the program's actions to err on the side of protecting sites.

Hellenistic, Roman, Sasanian influences as the basis for the development of a particular artistic expression in the Gandharan school. To this can be added the Islamic influence in a later period.

*Criterion (iii):* The Bamiyan Valley bears an exceptional testimony to a cultural tradition in the Central Asian region, which has disappeared.

*Criterion (iv):* The Bamiyan Valley is an outstanding example of a cultural landscape which illustrates a significant period in Buddhism.

*Criterion (vi):* The Bamiyan Valley is the most monumental expression of the western Buddhism. It was an important centre of pilgrimage over many centuries. Due to their symbolic values, the monuments have suffered at different times of their existence, including the deliberate destruction in 2001, which shook the whole world.

*Id.* The question then becomes why these criteria were not recognized and accepted twenty years earlier, before the destruction of the buddhas and the resulting global outrage.

The Bamiyan Valley was added to the World Heritage in Danger List with the following explanation:

The property is in a fragile state of conservation considering that it has suffered from abandonment, military action and dynamite explosions. The major dangers include: risk of imminent collapse of the Buddha niches with the remaining fragments of the statues, further deterioration of still existing mural paintings in the caves, looting and illicit excavation. Parts of the site are inaccessible due to the presence of antipersonnel mines.

*Cultural Landscape and Archaeological Remains of the Bamiyan Valley: Indicators*, UNESCO WORLD HERITAGE CTR., <http://whc.unesco.org/en/list/208/indicators/> (last visited Mar. 18, 2011).

75. See, e.g., Michael Semple, *Guest Blog: Why the Buddhas of Bamian Were Destroyed*, AFGHANISTAN ANALYSTS NETWORK, Mar. 2, 2011, <http://aan-afghanistan.com/index.asp?id=1538>. The importance of tourist dollars afforded World Heritage Sites as well as political pressures from other countries are just two of the potential mechanisms which could have been used to combat the Taliban's cultural threats. See *id.*

76. Indeed, the Taliban in 1983 posed no threat to Afghani cultural heritage; they did not exist until 1989. Pierre Tristam, *History of the Taliban: Who They Are, What They Want*, ABOUT.COM, [http://middleeast.about.com/od/afghanistan/ss/me080914a\\_2.htm](http://middleeast.about.com/od/afghanistan/ss/me080914a_2.htm) (last visited Feb. 13, 2010).

*B. Angkor, Machu Picchu, and the Galapagos: A Lesson in Fragility*

Human traffic has ravaged many World Heritage sites around the world, but has particularly plagued the three impressive sites of Angkor,<sup>77</sup> Machu Picchu,<sup>78</sup> and the Galapagos Islands.<sup>79</sup> The international reputation that UNESCO and the World Heritage program offer brings incredible numbers of tourists to even the most remote places on earth.<sup>80</sup> The Committee need only apply the “World Heritage Site” stamp in order for tourist dollars, along with tourist trampling and trashing, to come flooding into an area. In many cases, this has had disastrous results.<sup>81</sup>

---

77. Angkor is a giant complex of stone temples in the jungles of Cambodia. Osborne, *supra* note 26. It joined the World Heritage family of sites in 1992 and currently receives more than two million visitors each year. *Id.* Such large amounts of foot traffic have caused terrible and irreversible erosion at the site, and the surrounding villages have been utterly transformed into an urban jungle to attract tourists. The rural location now boasts an international airport along with Western-style hotels and restaurants. *Id.* The Director of UNESCO’s World Heritage Centre conceded that “[a]ll our efforts were focused on restoration [when Angkor was first inscribed] . . . . Nobody looked at the urban explosion” occurring due to the large interest in and pull of a World Heritage Site like Angkor to foreign tourists. *Id.*

