The World Heritage List: Bridging the Cultural Property Nationalism-Internationalism Divide

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"People everywhere, including all of the actors in the cultural property world, share an interest in the preservation, study, and enjoyment of cultural property."1

"Through international solidarity, the Convention translates the principle of collective responsibility for the protection of World Heritage into action."2

I. INTRODUCTION

As eloquently stated in the 1954 Hague Convention, "damage to cultural property belonging to any people whatsoever means damage to the cultural heritage of all mankind, since each people makes its contribution to the culture of the world."3 Cultural property includes a "limited range of objects that are distinguishable from the ordinary run of artifacts by their special cultural significance and/or rarity,"4 and on a larger scale, cultural heritage can include sacred sites or other culturally important...

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4. Merryman, supra note 1, at 11.
architecture.

Cultural heritage preservation engages individuals, local communities, state governments, nongovernmental organizations, and international organizations, as the potential "[t]hreats to cultural property are numerous, including war, economic development, natural disasters and degradation, tourism, illicit trade, and iconoclasm." Since there has been "a tremendous, accelerating increase in interaction among all participants across state lines" in the international arena, significant consideration has been paid to how one should conceptualize the cultural heritage within any given state.

Previous scholarship in the area of cultural property law has developed two competing ideologies: cultural property nationalism and cultural property internationalism—essentially, that cultural property "belongs" to the nation in which it originates or that cultural property "belongs" to the world as a whole. In his seminal article Two Ways of Thinking About Cultural Property, Professor John Henry Merryman argues that cultural property nationalism and cultural property internationalism need not be mutually exclusive theories, stating that "in the contemporary world, both ways of thinking about cultural property have their legitimate places. Both have something important to contribute to the formation of policy, locally, nationally and internationally, concerning pieces of humanity’s material culture." However, he does not identify a clear model for how these theories could or should be integrated.

This Note identifies and highlights a working bridge between nationalism and internationalism that has been developed and tested through implementation of the World Heritage List for the past thirty-five years. The World Heritage List, which was established by the World Heritage Convention, "has proven to be a unique instrument of

5. Corrine Brenner, Note, Cultural Property Law: Reflecting on the Bamiyan Buddhas’ Destruction, 29 SUFFOLK TRANSNAT’L L. REV. 237, 239 (2006) ("In addition to the destruction of the Buddhas, other prominent examples of threats to cultural property include: 1) Egypt’s Aswan High Dam and its threat to Abu Simbel and Philae Island (1955-80); 2) the Romanian Communist Government’s land reform policy, which entailed the complete destruction of historic villages (1971-89); and 3) Turkey’s construction of the Ilisu Dam which threatened the ancient town of Hasankeyf (1982-2002).”).
8. See Merryman, supra note 7.
international co-operation in the protection of cultural and natural heritage of outstanding universal value." 10 However, no previous scholarship has explored the process by which an instance of cultural heritage gains recognition on the World Heritage List. As this Note will demonstrate, the World Heritage List embodies a third mode for the conceptualization of international cultural property law, a mode that mediates the concerns of cultural property nationalists and cultural property internationalists—a mode of cultural property cooperation. 11

In order to explore cultural property cooperation, this Note will first lay out the competing theories of cultural property nationalism and cultural property internationalism. Then this Note will describe the development and implementation of the World Heritage Convention and the World Heritage List, focusing on a detailed analysis of the listing process. The listing process encourages a dynamic relationship between states and the international community. That dynamism animates the constitutive process exemplified by the World Heritage List—the process of nationalist-international cooperation for the protection of cultural heritage. 12

Although this Note concludes that the World Heritage listing process rightly honors and integrates both cultural property nationalist and internationalist perspectives, subsequent to exploring the cooperation of these theoretical underpinnings, this Note will address a continuing real-world imbalance between the theories. Currently, the basis of power for site selection rests exclusively with the nation-state. While empowering each nation-state with control over site identification has a number of practical benefits, the nation-state selection model may be unable to account for the cultural heritage concerns of minority populations, populations who have historic roots within one modern nation-state but currently reside primarily within another nation-state, or even the concerns of diaspora populations. Additionally, there may be sites that spark international attention in a manner disproportionate to the interest ignited

cultural heritage sites. There is also an awareness that the future of many of these irreplaceable properties will be decided, for better or worse, within the next 10-20 years. It is all the more important, therefore, to assure that existing legal instruments—particularly those such as the World Heritage Convention—be allowed to reach their full potential in the service of monument and site protection worldwide.”


11. The cooperative nature of the listing process mitigates against the sovereignty costs that are associated with “hard law” legalization of international law. See Kenneth W. Abbott & Duncan Snidal, Hard and Soft Law in International Governance, 54 INT’L ORG. 421, 437 (2000) (arguing that “sovereignty costs emerge when states accept external authority over significant decisions”).

12. See, e.g., Periodic Report on the Application of the World Heritage Convention: Application of the World Heritage Convention in North America § 6.0 (Dec. 2004) (“A key priority for the future is to reach out to and engage the local communities who are directly affected and benefit most by the World Heritage Site designation. In doing so, one of the important messages will be that the World Heritage Site in Alberta or in Illinois is part of the heritage of humanity, or, in other words, the heritage that is found locally connects the local community to the international community.”), available at http://www.pc.gc.ca/docs/pm-wh/whsr/sec2/sec2d_e.asp.
in the host nation-state government. Since the current listing process progresses from a nationalist base forward through internationalist affirmation, this Note argues for the introduction of an internationalist ‘feedback loop:’ allowing international bodies or nation-states beyond the cultural heritage sites’ host nation-state to ‘sponsor’ sites that otherwise would have gone unprotected.

II. DISTINCT WORLDVIEWS: CULTURAL PROPERTY NATIONALISM AND CULTURAL PROPERTY INTERNATIONALISM

Cultural property scholarship has coalesced into two schools of thought: cultural property nationalism and cultural property internationalism. These two schools were first defined as such by Professor Merryman in Two Ways of Thinking about Cultural Property.13 While both schools further the principal aim of cultural property law—"the preservation of cultural property in its original form because of its unique quality as a non-renewable resource,"—they differ in their understanding of the locus of the ownership interest for each manifestation of cultural heritage.14

Cultural property nationalism accords "a special interest" to the nation-state.15 Cultural property nationalism "is the dominant view, espoused by most market nations perhaps with the exception of the United States and Switzerland,"16 a view that implies "the attribution of national character to objects . . . and legitimizes national export controls and demands for the 'repatriation' of cultural property."17 The concept of shared heritage is central to cultural property nationalism. For example, national heritage areas can be understood as manifestations of cultural property nationalism because they are "large-scale living landscapes where community leaders and residents have come together around a common vision of their shared heritage."18 As Maria Aurora Fe Candelaria has argued:

Supporters of cultural nationalism argue that sovereignty and

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17. Merryman, supra note 7, at 832.

possession remain with the state for the following reasons: (1) because cultural property is an expression of a civilization that existed or is currently existing within a state, its citizens thus have a stronger claim based on identification and national pride; (2) retention of sovereignty provides the context of cultural property; and (3) cultural property usually has utilitarian qualities, including market value, that may be harnessed by the state and its people. 19

Further, "[i]n its truest and best sense, cultural nationalism is based on the relation between cultural property and cultural definition. For a full life and a secure identity, people need exposure to their history . . . Such artifacts are important to cultural definition and expression, to shared identity and community." 20 In sum, cultural property nationalism aligns the significance of an artifact with the people and within the territory in which the artifact resides. 21

Alternatively, cultural property internationalism "is shorthand for the proposition that everyone has an interest in the preservation and enjoyment of cultural property, wherever it is situated, from whatever cultural or geographic source it derives." 22 Cultural property internationalism "views cultural property as belonging to the world’s peoples and not limited to the citizens of the state where the property is located." 23 As Professor Merryman outlined in Cultural Property Internationalism, a good number of recent multilateral treaties issue from a cultural property internationalism stance, including the 2001 UNESCO Convention on Protection of the Underwater Cultural Heritage, the UNESCO Convention for the Safeguarding of the Intangible Cultural Heritage, and the UNESCO Declaration Concerning the Intentional Destruction of Cultural Heritage. 24 Cultural property internationalism emphasizes the "preservation, integrity, and distribution" of cultural property for the enjoyment and enhancement of the world’s populace as

19. Maria Aurora Fe Candelaria, Note, The Angkor Sites of Cambodia: The Conflicting Values of Sustainable Tourism and State Sovereignty, 31 BROOK. J. INT’L L. 253, 267-68 (2005) ("Because cultural property is a part of a national cultural heritage, sovereignty over these properties should remain with the state.").
22. Merryman, supra note 1, at 11.
23. Candelaria, supra note 19, at 269 (arguing that the "concept of world heritage as described by the [World Heritage Convention] echoes this sentiment: 'Parts of the cultural or natural heritage are of outstanding interest and therefore need to be preserved as part of the world heritage of mankind as a whole.'"); See also M. Catherine Vernon, Note, Common Cultural Property: The Search for Rights of Protective Intervention, 26 CASE W. RES. J. INT’L L. 435, 476 (1994) (arguing without historical justification that "[s]ince the world has long recognized that cultural property comprising mankind’s common cultural heritage should not be the province of any one state, rights of protective intervention should not be so difficult to justify."). See also Sarah Eagen, Comment, Preserving Cultural Property: Our Public Duty: A Look at How and Why We Must Create International Laws that Support International Action, 13 PACE INT’L L. REV. 407, 429-32 (2001).
whole, seeking to provide for “all mankind” a “reasonable opportunity for access to its own and other people’s cultural achievements.”

