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Jordan Thorne

Indigenous Land Rights and World Heritage Sites

Why Are Some Indigenous Peoples
Treated Better than Others by UNESCO
and the World Heritage Committee?

EMA, European Master's Programme
in Human Rights and Democratisation

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by UNESCO and the World Heritage Committee?**

Foreword

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Biography

Jordan Thorne holds a Master's degree in Human Rights and Democratisation from the Global Campus of Human Rights and a Bachelor's degree in Liberal Arts (History and Italian) from Royal Holloway, University of London. She is committed to Indigenous rights issues, with research interests around land rights, postcolonialism, and heritage policies; she is also a proud feminist and advocate of gender equality. Her work uses an interdisciplinary approach to explore issues holistically and makes a point of communicating in an accessible way. After her Master's degree, Jordan worked as an intern with the Indigenous-focused NGO Incomindios and is now working with the International Organization of Migration (IOM) in the People's Republic of China.

Abstract

This thesis explores the relationship between UNESCO World Heritage Sites and Indigenous land rights, focusing on the varying levels of protection that UNESCO and the World Heritage Committee afford to Indigenous Peoples. Through an analysis of case studies from different regions, this study seeks to identify patterns in the ways UNESCO and the Committee address Indigenous rights, considering procedures of the World Heritage system and their interactions with national interests. Particular attention is paid to the concepts of ‘Outstanding Universal Value’, authenticity, uniqueness, and wilderness, and the continuing role of colonialism in conservation. This thesis highlights the increasing politicisation of decision making within the World Heritage Committee and the changing dynamics between the Committee, UNESCO, and its advisory bodies, looking at how this not only threatens Indigenous rights but also limits the effectiveness of the World Heritage Convention. Ultimately, this thesis argues that Indigenous Peoples receive greater or lesser protection due to compatibility with a ‘productive’ use of land, rather than any inherent merits of their cultures. The study highlights the need for more Indigenous involvement in heritage conservation, and how UNESCO and the World Heritage Committee could use their influence to protect Indigenous land rights more effectively.

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Table of Abbreviations

AMPS	Architecture Media Politics Society
ECOSOC	(UN) Economic and Social Council
EMRIP	Expert Mechanism on the Rights of Indigenous Peoples
FPIC	Free Prior and Informed Consent
FRA	Forest Rights Act
ICCPR	International Covenant on Civil and Political Rights
ICCROM	International Centre for the Study of the Preservation and Restoration of Cultural Property
ICOMOS	International Council on Monuments and Sites
IIPFWH	International Indigenous Peoples' Forum on World Heritage
IGO	International governmental organisation
ILO	International Labour Organization
IPACC	Indigenous Peoples of Africa Co-ordinating Committee

IUCN	International Union for the Conservation of Nature
IWGIA	International Working Group on Indigenous Affairs
KKFC	Kaeng Krachan Forest Complex
LTRs	Lands, territories and resources
NCA	Ngorongoro Conservation Area
NGOs	Non-governmental organisations
OBC	Otterlo Business Company
OUV	Outstanding Universal Value
SRRIP	(UN) Special Rapporteur on the Rights of Indigenous Peoples
UN	United Nations
UNDRIP	United Nations Declaration of the Rights of Indigenous Peoples
UNESCO	United Nations Educational, Scientific and Cultural Organisation
UNGA	United Nations General Assembly
UNPFII	UN Permanent Forum on Indigenous Issues
WHC	World Heritage Centre
WHIPCOE	World Heritage Indigenous Peoples Council of Experts
WWF	World Wide Fund for Nature

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1. Introduction

‘UNESCO cannot turn away from its obligations ... States can, but not UNESCO, and we should not allow it to do so.’¹

Lola García-Alix

Although they make up only 5% of the world’s population, Indigenous Peoples are essential to protecting its biodiversity.² They are increasingly being recognised as ‘the key’ to tackling rapid climate change given their traditional knowledge and land practices, although these conversations have yet to have much of an impact in practice. In fact, Indigenous Peoples have been and continue to be subjected to violent evictions and other human rights violations in the name of conservation, including in and around World Heritage Sites.