78. Machu Picchu, an ancient Inca citadel and the most popular tourist destination in Peru, narrowly avoided being added to the list of World Heritage Sites in Danger recently, owing to the damage caused by poor oversight, uncontrolled foot traffic, unrestrained development in the nearby tourist town of Aguas Calientes, and “imminent risks of landslides, fires and deforestation.” *UNESCO World Heritage Committee Wants More Monitoring of Machu Picchu*, PERUVIAN TIMES, July 10, 2008, <http://www.peruviantimes.com/unesco-world-heritage-committee-wants-more-monitoring-of-machu-picchu>. The site was saved from inclusion on the infamous list by a last-minute “\$132.5 million emergency plan [proposed by the Peruvian government] to preserve the ruins and limit the flow of tourists, as well as take measure to prevent forest fires and landslides.” *Id.* “The site’s inclusion [in 2007] to the new list of world wonders has set off an unprecedented increase in the number of visitors,” which may be good for the Peruvian government and locals who want to cash in on Machu Picchu’s fame, but UNESCO’s involvement has thus far caused more damage than it has averted. *See id.*

79. “In 2007, Ecuador’s Galapagos Islands were added to UNESCO’s list of endangered World Heritage sites after an unprecedented wave of tourism-related immigration brought invasive species, such as cats and goats, to the islands.” *Id.* It is not rare to find “less scrupulous custodians [of cultural and natural sites] desperate for tourist dollars campaign[ing] to be included in Unesco’s sacred list without preparing for the inevitable hordes.” Osborne, *supra* note 26. Some have argued that fragile sites, such as the Galapagos ecosystem, should be approached much more carefully than others, such as Britain’s Tower of London, which are equipped to deal with large numbers of tourists and the effects that their presence may cause. *See, e.g., id.* “[A] row [recently] erupted over St[.] Kilda, a remote, Unesco-protected island in the Outer Hebrides. When plans were announced to open a visitor centre on nearby Harris, St[.] Kilda’s local guardians, the National Trust for Scotland, feared an influx of World Heritage Site-bagging tourists could damage the site.” *Id.*

80. Such places include the Galapagos Islands and St. Kilda. *See supra* note 79.

81. *See, e.g., Tourism Threatens UN World Heritage Site in Cambodia*, TAIPEI TIMES, Feb. 26, 2007, <http://www.taipeitimes.com/News/world/archives/2007/02/26/2003350106>; MARIA ANA BORGES, GIULIA CARBONE, ROBYN BUSHELL & TILMAN JAEGER, INT’L UNION FOR CONSERVATION OF NATURE, SUSTAINABLE TOURISM AND NATURAL WORLD HERITAGE: PRIORITIES FOR ACTION 8 (2011), <http://data.iucn.org/dbtw-wpd/edocs/2011-002.pdf>.

Sites both natural and cultural have fallen victim to hordes of visitors, often unforeseen and unstoppable by the World Heritage program or the host countries, which are reluctant to lose the economic boon that the World Heritage moniker brings to (often impoverished) areas. The effect of bringing people to a location unequipped to deal with the consequences of tourism seriously undermines the World Heritage program's altruistic beginnings and goals. The Committee has tried to curtail the destruction, but even as it adds some sites to its "in Danger" list, it continues to overlook others.<sup>82</sup> Moreover, the Committee still inscribes fragile sites on the World Heritage List without determining whether a host country can and will maintain the site's integrity, even against the influx of tourists with open wallets.

*C. Amsterdam, Great Britain, and the Elbe Valley: Economic, Political, and Ideological Blackmail*

It is no secret that the United Nations focuses its political agenda on cultural relativism,<sup>83</sup> peacekeeping,<sup>84</sup> and global sustainability,<sup>85</sup> among

82. In 2010, the Committee removed the Galapagos Islands from the list of sites in danger despite concerns from other conservation organizations like the Galapagos Conservation Trust. *UNESCO's World Heritage Sites: A Danger List in Danger*, *ECONOMIST*, Aug. 26, 2010, available at <http://www.economist.com/node/16891951>. For a list of current sites "in Danger," see *List of World Heritage in Danger*, UNESCO WORLD HERITAGE CTR., <http://whc.unesco.org/en/danger> (last visited May 16, 2011). See generally INT'L COUNCIL ON MONUMENTS & SITES, HERITAGE AT RISK: ICOMOS WORLD REPORT 2006/2007 ON MONUMENTS AND SITES IN DANGER (Michael Petzet & John Ziesemer eds., 2008), available at [http://www.international.icomos.org/risk/world\\_report/2006-2007/index.htm](http://www.international.icomos.org/risk/world_report/2006-2007/index.htm).