Consequently, in contrast to a cultural property nationalist, a cultural property internationalist would argue for intervention for the protection of cultural heritage without regard for the preferences of the artifact’s host nation. Simply put, cultural property internationalism views cultural heritage as the provenance of a global community, rather than the provenance of the territorially limited nation-state.

Kanchana Wangkeo aptly summarized the tension between cultural nationalism and cultural internationalism in her 2003 article Monumental Challenges: The Lawfulness of Destroying Cultural Heritage During Peacetime. She recognized that cultural property internationalism conceives of cultural heritage “as part of the ‘common heritage of mankind’ so that these objects are a common resource, like air or water, and states hosting these resources become custodians of the property for the benefit of all.”

Yet, this conception of cultural property is problematic because “cultural heritage is not common property in the traditional sense.” She notes that, unlike traditional common property, cultural heritage “is not necessarily open to public access and use, and the costs of use are borne by only one party.” Moreover, “[t]he host state necessarily bears the responsibility for protecting cultural treasures because of their location, and this puts preservation in direct conflict with fundamental principles of international law - state sovereignty and the right of nonintervention.”

Much like Merryman, Wangkeo highlights the tensions between cultural property nationalism and internationalism. Their focus on the tension between nationalism and internationalism—scholarship that has sorted cultural property treaties into nationalism and internationalism boxes—seems to call for a synthesis of these two modalities. Now, this Note will provide just such a synthesis by exploring a working bridge between cultural property nationalism and cultural property internationalism—the cultural property cooperative that

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27. Id.
28. Id.
29. Id.
30. Id.
31. But see David N. Chang, Comment, Securing the Future of our Past: Current Efforts to Protect Cultural Property, 28 Hous. J. Int’l L. 829, 830-31 (2006) (“The proposition that the two theories are mutually exclusive, however, is not so clear. Ostensibly, cultural nationalism’s position that cultural property is best appreciated within the context of its place of origin conflicts with cultural internationalism’s position that cultural property belongs to the whole world. However, as a matter of conceptual scope, cultural internationalism merely constitutes a broader perspective that encompasses cultural nationalism. A nation’s cultural property can “belong” to all humankind while still being best appreciated within the context of its place of origin, history, and traditional setting.”).
is the World Heritage List.

III. THE CULTURAL PROPERTY COOPERATIVE: BRIDGING THE NATIONALISM-INTERNATIONALISM DIVIDE

The Convention Concerning the Protection of the World Cultural and Natural Heritage (hereinafter the "World Heritage Convention")\(^\text{32}\) has been called "the most successful global instrument for the protection of cultural and natural heritage."\(^\text{33}\) The World Heritage Convention was adopted by the UNESCO\(^\text{34}\) General Conference in Paris on November 16, 1972\(^\text{35}\) and entered into force in December 1975.\(^\text{36}\) In order to facilitate international recognition of and assistance for cultural property sites within the sovereign territory of individual nation-states, the World Heritage Convention called for the development of a World Heritage List.\(^\text{37}\) The World Heritage List "often serves as a catalyst to raising awareness for heritage preservation" and can increase tourism to the heritage site, which "can bring important funds to the site and to the local economy."\(^\text{38}\) Each State Party to the World Heritage Convention is invited

\(^{32}\) UNESCO Convention Concerning the Protection of the World Cultural and Natural Heritage, Nov. 16, 1972, 27 U.S.T. 37, T.I.A.S. No. 8226 (hereinafter "World Heritage Convention"), available at http://unesdoc.unesco.org/images/0013/001333/133369e.pdf. For a discussion of the origins of heritage preservation, see J. L. Sax, Heritage Preservation as a Public Duty: The Abbe Gregoire and the Origins of an Idea, 88 MICH. L. REV. 1142, 1146 (1990) (quoting the Abbe Gregoire stating that "those who were willing to see these artefacts destroyed, or sold abroad as if the nation cared nothing for them ... were imperiling the most important symbols of national identity, those things that spoke for what France should aspire to be.").


\(^{34}\) UNESCO -- the United Nations Educational, Scientific, and Cultural Organization—pursues conservation and protection, the recommendation of international conventions, and the encouragement of international exchange in cultural property.


\(^{37}\) World Heritage Convention, art. 11, para. 2. See Candelaria, supra note 19, at 263 (2005) ("Inscription onto the World Heritage List also provides other benefits, such as increased global awareness of the site, as well as a means of obtaining additional aid from developed countries and non-governmental organizations.").

\(^{38}\) United Nations Educational, Scientific, and Cultural Organization, "Benefits of Ratification,"
to nominate natural and cultural property sites with “outstanding universal value” to be inscribed on the World Heritage List. The requirement that nation-states sign the World Heritage Convention before they are eligible to nominate sites within their sovereign territory assures that any nation-state who receives the benefits of listing has pledged to protect their natural and cultural property. As stated by UNESCO, “the overarching benefit of ratifying the World Heritage Convention is that of belonging to an international community of appreciation and concern for universally significant properties that embody a world of outstanding examples of cultural diversity and natural wealth.”

Thus, each nation-state participant in the listing process has voluntarily entered into a community of shared values and commitments. Participation in this community affords nation-states the opportunity to highlight their cultural treasures before the world community. Furthermore, participation in the World Heritage community opens the door to financial and technical assistance, an aspect of the World Heritage Convention which this Note will explore in its discussion of internationalism.

As of October 2006, 184 States Parties had ratified the World Heritage Convention. Of those, 141 States Parties have sites inscribed on the World Heritage List. Currently, there are 851 properties on the World Heritage List, 660 of which are cultural heritage sites, 166 of which are natural heritage sites, and 25 of which are mixed properties. The
World Heritage List includes "sacred places, ranging from Stonehenge to Borobudur, from Jerusalem to the shrines of Nara and the Kasubi Tombs in Uganda." Other sites are recognized for their architecture, including the City of Graz in Austria and the Ancient City of Nessebar in Bulgaria. Sites are selected for inclusion on the World Heritage List in accordance with the selection criteria set out in the Operational Guidelines for the Implementation of the World Heritage Convention. Sites may be considered to have "outstanding universal value" if they meet one or more of ten criteria. For example, a site may "represent a masterpiece of human creative genius" or "bear a unique or at least exceptional testimony to a tradition or to a civilization . . . ." In addition, the site must accord with

protecting unique wildlife habitats and representative examples of important ecosystems. The World Heritage Convention has, among other achievements, protected: habitats for sea birds in the South Atlantic, threatened primates in the Congo, elephants and tigers in Thailand, and endangered Indian rhinoceroses and tigers in India. The World Heritage Convention has also received recognition for being one of the few agreements that has helped maintain 'ecological balance and biological diversity.'


45. UNESCO, "World Heritage List," http://whc.unesco.org/en/list (last visited Nov. 16, 2007). As evidenced by the Convention's title, the World Heritage Convention is not exclusively engaged with the protection of cultural property, but rather seeks to protect natural heritage as well. Thus, in pursuing a case study of the World Heritage Convention to illuminate cultural property coordination, this Note will in part reference natural heritage sites, alongside cultural heritage sites. However, the inclusion of natural heritage sites within the concept of cultural heritage writ large, particularly given the increased recognition of mixed cultural and natural sites and the overwhelming percentage of cultural heritage sites on the List, should in no way detract from the light that the process of site selection sheds on the coordination of cultural property nationalism and cultural property internationalism inherent in the World Heritage Convention. For further discussion of the linking of cultural and natural heritage, see Mechtild Rößler, World Heritage- Linking Cultural and Biological Diversity, in ART AND CULTURAL HERITAGE: LAW, POLICY AND PRACTICE 201, 202 (Barbara T. Hoffman ed., 2006) (discussing cultural property landscapes: "In 1992, the World Heritage Committee "adopted three categories of cultural landscapes as qualifying for World Heritage status: (1) clearly defined landscapes designed and created intentionally by man; (2) organically evolved landscapes, which can be either relict landscapes or continuing landscapes; and (3) associative cultural landscapes. [Cultural landscapes are often] associative cultural landscapes, or sacred sites, which may be physical entities or mental images embedded in a people's spirituality, cultural tradition, and practice.")