United Nations Educational, Scientific and Cultural Organisation (UNESCO) World Heritage Sites are areas deemed of such importance that they are part of humankind’s collective heritage, and their preservation is necessary for not just present, but also future generations.³ Inscription on the World Heritage List in this sense implies a level of collective ownership, yet often Indigenous

¹ Lola García-Alix, senior adviser on global governance at the International Work Group for Indigenous Affairs (IWGIA) (as quoted in Tristan Ahtone, ‘In Sweden, a proposed iron mine threatens a World Heritage Site – and the culture that made it’ (*Grist*, 18 April 2023) <<https://grist.org/indigenous/sweden-sami-unesco-world-heritage-indigenous-rights-iron-mine/>> accessed 2 June 2023).

² B Trewin, D Morgan-Bulled and S Cooper, ‘Climate: National and international frameworks’ (*Australia State of the Environment*, 2021) <<https://soe.dcceew.gov.au/climate/management/national-and-international-frameworks>> accessed 4 February 2023.

³ UNESCO, Convention Concerning the Protection of the World Cultural and Natural Heritage (adopted 16 November 1972, entered into force 17 December 1975) 1037 UNTS 151, art 4.

Peoples' ownership of these same lands is ignored and violated. Upon examination of World Heritage Sites around the world, large discrepancies emerge in the policies carried out regarding Indigenous Peoples; some experience greater protection of their rights as a result of the listing, while others are forced off the land that they own.

Land ownership and governance in general is an understudied topic in international law, with decided uncertainty about who governs land and how. Given that Indigenous rights is also one of the lesser researched areas of human rights, largely due to the limited legal documents on Indigenous Peoples as well as a lack of clarity about who is Indigenous, Indigenous land rights come with a myriad of uncertainty. This uncertainty permeates the World Heritage system, with its uneven protection of Indigenous rights.

Existing literature has tended to focus on how Indigenous Peoples are treated, analysing the particularities of Indigenous Peoples' relationships with specific World Heritage Sites. There is a considerably greater focus on natural rather than cultural sites and how dominant ideas of conservation have led to evictions, against the best interests of not only the Indigenous Peoples but also their lands. The most relevant literature has largely been published by Indigenous organisations, namely Survival International, Forest Peoples Programme, the International Working Group on Indigenous Affairs (IWGIA) and The Oakland Institute. Whilst this is expected, the limited resources outside of these sources demonstrates the emerging nature of the topic. Indeed, the only resource I found along the same lines as this thesis – looking at not only the 'how' but the 'why' – was the 2022 Joint Submission of the IWGIA, International Indigenous Peoples' Forum on World Heritage (IIPFWH) and Indigenous Peoples of Africa Co-ordinating Committee (IPACC) to the United Nations (UN) Special Rapporteur on the Rights of Indigenous Peoples (SRRIP).⁴ This report looks at the varying impact of World Heritage designation on Indigenous Peoples, as well as examining World Heritage processes and protocols, and practical examples.

⁴ IWGIA, IIPFWH and IPACC, 'Submission to the UN Special Rapporteur on the Rights of Indigenous Peoples for his report to the 77th Session of the UN General Assembly: Indigenous Peoples' Rights and UNESCO World Heritage Sites' (*IWGIA*, 19 April 2022) <www.iwgia.org/en/news/4721-unsrrip-77unga-protectedareas.html> accessed 2 February 2023.

There is a significant gap to be filled in the existing research around Indigenous Peoples and World Heritage Sites that this thesis can contribute to. While similar to the joint submission in its use of cases and critiques of protocols, this study will delve deeper into the concepts of the World Heritage system at odds with Indigenous rights, with a particular focus on the concept of Outstanding Universal Value (OUV) that forms the basis of the World Heritage List, and the grounds on which Indigenous cultures are or are not considered as fitting this criteria. There will also be a greater focus on the interplay of the heritage process and national interests. Through a consideration of history, international relations, law, and philosophies, I aim to identify trends and bring these together to find out why Indigenous Peoples are treated differently by UNESCO and the World Heritage Committee (the Committee), which is the decision-making body of the heritage system.

I anticipate that certain Indigenous Peoples may receive greater protection due to alignment with dominant political interests – be that of states or UNESCO – rather than any inherent merit of their cultures. To test this hypothesis, the thesis will first provide the necessary background on Indigenous rights in international law, and how the dominant conservation model undermines these rights. The following three chapters will use case studies to examine the political dynamics of the Committee, the role of tourism and resource interests, and the importance of national policies, to understand the reasons behind differing treatments of Indigenous Peoples.