83. See MICHLA POMERANCE, SELF-DETERMINATION IN LAW AND PRACTICE: THE NEW DOCTRINE IN THE UNITED NATIONS 1 (1982) ("For many representatives in the United Nations, 'self-determination' has not only been transformed from a political or moral principle to a full legal 'right'; it has become *the* peremptory norm of international law, capable of overriding all other international legal norms and even such other possible peremptory norms as the prohibition of the threat or use of force in international relations.").

84. See, e.g., Ruth Wedgwood, *The Evolution of United Nations Peacekeeping*, 28 CORNELL INT'L L.J. 631, 635 (1995) ("Peacekeeping now looks like a summary of all the hopes of the 1960's and 1970's for development aid and political transition—to somehow remake emerging countries as prosperous, democratic, and stable societies."). But see Inis L. Claude, Jr., *Just Wars: Doctrines and Institutions*, 95 POL. SCI. Q. 83, 87 (1980) ("Pacifism has not been, nor is it likely to become, the dominant doctrine of any state or international organization. Some flirting with pacifism, however, has occurred . . . . The urge to denounce war unconditionally and indiscriminately is occasionally irresistible.").

85. See United Nations Conference on Environment and Development, Rio de Janeiro, Braz., June 3–14, 1992, *Rio Declaration on Environment and Development*, U.N. Doc. A/CONF.151/26/Rev.1 (Vol. I), Annex I (Aug. 12, 1992), available at <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/N92/836/55/PDF/N9283655.pdf?OpenElement>.

Principle 1[:] Human beings are . . . entitled to a healthy and productive life in harmony with nature.

other things.<sup>86</sup> Unfortunately, the Committee appears to place a heavy emphasis on furthering the goals of its parent organization when considering which sites are worthy of World Heritage status. Sites in Amsterdam, Great Britain, and Germany's Elbe Valley are just some of the more prominent examples.<sup>87</sup> If the host country engages in activities that the Committee frowns upon, it threatens to take away World Heritage status or refuses to grant it at all.<sup>88</sup> This is incredibly damaging to the World Heritage program's reputation. More importantly, it puts nations, especially those in fiscal or political turmoil, in a rather difficult place: they must lobby for a site and subsequently cooperate with the Committee in order to receive funding for tourism and preservation, or snub the UN by refusing to acquiesce to the UN's (often ludicrous)<sup>89</sup> demands and face blacklisting from the international cultural community.<sup>90</sup>

---

Principle 2[:] States have . . . the sovereign right to exploit their own resources pursuant to their own environmental and developmental policies, and the responsibility to ensure that activities within their jurisdiction or control do not cause damage to the environment of other States or of areas beyond the limits of national jurisdiction.

Principle 3[:] The right to development *must* be fulfilled so as to *equitably* meet developmental and environmental needs of present and future generations.

Principle 4[:] In order to achieve sustainable development, environmental protection *shall* constitute an integral part of the development process and cannot be considered in isolation from it.

Principle 5[:] All States and all people *shall* cooperate in the essential task of eradicating poverty as an *indispensable* requirement for sustainable development, in order to decrease the disparities in standards of living and better meet the needs of the majority of the people of the world.

*Id.* (emphasis added).

86. See generally Wedgewood, *supra* note 84, at 631–32 (explaining how “[t]he United Nations is a deeply political place.”).