46. Rößler, supra note 45, at 202.


49. UNESCO, "The Criteria for Selection," http://whc.unesco.org/en/criteria/ (last visited Oct. 19, 2007). Note that these criteria were originally presented as two separate sets of criteria—six criteria for cultural property sites and four criteria for natural heritage sites. These separate sets of criteria were merged at the 6th extraordinary session of the World Heritage Committee. See UNESCO, "Decisions Adopted by the World Heritage Committee at its 6th Extraordinary Session (May 7, 2003), Decision 6, EXT.COM 5.1, WHC-03/6 EXT.COM/8, available at http://whc.unesco.org/archive/nextcom.htm

the conditions of integrity and/or authenticity set out in the Operational Guidelines and “have an adequate protection and management system to ensure its safeguarding.”

The World Heritage List is an expression of the World Heritage Convention’s proclamation that “parts of the cultural or natural heritage are of outstanding interest and therefore need to be preserved as part of the world heritage of mankind as a whole...” The World Heritage Convention thereby reflects the ethos of cultural property internationalism. Indeed, UNESCO has stated: “What makes the concept of World Heritage exceptional is its universal application. World Heritage sites belong to all the peoples of the world, irrespective of the territory on which they are located.” Yet, through the World Heritage List, the World Heritage Convention honors heritage sites selected and protected by individual

outlined in the Operational Guidelines are as follows:

(i) represent a masterpiece of humancreative 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; (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 ongoing geological processes in the development of landforms, or significant geomorphic or physiographic features; (ix) be outstanding examples representing significant ongoing 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. Id. at ¶ 77.

51. See Operational Guidelines, ¶ 88 (“Integrity is a measure of the wholeness and intactness of the natural and/or cultural heritage and its attributes.”).

52. See id. at ¶ 80 (“The ability to understand the value attributed to the heritage depends on the degree to which information sources about this value may be understood as credible or truthful. Knowledge and understanding of these sources of information, in relation to original and subsequent characteristics of the cultural heritage, and their meaning, are the requisite bases for assessing all aspects of authenticity.”).

53. Protection of a site includes the definitive definition of the site. See id. at ¶ 99 (“The delineation of boundaries is an essential requirement in the establishment of effective protection of nominated properties. Boundaries should be drawn to ensure the full expression of the outstanding universal value and the integrity and/or authenticity of the property.”).

54. Management systems may be diverse, reflecting the culture and natural context of the site. See id. at ¶ 110 (“An effective management system depends on the type, characteristics and needs of the nominated property and its cultural and natural context. Management systems may vary according to different cultural perspectives, the resources available and other factors. They may incorporate traditional practices, existing urban or regional planning instruments, and other planning control mechanisms, both formal and informal.”).

55. Id. at ¶ 78.

56. World Heritage Convention (emphasis added).

nation-states. Each site reflects a cultural or natural phenomenon that the nominating nation-state values as precious to itself and its people. Moreover, each site is quite literally owned by and managed within a particular nation—a state of affairs which equally reflects cultural property nationalism.

In order to express the relationship between cultural property nationalism and cultural property internationalism that animates the World Heritage List's cultural property coordination, this Note will explore the World Heritage List listing process. The listing process is composed of four distinct steps: tentative listing, nomination, evaluation by advisory international governmental organizations, and selection by the intergovernmental World Heritage Committee. Individual nation-states direct tentative listing and nomination, and the international community responds, to and potentially elevates, sites nominated by nation-states through evaluation and selection. Since selected sites are inscribed on an internationally recognized List, and their final inscription is an act of an international body, undue and confusing emphasis has been placed on the


59. For additional information on the International Council on Monuments and Sites (ICOMOS), see http://www.international.icomos.org/home.htm. For additional information on the International Centre for the Study of the Preservation and Restoration of Cultural Property (ICCROM), see http://www.iccrom.org/. See also ERNEST ALLAN CONNALLY, World Heritage Convention, 10 CRM Bulletin 16, at 17 (1987), available at http://cmm.cr.nps.gov/archive/10-si/10-siiall.pdf ("Both ICOMOS and IUCN are international non-governmental organizations that have been accorded the status (Category A) of "consultation and associate relations" with UNESCO. ICOMOS is seated in Paris; IUCN at Gland, near Geneva, Switzerland.").

international aspects of the listing process. This Note will first explore the
national roots of every listing. When this Note then explores the
complementary international recognition process afforded to World
Heritage nominations, it will demonstrate that the World Heritage listing
process is an example of cultural property cooperation, wherein a range of
actors coordinate for the protection of cultural property, toward ends not
only national and international, but local, regional, and non-state.

A. National Selection: Tentative Lists and Nomination

Cultural property nationalism teaches that cultural property falls within
the governmental provenance of the territorial nation-state. Similarly,
Article IV of the World Heritage Convention emphasizes that the
protection of cultural property is a responsibility first and foremost of
individual nation-states. Article IV provides that “[e]ach State Party to
this Convention recognizes that the duty of ensuring the identification,
protection, conservation, presentation and transmission to future
generations of the cultural and natural heritage... situated on its
territory, belongs primarily to that State.” Article IV goes on to
recognize that each state “will do all it can to this end, to the utmost of its
own resources and, where appropriate, with any international assistance
and co-operation, in particular, financial, artistic, scientific and technical,
which it may be able to obtain.” Even though, as this Note will
subsequently address, States Parties are at times provided financial and
technical support through the World Heritage framework, Article IV
makes clear that primary responsibility for locating international
assistance rests on the State. Although UNESCO may boldly declare that
“World Heritage sites belong to all the peoples of the world, irrespective
of the territory on which they are located,” such a pronouncement is
decidedly metaphorical, as selected sites continue to belong to and remain
the responsibility of that “territory.”

Under the World Heritage Convention, the management and protection
of each site inscribed on the World Heritage List are the responsibilities of
the nominating nation-state. The Operational Guidelines for the
Implementation of the World Heritage Convention provide:

All properties inscribed on the World Heritage List must have
adequate long-term legislative, regulatory, institutional and/or

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61. For a discussion of the development of and current shortcomings in international and regional
agreements designed to create protected areas, see generally Alexander Gillespie, Obligations, Gaps,
and Priorities within the International Regime for Protected Areas, 19 GEO. INT’L ENVTL. L. REV. 1
62. World Heritage Convention, supra note 32, art. IV.
63. Id. (emphasis added).
64. Id.
traditional protection and management to ensure their safeguarding. This protection should include adequately delineated boundaries. Similarly States Parties should demonstrate adequate protection at the national, regional, municipal, and/or traditional level for the nominated property. They should append appropriate texts to the nomination with a clear explanation of the way this protection operates to protect the property.  

The World Heritage Convention thus conveys that the international community will not remove first responsibility for the protection of cultural property from each individual nation-state. Each nation-state must remain in control of the everyday operation of the site, whereby dividing the responsibility for protecting cultural heritage equitably among the states. Since every state can choose the extent to which it wishes to participate, in that each nation-state chooses to nominate a site, nation-states are left with little room for complaint and no room to shirk their responsibilities. A State Party must so value a site within its territory that it wishes to commit to that site’s protection by allocating resources “at the national, regional, municipal, and/or traditional level for the nominated property.”