87. See *infra* notes 88–90.

88. Severin Carrell, *UN Threatens to Act Against Britain for Failure to Protect Heritage Sites*, THE GUARDIAN, Sept. 8, 2008, <http://www.guardian.co.uk/artanddesign/2008/sep/08/heritage-conservation> (“The UN is threatening to put [seven UK world heritage sites] on its list of world heritage sites in danger after its experts accused the UK of damaging [them] . . . [The] complaints range from decisions to approve new tower blocks in central London . . . , to the failure to relocate the A344 [motorway] beside Stonehenge . . . , to a proposed wind farm which threatens neolithic sites on Orkney.”); see also Kester Freriks, *Bothered About Billboards: Amsterdam Endangers UNESCO World Heritage Bid*, SPIEGEL ONLINE, Aug. 14, 2009, <http://www.spiegel.de/international/europe/0,1518,642540,00.html> (“Huge billboards in Amsterdam’s historic inner city have endangered [its] bid for world heritage site status. . . . [UNESCO advisers’] criticism has been added to Amsterdam’s UNESCO nomination file.”).

89. See *supra* note 88.

90. Germany experienced the extreme end of this dilemma with the Dresden Elbe Valley. See *supra* note 56.

*D. Japan's Iwami Ginzan Silver Mine: A Worst-Case Scenario?*

An abandoned mining town, little more than a hole in the ground after forty-five years of desertion, suddenly popped up on the World Heritage List in 2007 after intensive lobbying by Japanese tourist authorities in Tokyo, who saw huge tourism profits in having a World Heritage site.<sup>91</sup> Most Japanese citizens were entirely unaware of the site's existence.<sup>92</sup> Yet, with the help of diplomats connected to the UN, a moldering ghost town in the middle of a forest became a tourist mecca, along with all of the associated perks and problems.<sup>93</sup> Many have protested that Iwami satisfies none of the Committee's ten selection criteria.<sup>94</sup> However, this was

---

91. Osborne, *supra* note 26.

The Iwami Ginzan Silver Mine in the south-west of Honshu Island [Japan] is a cluster of mountains, rising to 600 m and interspersed by deep river valleys featuring the archaeological remains of large-scale mines, smelting and refining sites and mining settlements worked between the 16th and 20th centuries. The site also features routes used to transport silver ore to the coast, and port towns from where it was shipped to Korea and China. The mines contributed substantially to the overall economic development of Japan and south-east Asia in the 16th and 17th centuries, prompting the mass production of silver and gold in Japan. The mining area is now heavily wooded. Included in the site are fortresses, shrines, parts of Kaidō transport routes to the coast, and three port towns, Tomogaura, Okidomari and Yunotsu, from where the ore was shipped.

*Iwami Ginzan Silver Mine and Its Cultural Landscape: Description*, UNESCO WORLD HERITAGE CTR., <http://whc.unesco.org/en/list/1246> (last visited Jan. 18, 2010).

92. Osborne, *supra* note 26.

93. *Id.*

94. See, e.g., *id.* For the list of the ten criteria, see Operational Guidelines, *supra* note 54, ¶ 77. The Committee cited the following criteria to justify Iwami's induction into the World Heritage arena:

Criterion (ii): During the Age of Discovery, in the 16th and early 17th centuries, the large production of silver by the Iwami Ginzan Silver Mine resulted in significant commercial and cultural exchanges between Japan and the trading countries of East Asia and Europe.

Criterion (iii): Technological developments in metal mining and production in Japan resulted in the evolution of a successful system based on small-scale, labor-intensive units covering the entire range of skills from digging to refining. The political and economic isolation of Japan during the Edo Period (1603 to 1868) impeded the introduction of technologies developed in Europe during the Industrial Revolution and this, coupled with the exhaustion of commercially viable silver-ore deposits, resulted in the cessation of mining activities by traditional technologies in the area in the second half of the 19th century, leaving the site with well-preserved archaeological traces of those activities.

Criterion (v): The abundant traces of silver production, such as mines, smelting and refining sites, transportation routes, and port facilities, that have survived virtually intact in the Iwami Ginzan Silver Mine Site, are now concealed to a large extent by the mountain forests that have reclaimed the landscape. The resulting relict landscape, which includes the surviving settlements of the people related to the silver production, bears dramatic witness to historic land-uses of outstanding universal value.

The elements of the property showing the original mining land-use system remain intact; the organic relationships among the individual elements exhibit the full expression of the mechanism of the original land-use system. They are a living part of the contemporary lives

irrelevant in the face of politics, money, and big business: Iwami was inscribed, and remains, on the list.<sup>95</sup> To have a site which is so blatantly unfit to be included alongside Stonehenge and the Great Barrier Reef tarnishes the reputation of UNESCO, the Committee, and all the other legitimate cultural and natural heritage gems that have been inscribed.

#### V. A PLAN: HALTING THE DECLINE OF THE WORLD HERITAGE PROGRAM

While there are arguably as many success stories associated with the World Heritage program as there are failures, the situation must change in order to preserve the best natural and manmade sites for future generations. As it stands, the program does not even come close to performing as its intended level, and, sadly, no other organization in the world has enough clout to fix the state of site preservation on a global scale.<sup>96</sup> Therefore, the World Heritage program requires concrete and serious efforts at transformation. Below are several key issues that, if

and livelihoods of the local society in unity with the abundant mountain forests and hence the integrity as a cultural landscape is maintained. The elements of the property that show the whole process ranging from silver production to shipment, in a good state of preservation and retain a high level of authenticity. In the mining settlements, there remains a group of traditional wooden buildings of 17th–20th century with careful maintenance, treatment, and repairs, retaining authenticity in terms of design, materials, techniques, functions, setting and environment.

*Iwami Ginzan Silver Mine and Its Cultural Landscape*, *supra* note 91.

95. The “outstanding universal value” attributed to the Iwami Ginzan silver mine and its cultural landscape is described as follows:

Iwami Ginzan Silver Mine pioneered the development of silver mines in pre-Modern Asia. It had contributed to exchange of values between East and West by achieving the large-scale production of high quality silver through the development of the Asian cupellation techniques transferred from China through Korea and the Japanese unique assemblage of numerous labor-intensive small businesses based upon manual techniques in the 16th century. The exceptional ensemble, consisting of mining archaeological sites, settlements, fortresses, transportation routes, and shipping ports represents distinctive land use related to silver mining activities. As the resource of silver ore was exhausted, its production came to an end, leaving behind, in the characteristically rich nature, a cultural landscape that had been developed in relation to the silver mine.

*Iwami Ginzan Silver Mine and Its Cultural Landscape*, *supra* note 91.

96. The World Monuments Fund (WMF) is “a non-governmental conservation group” which “publishes a ‘watch list’ of the world’s 100 most-endangered sites.” Osborne, *supra* note 26; *see also* 2010 *Watch Map*, WORLD MONUMENTS FUND, <http://www.wmf.org/watch/project-map> (last visited May 19, 2011). However, the WMF does not have the widespread influence and power of UNESCO’s World Heritage program, as it operates as a public charity and its independence requires reliance on and coordination with individual partners and affiliates around the world. *See About Us*, WORLD MONUMENTS FUND, <http://www.wmf.org/content/about-us> (last visited May 19, 2011). Thus, the best way to work toward better preservation of cultural sites is to build upon an already influential platform, even if it has been steadily crumbling for forty years.

addressed, may help to ameliorate some of the practical, procedural, and ideological problems confronting the World Heritage program.

*A. Changes to Nomination Processes*

Member states should no longer be allowed to submit their own nominations for inclusion directly to the Committee. Several independent groups, comprised of anthropologists, archaeologists, ecologists, and others, should research and recommend worthy sites to the World Heritage Committee. This extra layer of vetting will help to quell extensive lobbying and bartering by potential host countries on behalf of their sites.