Since the management and protection of a site involves the concentric circles of community, when preparing their Tentative Lists and choosing sites for nomination, nation-states are “encouraged to prepare nominations with the participation of a wide variety of stakeholders, including site managers, local and regional governments, local communities, NGOs and other interested parties.” Consider, for example, the application for inclusion on the U.S. Tentative List prepared for the Okefenokee National Wildlife Refuge, which is located in southeast Georgia and northeast Florida. The Okefenokee application emphasizes that the swamp has

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67. Id.
68. Id. at ¶123. See also Natasha Affolder, Mining and the World Heritage Convention: Democratic Legitimacy and Treaty Compliance, 24 PACIFIC ENVTL. L. REV. 35, 53-54 (2007) (“The governmental agencies responsible for World Heritage Site nominations in Canada, the United States, and Australia have all made recent commitments to involving stakeholders in nomination decisions and consulting with local communities and affected peoples. This commitment was made in Parks Service communications in Canada and the United States. In Australia, it is contained in legislation, although this legislation specifies that failure to follow such requirement does not invalidate the nomination. These developments follow 1999 revisions to the Operational Guidelines, expressing that participation of local people, various levels of government, and non-governmental organizations (‘NGOs’) in the nomination process is essential. As there are no stated consequences for a failure to adopt such participatory approaches, states are left to define their own standards of acceptable consultation and participation in site nomination processes.”). For a discussion of the increasing participation of non-state parties in international law and politics, see McDougal & Reisman, supra note 6, at 215 (“The comparatively few states of the nineteenth century have been replaced by some 200 territorial communities and a vast array of non-territorially based actors: governmental organizations, non-governmental organizations, multinational enterprises, political parties, political orders, terrorist groups and gangs, and above all, individuals, increasingly acting trans-nationally.”).
national significance, noting that the Okefenokee has been designated a National Wildlife Refuge and, in part, a National Wilderness Area. The application also notes that the Okefenokee was named a National Natural Landmark in 1976. But in addition to emphasizing the national recognition afforded by the United States to the Okefenokee, the application highlights the range of other stakeholders and interested parties who support the site's inclusion on the Tentative List. Such supporters included members of Congress, nonprofit organizations, governmental agencies in Georgia and Florida, and local county commissioners. Similarly, when India inscribed the city of Chandigarh on its Tentative List, the inscription received wide stakeholder support, including the support of the Le Corbusier Foundation in Paris and the local Chandigarh College of Architecture.

B. Cultural Property Nationalism Case Studies

The ethos of cultural property nationalism—the ownership and control over the listing process of each nation-state—is evidenced by the variety of processes through which nation-states identify sites and compose their Tentative Lists. In the following section, this Note will explore the range of national processes used in the identification of World Heritage sites. While the Tentative List process is structurally similar between some highlighted nations, there are notable differences in each of the list creation processes. Moreover, exploration of how each nation-state selects the sites it wishes to honor and protect indicates the national ownership and control over each nominated site—reflecting the ownership locus at the heart of cultural property nationalism.

1. United States of America

The United States ratified the World Heritage Convention on December 7, 1973. Currently, the U.S. has twenty sites inscribed on the World Heritage List—eight cultural sites and twelve natural sites. In the United

70. U.S. House of Representatives Jack Kingston, U.S. Senator Saxby Chambliss, and U.S. Senator Johnny Isakson supported the Okefenokee application. Id.
72. Georgia Department of Natural Resources, Georgia Forestry Commission, Georgia Department of Economic Development, and Florida Fish and Wildlife Conservation Commission supported the Okefenokee application. Id.
73. Ware, Charlton, and Clinch, Georgia County Commissioners, Okefenokee Chamber of Commerce, and Okefenokee Trail Association supported the Okefenokee application. Id.
76. Id.
States, the Secretary of the Interior provides leadership in the implementation of the World Heritage Convention. The National Park Service works with the United States Committee, International Council on Monuments and Sites (US/ICOMOS) "to develop standards and procedures for nominations of American cultural resources as World Heritage sites." The National Park Service "serves as chief steward of the nation's natural and cultural patrimony," and the Secretary of the Interior "is responsible for identifying and nominating U.S. sites to the list." Specifically, the staff of the National Park Service's Office of International Affairs supports participation of the United States in the World Heritage Convention. The U.S. Department of the Interior works with the Federal Interagency Panel for World Heritage and the George Wright Society, a nonprofit organization, to develop the United States' Tentative List.

The U.S. Tentative List begins with a "call through the Federal

80. Id.
81. The George Wright Society (GWS) is a nonprofit organization "dedicated to the protection, preservation, and management of cultural and natural parks and reserves through research and education." GWS "pursues its objectives by . . . [p]romoting public policy that supports the scientific and heritage values of parks. For example, we have actively supported the U.S. National Park Service's Natural Resource Challenge and scientific program, The World Heritage Convention, and UNESCO's Man and the Biosphere (biosphere reserve) Program, among many other programs." Who We Are, http://www.georgewright.org/ (last visited Oct. 29, 2007) (emphasis added).
Register for any interested party for the Tentative List." The Office of International Affairs provides an application form and accepts voluntary applications from governmental and private property owners. The applications are then reviewed by expert consultants. The George Wright Society helps facilitate review of the applications by subcontracting expert consultants for the National Park Service. The consultants may recommend applications for inclusion on the U.S. Tentative List, but the Office of International Affairs reserves the right to accept or reject those recommendations. The Office of International Affairs' recommendations are then "presented to the World Heritage List Subcommittee of the U.S. National Commission for UNESCO for comment." The Subcommittee will present a draft list to the Commission for its review, and the Commission will forward a recommended draft list to the Department of the Interior." At this point, the public is once again invited to participate in the nomination process, as the Department of the Interior provides for a public comment process. Finally, "[t]he U.S. Secretary of the Interior will consider comments on the draft List and approve a final Tentative List in time for submission to the World Heritage Centre . . . ." Once the U.S. Secretary of the Interior approves the Tentative List, he submits the U.S. list of potential nominations.

2. Canada

Canada currently has fourteen sites inscribed on the World Heritage List—six cultural and eight natural heritage.91 When the Government of Canada decided to update Canada's Tentative List for submission in the 2004 cycle, it began by “tasking” two Canadian experts in heritage “with defining how an emerging global framework for the identification of potential World Heritage Sites might influence Canadian proposals in the future” and providing “a preliminary assessment of possible Canadian sites against this framework.”92 Then, Parks Canada, as the State Party representative to the World Heritage Convention, sought site proposals from the Canadian public. In Canada, “natural and cultural heritage is the shared responsibility of a multitude of government departments and agencies, each operating from its own legal authority and a particular perspective, be it local, regional, territorial, state, provincial or national.”93 Thus, when Canada decided to update its Tentative List, Parks Canada began a series of “face-to-face consultations,” with “the provinces and territories, key Aboriginal organizations and key national non-governmental organizations in the fields of cultural and natural heritage.”94 Through these consultations, Parks Canada was able to “raise awareness of the World Heritage process and criteria, elicit qualified nominations, ensure the accuracy of information, and obtain feedback regarding interests, capacities and priorities.”95 Prior to 1990, “the inscription process was viewed as the work of experts and it was considered sufficient to have the support of the relevant provincial government.” 96 However, as indicated by Parks Canada’s consultation with a wider stakeholder community, inscription now engages “the public to a much greater extent.” 97 Now, “[i]n all cases, support for the nomination from local communities and appropriate Aboriginal groups is required before a nomination is put forward.98 By engaging stakeholders, Canada is able to ensure that the selected site reflects the cultural heritage concepts of its local communities.

91. Id.
93. See Periodic Report, supra note 12. ("[W]hile Parks Canada and the US [National Parks Service] are the State Party representatives for the World Heritage Convention in their respective countries, in neither country is there a single government agency with overall national responsibility for protecting and presenting natural or cultural heritage. . . . A number of coordinating mechanisms—such as the Canadian Parks Council, which unites the directors of Canada's national, provincial and territorial parks systems, and the National Association of State Park Directors, which unites the directors of the American state park systems currently exist and serve as fora for ongoing exchange and dialogue amongst agencies with authority for heritage protection.").
95. Id.
96. See Periodic Report, supra note 12.
97. Id.
98. Id.
While the U.S. National Park Service received fewer than forty applications for the Tentative List in the 2007 cycle,99 Parks Canada received one hundred and twenty-five proposals in 2004, indicating the commitment by the Canadian people to the protection of cultural and natural heritage. 100 To evaluate the numerous proposals, the Government of Canada turned again to “independent, internationally respected Canadian experts familiar with World Heritage policies and guidelines,” who assessed each site suggested by the Canadian public, as well as other potential sites, against World Heritage List criteria. Then, the Government of Canada relied on an appointed Minister’s Advisory Committee to review the expert reports and the results of all additional consultations with stakeholders to recommend “in its view,” sites with “the best potential to become World Heritage Sites.”101 The Minister’s Advisory committee included a consultant on sustainable development strategies and the environment, a consultant natural resource policy, a Canadian Senator, a Regional Vice Chair IUCN World Commission on Protected Areas, a professor of social and economic history, and a leader in Aboriginal tourism.102 The Minister’s Advisory Committee recommended eleven sites for inscription on Canada’s Tentative List. As Parks Canada proudly proclaims, as a result of their in depth review process, that Tentative List is “well researched and has broad public support.”103 Canada’s updated Tentative List currently includes ten sites, as the Rideau Canal, a cultural heritage site placed on Canada’s 2004 Tentative List, was inscribed onto the World Heritage List in 2007.104