*B. New Tools for Scaring Governments into Action*

UNESCO must have mechanisms with which to effect real change when governments do not comply with the basic premises of preservation. The organization also must be willing and able to use them. Some potential mechanisms include cutting off funding for sites, launching widespread public relations campaigns (free from politics) for sites in danger from neglect or overuse, and invoking targeted international sanctions. The availability of and willingness to embark on these courses of action will ensure that countries care for their sites, rather than risk the loss of funds or negative global press.

*C. Outside Research to Ensure Site Stability*

The Committee must find that a site has sufficient ability to withstand any accompanying tourism and urban development problems before designation as a World Heritage site. The potential host country also must be willing and able, both financially and bureaucratically, to preserve the site and rein in enterprising locals looking to make money from it. This will ensure the site's protection from both people and the ravages of time, which has been the World Heritage Program's goal from the start.<sup>97</sup>

*D. Tapping Donors and Networking with Other Conservation Groups*

The World Heritage program must bring in money from various sources in order to fund its programs. As it stands, corporations and philanthropists are hesitant to sink money into UNESCO because of its

---

97. *See supra* Part II.B.

extensive bureaucracy and lack of transparency. If the World Heritage Committee can reassure potential donors regarding the exact use of their funds, it will go a long way toward gathering the capital necessary to carry out the program's mission. At the same time, an influx of new potential donors will ensure that the program is not pressured to compromise on its goals by organizations that use money as leverage for political and economic influence.

### *E. Certifiable Oversight*

The Committee must actually be able to protect the sites that it promises to preserve. This includes keeping a consistent watch over the political, economic, natural, and cultural situation of host countries in order to combat problems before they become too big for UNESCO to handle. With the ready support of Member States, the program can effectively use the global, cooperative nature of the United Nations to preserve and protect important natural and cultural sites.

## VI. CONCLUSION

The creation of the World Heritage Convention was a significant step toward recognizing and preserving the greatest cultural and natural aspects of the world. However, its implementation has derailed, and the World Heritage program needs to realign its procedures with its goals. Reform will not be easy. The United Nations does not have a good track record for positive change.<sup>98</sup> However, in recent years, the World Heritage Committee has established several "strategic objectives"<sup>99</sup> to strengthen its commitment to conservation, sending a message that it understands and is

98. Russell, *supra* note 67. A four-month study of a five-year initiative "to streamline and coordinate the performance" of the UN conference bureaucracy, led by the UN's own investigators, came to the conclusion that the "reform effort so far has been a near-total failure." *Id.* The "Integrated Global Management Initiative" was supposed to improve the performance of the sprawling bureaucracy, but the investigators cited poor, if any, improvement in making allocations of funding and staff more efficient, creating cost savings, or indeed changing the situation at all to prevent waste in the future. *Id.* Worst of all, the inspectors were "unable to vouch for the accuracy and veracity of the data" and in some cases suspected that records had been "compromised." *Id.*

99. These objectives are:

[to] strengthen the *credibility* of the World Heritage List; [to] ensure the effective *conservation* of world heritage properties; [to] promote the development of effective *capacity building* in States Parties; [to] increase public awareness of, involvement in, and support for world heritage through *communication* . . . [and] "to enhance the role of the Communities in the implementation of the World Heritage Convention."

Scovazzi, *supra* note 22, at 150 (footnote omitted).

willing to work on overcoming many of its obstacles. And if outside organizations are willing to pressure the World Heritage Committee to change, such influence may be enough to re-route this out-of-control bureaucracy and place the World Heritage program on a path to reassert itself as the premiere global organization dedicated to protecting the best of nature and of man.

*Elizabeth Betsy Keough\**

---

\* J.D. (2011), Washington University in St. Louis; B.A. (2008), Anthropology and Classics, University of Notre Dame. Special thanks to the staff of the *Global Studies Law Review* and all those who encouraged me not to give up on my passions.