3. South Africa

South Africa did not ratify the World Heritage Convention until 1997.105 However, in the subsequent decade, South Africa has been an

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99. Id. at § 4.0 (“Canada submitted its first Tentative List in 1981, with minor amendments in 1994 and 1998. A fully revised Tentative List for Canada was submitted in 2004.”).
101. See Parks Canada supra note 95.
active participant in the listing process. South Africa has eight sites inscribed on the World Heritage List—four cultural sites, three natural sites, and one mixed heritage site. Although South Africa posted a new Tentative List in 2004, South Africa has already begun updating its Tentative List. The South African World Heritage Committee (SAWHC) entertains suggestions from provincial governments to include sites within their province on South Africa’s Tentative List. Individual provinces seek stakeholder support for their nominations. For example, when SAWHC agreed to consider the Makholnjwa mountains of the Mpumalanga province, which are believed to be the oldest mountains in the world, for inclusion on South Africa’s Tentative List, the province’s cultural spokesman emphasized that “the private sector in tourism, as well as provincial and local government were backing the process.”

According to the SAWHC secretary, November Msizi, the potential list is “updated all the time”: as of May 2007, SAWHC was considering ten properties for its final 2007 Tentative List submission. Once the Tentative List has been submitted, the South African Department of Environmental Affairs and Tourism steps in to handle the Nomination process, preparing and submitting each nomination file.

When South Africa nominates a site to the World Heritage List, the Nomination is an act of specifically national pride and national focus. The cultural property nationalism ethos of South Africa’s listing characterized the comments of the Minister of Arts and Culture, Dr. Z. Pallo Jordan, when South Africa’s Vredefort Dome was inscribed on the World Heritage List: “The awarding of this status is a proud moment for South Africa... This demonstrates that heritage can be a tool for nation-building... Representing the people of South Africa, we will set and

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http://www.environment.gov.za/ProjProg/WorldHerCon/WorldHerCon_contents.htm. See Republic of South Africa Department of Foreign Affairs, “World Heritage Committee” (Feb. 16, 2004),
President Phumzile Mlambo-Ngcuka, Address by the Deputy President Phumzile Mlambo-Ngcuka, at
the opening of the Cradle of Humankind Interpretation Centre, Steenkloof Caves, (Sept. 29, 2005)
(“[l]t] gives me great pleasure to be part of this event when we launch the Cradle of Humankind
Steenkloof Caves, it shows that South Africa is in the right direction when it comes to the
preservation and protection of our heritage sites.”), available at
2007).
108. Id.
109. Zinkie Sithole Barberton, South Africa: Mpuma Mountains May Be a Future World Heritage
110. Id.
111. Id.
112. See South African Department of Environmental Affairs and Tourism, “World Heritage
Convention Programme,”
maintain high standards for our heritage sites. The role of Heritage is to contribute to the eradication of poverty. We are, indeed, very pleased."113 Dr. Jordan’s comments clearly indicate that he conceptualizes South Africa’s Tentative List as a reflection of specifically South African cultural heritage and a tool for improving South Africa’s future.

4. India

India ratified the World Heritage Convention on November 14, 1977.114 India has subsequently inscribed twenty-two cultural sites and five natural sites onto the World Heritage List.115 India’s most recently inscribed the Red Fort Complex in 2007, after updating its Tentative List in 2006.116 In India, the Wildlife Institution, which is an autonomous institution of the Ministry of Environment and Forests, oversees institutions and NGOs in the fields of forest and wildlife conservation, as they prepare proposals for each Tentative List site. Over 1,400 NGOs are involved with World Heritage conservation efforts in India.117 The NGOs hold “stakeholder workshops” and ‘liaise’ with the office of the Chief Wildlife Warden for each state in which there is a potential site.118 India’s Tentative List is prepared “through a participative process with active partnership between government, scientific institution[s] . . . and civil society organizations. . .”119 For example, when preparing its 2002 revised Tentative List, the Wildlife Institution partnered with the Ashoka Trust for Research in Ecology and Environment in Bangalore120 and the Nature Conservation Foundation in Mysore.121 India’s tentative listing process emphasizes coordination between national conservation organizations and regional governments. The Archaeological Survey of India and the Department of Culture consult to determine which sites will be included on India’s

116. Id.
Tentative List. When preparing a Nomination, the Government of India once again involves a range of governmental organizations and NGOs. For example, when Champaner-Pavagadh in Gujarat was nominated in 2003, the Indian Space Research Organization prepared remote sensing imagery of the buildings and the University of Illinois provided landscape architecture expertise. Once a site is inscribed on the World Heritage List, the Archaeological Survey of India oversees the maintenance of each World Heritage site with a "large work force of trained archaeologists, conservators, epigraphists, architects and scientists for conducting archaeological research projects." When the Red Fort Complex was inscribed in 2007, The Hindu reported that the inscription was "especially satisfying" for the Archaeological Survey of India, and in a cultural property nationalistic move, that the inscription was "a moment of pride for the country." Thus, much like the South African media, Indian reporting on an Indian listing reflects the ethos of cultural property nationalism.

5. New Zealand

New Zealand ratified the World Heritage Convention on Nov. 22, 1984 and has two natural and one mixed site inscribed on the World Heritage List. When New Zealand began the process of revising its Tentative List in 2004, the New Zealand Department of Conservation invited the public to comment on the illustrative list of sites presented in "Our World Heritage. Discussion Document: Towards a New Zealand Tentative List." The public was invited to suggest additional sites which might qualify for inscription. After the Department of Conservation received

three hundred and four public submissions, which together argued for the inscription of twenty-eight sites, it organized two Advisory Groups (one for cultural sites and one for natural sites) to evaluate the sites and "recommend the best cultural and natural heritage candidates, especially those identified through the public response to the discussion document..." The cultural heritage Advisory Group included two professors of history, a scholar of indigenous Maori culture, as well as specialists in conservation architecture, cultural heritage and tourism policy, and archaeology. Mr. John Acland, the Deputy Chair of the New Zealand Historic Places Trust, chaired the Advisory Group. These distinguished New Zealand scholars and NGO members "appraised [each sites'] integrity, legal protection, conservation management, and whether listing posed risks or added value to the site." The Advisory Groups consulted with The Ministry for Culture and Heritage, New Zealand Historic Places Trust, Te Puni Kōkiri, New Zealand National Commission for UNESCO, and International Council on Monuments and Sites (ICOMOS) New Zealand when selecting sites for inscription. New Zealand’s Department of Conservation emphasizes that sites inscribed on the World Heritage List remain wholly within New Zealand’s ownership and subject to New Zealand’s legal system: "World heritage listing does not affect ownership rights and world heritage properties do not become public property, nor pass to any international body. Ownership remains as it was prior to the listing, and New Zealand laws still apply." Such comments by the Department of Conservation forthrightly express a cultural property nationalist view and specifically disclaim international ownership over New Zealand’s World Heritage properties.

133. Id. For more information on the New Zealand Historic Places Trust, which is a charitable trust that was established by an Act of Parliament in 1954, see New Zealand Historic Places Trust, http://www.historic.org.nz/ (last visited Apr. 8, 2008).
134. See supra note 132, at 5.
6. Nigeria

Nigeria ratified the World Heritage Convention on Oct. 23, 1974 and has since inscribed two cultural heritage properties onto the World Heritage List. Nigeria most recently updated its Tentative List in 2007, proposing six potential World Heritage sites. Nigeria presents an interesting example wherein a nation-state coordinates with international and intergovernmental organizations when preparing its nomination files, seemingly integrating an internationalist perspective into its tentative listing. The Nigerian National Commission for Museums and Monuments (NCMM) implements the World Heritage Convention in Nigeria. NCMM prepares both Nigeria's Tentative List and nomination files. In order to complete nomination files for two of its Tentative List sites, NCMM has begun working with Africa 2009, which is "a joint effort of Africa cultural heritage organizations, ICCROM, the UNESCO World Heritage Centre, and CRATerre-EAG." Africa 2009 helped Nigeria prepare its nomination file for Osun-Osogbo Shrine, which was inscribed onto the World Heritage List in 2005. Together, these organizations prepared the nomination dossier and management plan. Approximately one hundred stakeholders were involved with the preparation of the management plan, including the state government, "traditional rulers, priestesses and priests, [and] artists." The coordination of local artists and priests with international bodies demonstrates the sometime fluidity of the cultural property nationalism-international bridge. However, since the ultimate responsibility for the Tentative List and each selected nomination remains with the NCMM, the Nigerian nation-state continues to exert cultural property nationalism into the World Heritage listing process.

7. Botswana


138. Id.
142. Id. See supra note 145.
143. See supra note 109.
144. Id.
Botswana most recently updated its Tentative List in 1999. Currently, Botswana has four sites inscribed on its official Tentative List, and one site, Tsodilo, inscribed on the World Heritage List.

Like Nigeria, Botswana’s listing process evidences coordination between the nation-state and the international community. In Botswana, the Department of National Museum, Monuments and Art Gallery, which is a subdivision of Botswana’s Ministry of Labour and Home Affairs, serves as the implementing institution for the World Heritage Convention. The Department of National Museum, Monuments and Art Gallery’s primary responsibility is to “Preserve and Promote Botswana’s Cultural and Natural Heritage for appreciation and sustainable utilization thereof by collecting, researching, conserving, exhibiting, and educating the public.” The Department consults with nongovernmental organizations when developing Botswana’s Nomination dossiers. For example, when Botswana wished to nominate the Tsodilo Hills in 2000, the Department appointed consultants from the University of Botswana and the World Heritage Centre to edit the application. Additionally, the Kalahari Conservation Society was “contracted by the museum to raise funds for the preparation and the launching of the dossier . . . .” The Kalahari Conservation Society is a Botswanian nongovernmental organization formed to respond to pressures on Botswana’s wildlife and general environment. Thus, while Botswana consulted with the intergovernmental World Heritage Centre when preparing its nomination application, the Department of National Museum, Monuments and Art Gallery primarily relied on the intellectual resources of Botswana, whereby indicating the national commitment to each site on Botswana’s Tentative List.

146. Id.
147. Id.
148. See Botswana Dep’t of National Museum, Monuments and Art Gallery, Forward, http://www.botswana-museum.gov.bw/fore.html (last visited Nov. 11, 2007). See also REPUBLIC OF BOTSWANA DAILY NEWS, Tsodilo hills declared world heritage site, Dec. 21, 2001 available at http://www.gov.bw/cgi-bin/news.cgi?d=20011221&i=Tsodilo_hills_declared_world_heritage_site (quoting the Director of the National Museum saying that “effort has gone in to identifying suitable sites for inclusion in the World Heritage list as well as preparing proposals to be presented to the World Heritage committee.”); Botswana Tourism, “The National Museum and Art Gallery,” http://www.botswana-tourism.gov.bw/attractions/thenational.html (“As the custodian of crucial cultural and natural heritage the Botswana National Museum has to be instrumental in pushing cultural and natural issues to the fore and through such efforts Botswana ratified the 1972 UNESCO Convention on the protection of the world’s cultural and natural heritage. This saw Botswana drawing up a tentative list of possible World Heritage Sites and nominating Tsodilo for enlisting as a possible first World Heritage Site for Botswana”).
151. Id.
These case studies indicate that the tentative listing and nomination process often involves soliciting applications from the public at large, such that a nation-state's Tentative List ultimately reflects the pride of local peoples. Often, a nation-state will employ national experts to evaluate properties. States Parties vary as to whether they hire independent heritage experts or task the cultural arm of the national government with evaluating sites, but each nation-state studied demonstrated that the evaluation process was completed in large part by citizens of that territory. To the extent that nation-states consulted with international nongovernmental organizations about their Tentative Lists, this internationalization at the nation-state level was balanced by stakeholder consultation. While each potential site was, of course, evaluated for its "outstanding universal value," such value is centered in the sentiments of each individual State Party. As such, the tentative listing and nomination process are imbued with the ethos of cultural property nationalism.

C. International Affirmation: World Heritage List Inscription

The World Heritage List's cultural property nationalism roots reach out to a process of cultural property internationalism. Once a State Party submits its Tentative List and selects a property from the list to nominate for that particular year, the site is evaluated on an international level. If a site is selected for inscription, that site becomes eligible for international assistance, aid that flows from a sense of collective responsibility for world cultural heritage—cultural property internationalism.

1. Recognizing Outstanding Universal Value: Intergovernmental Evaluation

When a State Party submits a Nomination, the site is first evaluated by the Advisory Bodies and then voted upon by the Intergovernmental Committee for the Protection of the Cultural and Natural Heritage of Outstanding Universal Value (hereinafter "World Heritage Committee.") Each nominated property is independently evaluated by either the International Council on Monuments and Sites (ICOMOS) or the World Conservation Union (IUCN). ICOMOS provides the World Heritage Committee with information on cultural sites, and IUCN provides evaluations of natural sites. The International Centre for the Study of the Preservation and Restoration of Cultural Property (ICCROM) serves as a third Advisory Body, to provide the World Heritage Committee "with expert Advisory Body, to provide the World Heritage Committee "with expert advice on conservation of cultural sites, as well as

156. Id.
on training activities."

The Advisory Body evaluation procedures are set out in the Operational Guidelines. The ICOMOS evaluation process includes consultation with two groups of experts, primarily selected from among ICOMOS personnel. The first group of experts evaluates the site’s “outstanding universal value.” The second group of experts perform confidential on site evaluations of the management, conservation, and authenticity of the site, and this group of experts may include experts from “specialist bodies with whom ICOMOS has partnership agreements, such as The International Committee for the Conservation of the Industrial Heritage (TICCIH), the International Federation of Landscape Architects (IFLA), and the International Committee for the Documentation and Conservation of Monuments and Sites of the Modern Movement (DoCoMoMo).” Each group of experts prepares a report, which are presented to the World Heritage Panel of ICOMOS and reformatted as draft evaluations. The draft evaluations are debated over a two to three day meeting of the ICOMOS Executive Committee and then “the evaluations are revised and printed” for presentation to the World Heritage Committee.

The World Heritage Committee is responsible for the final selection of sites included on the World Heritage List. Established in Article VII of the World Heritage Convention, the World Heritage Committee is composed of twenty-one States Parties. The membership of the World Heritage Committee is elected to ensure equitable representation of diverse regions and world cultures. Additionally, the World Heritage Committee includes representatives from the International Centre for the Study of the Preservation and Restoration of Cultural Property (Rome Centre), ICOMOS, and the IUCN, and may include representatives from other intergovernmental or nongovernmental organizations as well.

Through the involvement of intergovernmental organizations at both the

157. Id.
159. Id. at 111.
160. Id.
161. Id.
162. Id. at 112.
164. Id.
165. Id. at ¶ 2.
166. World Heritage Convention, supra note 32, art. VIII, ¶ 3.
167. For a discussion of the rising power of non-state groups in international politics, see generally McDougal & Reisman, supra note 6, at 240 (“[T]he nation-state continues to be important, but it is joined both by a diversity of governmental organizations, of varying geographic reach, primarily dedicated to power, and by a host of non-governmental organizations, primarily dedicated to values other than power, but which seek power effects. This construct builds upon the assumptions that the ‘rising common demands’ of individual human beings, as the organizers and ultimate actors in all associations, will not abate, but rather intensify and stimulate increasing interaction transcending geographic boundaries; that the contemporary partial identifications of peoples will, despite recurrent
Advisory Body stage and as representatives on the World Heritage Committee, the World Heritage listing process ensures that final listings reflect global concerns.

If the World Heritage Committee decides to inscribe a particular site to the World Heritage List, it issues a Statement of Outstanding Universal Value and may make recommendations about the management and protection of the property. For example, in 2007, the World Heritage Committee inscribed Twyelfontein or /Ui-//aes, Namibia onto the World Heritage List. The World Heritage Committee adopted the following Statement of Universal Value: “The rock art forms a coherent, extensive and high quality record of ritual practices relating to hunter-gather communities in this part of southern Africa over at least two millennia and, eloquently reflects the links between ritual and economic practices of hunter-gatherers in terms of the value of reliable water sources in nurturing communities on a seasonal basis.”

2. Funding World Heritage: Cultural Property Internationalist Assistance

Part of the cultural property internationalism narrative of the World Heritage Convention is that the Convention promises to provide support for World Heritage list properties. The World Heritage Convention provides that the international community will join together to assist nation-states in protecting their cultural property, as each nation-states’ cultural property is of a benefit to the world community as a whole. Article VI provides that, while the international community will “fully [respect] the sovereignty of the States on whose territory the cultural and natural heritage . . . is situated,” State Parties to the World Heritage Convention “recognize that such heritage constitutes a world heritage for

waves of parochialism, acceleratingly expand toward recognition of, and respect for, a common humanity; and that the peoples of the globe will achieve an increasingly realistic perception of their indissoluble [sic] interdependences with respect to all values.”)

168. Operational Guidelines at ¶ 155. If the World Heritage Committee decides that a site should not be inscribed, that site can only be resubmitted for inscription under “exceptional circumstances,” which may include “new discoveries, new scientific information about the property, or different criteria not presented in the original nomination.” Nominations may also be referred or deferred for future consideration. Id. at ¶ 158-60.


170. Id.

171. For an example of the international community coming together to support World Heritage properties, see the University of Minnesota’s College of Architecture and Landscape Architecture’s Center for World Heritage Studies, which was established in cooperation with the UNESCO World Heritage Center as an "interdisciplinary center committed to research and education for the protection, conservation and enhancement of cultural World Heritage as a partner to the WHC in its promotion of the 1972 Convention." Center for World Heritage Studies, “About CWHS,” available at http://worldheritage.cdes.umn.edu/index.html (last visited Oct. 30, 2007). The Center provides research assistance in heritage planning and management in Asia, Latin America, and Eastern Europe, with a particular research focus on problems associated with inscribed sites that are on the List of World Heritage in Danger. Id.
whose protection it is the duty of the international community as a whole to co-operate." Thus, through funding efforts, the global community actualizes the internationalism of the World Heritage List.

Sites listed on the World Heritage List may receive financial support from the World Heritage Fund. The World Heritage Fund is a trust fund for the protection of World Heritage sites, as established in Article XV of the World Heritage Convention. The fund may accept donations from a wide variety of funding sources. The World Heritage Committee directs expenditures from the World Heritage Fund to support:

- provision of experts, technicians and skilled labour to ensure that the approved work is correctly carried out;
- training of staff and specialists at all levels in the field of identification, protection, conservation, presentation and rehabilitation of the cultural and natural heritage;
- supply of equipment which the State concerned does not possess or is not in a position to acquire;
- low-interest or interest-free loans which might be repayable on a long-term basis;
- the granting, in exceptional cases and for special reasons, of non-repayable subsidies.

Additionally, funds may be extended to support capacity building in

172. World Heritage Convention, art. VI (emphasis added).
173. See, e.g., Mark R. Goldschmidt, Note, The Role of Transparency and Public Participation in International Environmental Agreements: The North American Agreement on Environmental Cooperation, 29 B.C. ENVTL. AFF. L. REV. 343, 352 (2002) ("Incentives take many forms including special funds that provide a party with benefits, including financial or technical assistance, training programs and materials, access to technology, and bilateral or multilateral assistance from governments, international organizations, or the private sector. These incentives assist a party’s capacity to comply with a treaty. Numerous agreements, such as the World Heritage Convention the Montreal Protocol on Substances that Deplete the Ozone Layer (Montreal Protocol), and the International Tropical Timber Agreement, provide for funds that assist a party’s ability to comply with those treaties."); Benjamin J. Richardson, Environmental Law in Postcolonial Societies: Straddling the Local-Global Institutional Spectrum, 11 COLO. J. INT’L ENVTL. L. & POL’Y 1, 65 (2000) (noting that the World Heritage Convention’s World Heritage Fund was the first financial protocol included in an international treaty to “provide technical and financial resources for national environmental protection initiatives”).
174. See World Heritage Convention, art. XV ("[I]t is incumbent on the international community as a whole to participate in the protection of the cultural and natural heritage of outstanding universal value, by the granting of collective assistance which, although not taking the place of action by the State concerned, will serve as an efficient complement thereto . . . ").
175. See United UNESCO, Financial Regulations for the World Heritage Fund at § 3.1, available at http://whe.unesco.org/en/financialregulations/ ("The resources of the Fund shall consist of: contributions made by the States Parties to the Convention, in accordance with its Article 16; contributions, gifts or bequests which may be made by: other States; 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; public or private bodies or individuals; any interest due on the resources of the Fund; funds raised by collections and receipts from events organized for the benefit of the Fund; and any other resources acceptable to the World Heritage Committee.").
regions that are underrepresented on the World Heritage List, with particular emphasis on the developing countries.177

In 2000, the World Heritage Fund had a $3,230,000 budget for international assistance.178 A substantial portion of the funds were allocated to technical cooperation and training, with additional sums allocated to the Emergency Reserve Fund, preparatory assistance, and promotional activities. The funds provided for technical cooperation supported a wide variety of projects at natural heritage, cultural heritage, and mixed natural and cultural heritage sites. For example, Côte d’Ivoire received technical cooperation support to fund the participative management of sustainability development initiatives in Comoe National Park; Egypt received funds for a rehabilitation program for Islamic Cairo; Lithuania received funds for the Vilnius Old Town Revitalization Programme; and Costa Rica received funds to protect the biodiversity of the Cocos Island World Heritage site.179 Similarly, the funds provided for emergency assistance supported threatened heritage sites around the world. For example, Niger received funds to implement an urgent rehabilitation programme for the Air and Tenere Natural Reserve of Niger; Viet Nam received emergency assistance for Hoi An and Hue to counteract the flood damage those site sustained in November 1999; and, Mexico received emergency assistance to fund repairs to the Monastery of Tochimilco, Puebla, which was damaged by an earthquake in south central Mexico.180

On May 5, 2006,181 subsequent to discussions between South Africa, Benin, Nigeria, Egypt, and Zimbabwe,182 an additional fund was launched to support world heritage conservation in Africa: the African World Heritage Fund.183 This is “a Fund led by Africans. It is Africa taking the lead, resolving her own challenges. The solutions will come from Africa and we will join with international partners.”184 Funds will be used to

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180. Id.
184. UNESCO, The African World Heritage Fund: Donors’ Conference & Launch,
"help the States of sub-Saharan Africa improve the preservation of their cultural and natural heritage..."

Since "Sub-Saharan Africa is severely under-represented on the List," the Fund will award grants "to help African States Parties to the UNESCO World Heritage Convention prepare national inventories of their heritage sites and prepare nomination dossiers for inscription onto the World Heritage List. Help will also be extended to train personnel to carry out these tasks." The Fund was created as a Trust under South African law and is housed in the Development Bank of Southern Africa. The Fund is managed by a Board of Trustees, each member of which is an expert in heritage preservation. South Africa donated US $3.5 million, additional contributions were pledged by Israel and India, and "the private sector is expected to become a key partner in the future." In February of 2007, the African World Heritage Fund received a substantial donation from China, which the South African Minister of Arts and Culture said "will make it possible for Africa's rich, diverse, natural tangible and intangible heritage to be rehabilitated and preserved for future generations." Such regionally targeted funding, designed to increase representivity, reflects cultural property internationalism in that, if cultural property is understood as a global concern, each arena of the globe's culture should be valued, highlighted, and protected.

IV. FUTURE DIRECTIONS: INTRODUCING AN INTERNATIONALIST-NATIONALIST FEEDBACK LOOP

As this Note has explored, currently, each World Heritage list site has cultural nationalist roots and an internationalist pedigree. While the overall rhetoric of the World Heritage Convention espouses an internationalist viewpoint, with each nation-state selected site chosen with a view toward its recognition as integral to the "common heritage of mankind," the cultural nationalist underpinnings of the process simply are not ultimately outweighed by the internationalist recognition. Each nation-state has control over which sites they put forward, and through that control, the government is able to delineate and circumscribe which instances of cultural heritage best support the contemporary national/cultural image. This is not to say that a nation-state would
necessarily have a clear, intentional cultural-creative agenda when promoting a heritage site. However, any nation-state government would have an understandable interest in promoting one particular cultural narrative over another and might pursue site selection with such motivations.

By solely empowering the nation-state to select sites for inscription, the World Heritage listing process does little to protect the cultural heritage of minority populations, socio-ethnic populations not currently in power, or populations who currently reside primarily within another nation-state but who identify their ancestral roots and cultural heritage within a different host nation. The potential tension between a heritage host nation and a neighboring population was aptly demonstrated by the well-known destruction by the Saudi Arabian government of a two hundred year old Ottoman castle valued by the Turkish people as integral to their cultural heritage. The Saudi Arabian government needed a site to develop into additional accommodations for the many pilgrims who travel to Mecca each year, and their analysis devalued a heritage site important to citizens of another country against the economic gain and cultural symbolism of providing for contemporary Islamic pilgrims. While it may be the case that Saudi Arabia would have destroyed the castle even if it were integral to the cultural narrative of the Saudi people, it seems more likely that the government would have selected a different site for development. One can almost certainly conclude that at least their calculus would have been affected.

Could Turkey have effectively prevented destruction of the Ottoman castle? How could Turkey have at least altered the economic calculus? What if we assume a less extreme hypothetical, in which Saudi Arabia has not decided to bulldozer the site, but rather simply cannot be bothered to keep the castle in a state of decent repair, such that it has begun to crumble and disappear? If Turkey was motivated to help protect and honor the site, how could it intervene, given the cooperative spirit of the World Heritage listing process, within the territory of another nation-state?

Similarly, what if an economically empowered diaspora population wished to protect a symbol of their cultural heritage within their ancestral nation-state? If that cultural heritage site lacked symbolic interest for the host nation-state, the diaspora population would be out of luck under the current listing regime. What if a developed country wished to help a country currently underrepresented on the World Heritage List promote its cultural heritage, but was more interested in providing technical assistance for the promotion of a site that resounded within the cultural context of the developed country than the site preferred by the host nation for promotion? Should the underrepresented nation face the stark choice

189. See Wangkeo, supra note 26.
between increasing the probability that it would present an accepted recommendation and promoting the site of their preference without the assistance of valuable experts with knowledge of the inscription process?

Each of these concerns could be addressed by introducing an internationalist-nationalist feedback loop into the World Heritage listing process. The primary positive benefit of rooting the listing process in cultural nationalism is practical: since each nation-state garners national pride from international recognition, in addition to often garnering economically beneficial tourist dollars from a World Heritage listing, the nation-state is a unit equipped and motivated to protect the World Heritage sites that it hosts. When such administrative practicality is paired with the reality of territorial sovereignty concerns, it seems evident that the nation-state will remain the locus of site selection control. However, neither administrative practicality nor territorial sovereignty precludes the introduction of an internationalist-nationalist feedback loop, through which other nation-states or internationally established non-state actors could sponsor heritage sites within a foreign nation-state's territory.

Essentially, this Note argues for the development of a subsidiary system of Tentative Lists and Nominations. If a neighboring state, a state motivated by a diaspora lobby, or an international NGO identified a heritage site within a foreign nation-state that it wished afforded the protection and status of a World Heritage site, that non-host nation-state entity would be encouraged to develop a nomination dossier for the site. The non-host nation-state's nomination would be considered in addition to the nomination dossier(s) put forward by the host nation-state. Since the Operational Guidelines currently limit nation-states to one, or occasionally two, nominations per year, the feedback loop would allow for a substantial percentage increase in potential yearly nominations.

The feedback loop nomination process would need to be designed to prevent any potential hindrance to the host nation-state's nomination. For example, the new Operational Guidelines could provide for a one-to-one or two-to-one ratio of inscribed host nation-state sites to inscribed sponsored sites. Dovetailing the success of sponsored sites with the success of host nation-state sites and limiting the quantity of inscribed sponsored sites would have two primary positive benefits. First, since the inscription-success of the sponsored site would be intimately connected to the inscription-success of the host nation-state's site, the sponsoring entity might be motivated to provide technical assistance to the host nation-state in its nomination preparations. Such assistance should engender positive and direct cooperation between international actors and possibly improve the overall nomination process. Second, as long as the sponsored nominations cannot outnumber or otherwise overwhelm the host nation-state's nomination, having an additional inscribed site would seemingly have only positive benefits for the host nation-state, even if the sponsored
site would never have been a site highlighted by the national government for inscription.

The feedback loop should require host nation-state consent to each sponsored nomination. World Heritage listing should continue to be an upbeat, consensual process. If a sponsoring entity were able to sponsor a site without the permission of the host nation-state, one could easily foresee the listing process disintegrating into a heated battleground for socio-political disputes, with the impetus to collectively focus on the protection of cultural heritage buried in the rubble. Forcibly sponsored nominations would incite the rancor of governments controlling oppressed minority populations—governments disinclined to elevate the minority culture. Similarly, a national government might be uninterested in promoting a pluralist view of their nation’s cultural heritage. A nation-state might even foresee the desire to destroy a particular otherwise non-inscribed heritage site for economic gain and be unyielding. The World Heritage List simply is not the appropriate instrument for forcible intervention.

However, it does not seem likely that such scenarios would be common, and if such a scenario were at issue, the host nation-state would simply refuse to agree to the nomination before the aspiring sponsor invested time and resources into pursuing an inscription. It seems more likely that the host nation-state would stand to gain respect from the international community for promoting pluralism within its territory, see economic gain through tourism, and gain further recognition as a positive actor on the international stage—an actor taking the future heritage of the world to heart.

What then would be required of a sponsoring entity? There are several possible scenarios, which exist along a scale of involvement. One could imagine a sponsorship scenario where the host nation-state still takes responsibility for the management and protection of the sponsored site—with sponsorship being limited to the nomination phase. In such a scenario, the host nation-state gains the possibility of an additional inscription supported directly by the world community and economic gain from increased tourism but incurs the costs of managing the property. In contrast, one could imagine a sponsorship structure where the sponsoring entity would take full responsibility for the management and protection of the sponsored site. Such involvement by the sponsoring entity would be particularly beneficial when a host nation-state chose not to nominate a site for financial reasons or because the nation-state was ill-prepared to bear the administrative burden. Additionally, one could structure sponsorship such that the sponsoring entity and the host nation-state agree to work together to maintain the inscribed site. Since no relationship between a nation-state and a sponsoring entity would be identical to any other, it might well be beneficial and efficient to leave each of these
sponsorship scenarios available as a possibility and simply allow the nation-state and sponsoring entity to negotiate for a preferred sponsorship program.

The introduction of an internationalist-nationalist feedback loop into the listing process would provide further weight to its cultural internationalist aspirations. Presumably, the World Heritage List would be updated such that sponsoring nations or other sponsoring entities would be duly recognized for their involvement in the protection of sites within other sovereign territories. Such recognition would highlight the intercommunity and intercultural nature of cultural heritage, while simultaneously drawing attention to positive international cooperation. Even more importantly, additional and diverse sites would be protected for the enjoyment and education of future generations.

V. CONCLUSION

As UNESCO’s Director-General Koichiro Matsuura underlines: “The identification, preservation and enhancement of sites reflecting our world’s natural and cultural diversity can be assured only if governments, local authorities, business and, especially, local populations work at it together. To this end, we must incite every citizen to become an actor in the conservation and enhancement of humanity’s cultural heritage.” Matsuura’s emphasis on the involvement of local populations and governments in the protection of their local heritage toward the cumulative end of an international protection of cultural heritage for the sake of humanity as a whole encapsulates how the World Heritage List bridges cultural property nationalism and cultural property internationalism. When a nation-state identifies a site with “outstanding universal value,” that value derives from the uniqueness of the site and its specific cultural or natural context within the narrative or landscape of a particular nation. Then, when a site is elevated onto the World Heritage List via intergovernmental recommendation, the site is internationalized—afforded emergency protection and recognition by the global community. The World Heritage List serves as an effective example of the synthesis of cultural property nationalism and cultural property internationalism into a

190. Press Release, UNESCO, UNESCO Celebrates 30th Anniversary of World Heritage Convention in Venice, No. 2002-90 (2002) available at http://www.unesco.org/bpi/eng/unescopress/2002/02-94e.shtml. See also A. Charlotte De Fontaubert, David R. Downes, & Tundi S. Agardy, Biodiversity in the Seas: Implementing the Convention on Biological Diversity in Marine and Costal Habitats, 10 GEO. INT’L ENVT. L. REV. 753, 848 (1998) ("The World Heritage Convention, which has been in force since 1972, has the objective of creating international support for the protection and maintenance of sites demonstrating outstanding cultural and natural heritage of universal value. It provides for identification and protection of such sites under international law and encourages public and official attention to the value and the need to preserve such sites. Each of the 146 Parties to the World Heritage Convention assumes an obligation to identify, protect, conserve and transmit to future generations its unique cultural and natural heritage.")
celebrated process of cultural property coordination. Finally, as this Note has argued, the listing process could be updated and improved by the introduction of an internationalist-nationalist feedback loop that would encourage cross-cultural cooperation for the protection of heritage; buttress the cultural internationalist aspects of cultural property coordination; and ensure the protection of an additional range of heritage properties into the future.