The basis of my analysis is a critical approach to World Heritage protocols and Committee decisions, demonstrated by the particularities of cases from different regions. In the preparation of this study, I undertook a systematic review of World Heritage Sites with an established presence of, or importance to, Indigenous Peoples. This thesis is limited in scope in that it cannot analyse all of these cases, some of which themselves have little or no literary coverage. I have chosen instead to highlight illustrative cases in pursuit of the ‘why’ rather than the ‘how’. Wherever the literature has allowed, I have used Indigenous sources in order to amplify the voices of Indigenous Peoples fighting for their rights worldwide. The broad topic does limit the depth I am able to achieve in regard to any particular case or aspect of the World

Heritage process; the goal is rather to use specificities to achieve a general conclusion that could be applied in future research and illuminate how UNESCO and the Committee can unify their approach and root it in human rights protection.

This thesis has also been shaped by experiences I had during the writing process. I was fortunate to spend a week around the Laponian Area in Sweden – a case I cite throughout – and see first-hand the involvement of Indigenous Sámi People in the management of the site. I discuss my experience in more depth in Chapter 6 and highlight the main issues that emerged in my conversations with Sámi people. Ideally, a research project on Indigenous Peoples should involve first-hand interactions with the Peoples in question; where this was not possible save for this one case, I have considered sources from an Indigenous perspective or other scholars that quote Indigenous communities as my most valuable resources. As well as my visit to Lapland, I was also able to present a summarised version of this thesis at the AMPS Heritages Conference in Prague, where I received valuable feedback from audience members. A key recommendation involved taking a more socio-economic approach, which influenced the chapter on differences in national policies. Generally, there was a sense of confusion concerning reasons behind the division of World Heritage into cultural and natural – which will be explored in detail in Chapter 4 – and concerns about the judgement of what, or who, is of ‘value’.

The tale of World Heritage and Indigenous Peoples is ultimately one of divisions: between natural and cultural, valuable and unvaluable, Peoples and their lands, and Peoples and their rights. UNESCO has obligations to Indigenous Peoples, yet this thesis will demonstrate why it continually turns away from these.

2. Indigenous rights under international law

2.1 Historical context

In 2007, the passing of the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP) represented international recognition of Indigenous Peoples' rights, both individual and collective.⁵ As the most comprehensive international legal instrument on Indigenous rights, it is the framework against which all actions concerning Indigenous People are assessed. This was not achieved without struggle – it was not just the decades of activism and negotiation preceding the UNDRIP's adoption, but hundreds of years of marginalisation and oppression that Indigenous Peoples faced before they got to this point.

The 1823 *Johnson v McIntosh* Supreme Court ruling in the United States (US) established the doctrine of discovery – that European sovereigns automatically gained ownership rights of the lands they discovered in the New World.⁶ This disregarded the land rights of Indigenous Peoples that were already living there and set the tone for international law into the early twentieth century. 'Disregard' is an appropriate expression for the overarching attitude towards Indigenous Peoples in international law, which was exclusively focused on states, and as ex-SSRIP James Anaya expresses, 'Indian tribes and other indigenous peoples not qualifying as states, could not participate in the shaping of international law, nor could they look to it to affirm the rights that had once been deemed to inhere in them by natural or divine law'.⁷

⁵ UN Declaration on the Rights of Indigenous Peoples (adopted 13 September 2007) A/RES/61/295 (UNDRIP).

⁶ Lindsay Robertson in OU IACH, 'Cherokee Cases (1/3): Johnson v M'Intosh' (*YouTube*, 28 August 2013) <www.youtube.com/watch?v=u9etyRazLvk> accessed 24 March 2023.

⁷ James Anaya, *Indigenous Peoples in International Law* (OUP 1996) 21.

This exclusionary context amounted to a legitimisation of colonialism, leaving Indigenous Peoples to suffer forced evictions, grave human rights abuses and attempted assimilation. The latter was embodied by the trusteeship doctrine, exercised by colonising nations with the aim to ‘civilise’ Indigenous Peoples, which became considered part of international law, especially after the 1919 Covenant of the League of Nations. The shift away from the idea of the ‘civilising mission’ is rooted in a changing narrative about equality and what this means for Indigenous Peoples; whilst in the past, equality was interpreted as assimilation, it is now understood that equality does not just consist of entitlement to the same rights as everyone else, but also additional protections.⁸

Professor of International Indigenous Rights and Sámi Law Mattias Åhrén considers the most important rights for Indigenous Peoples to be collective human rights in general (the same rights everyone is entitled to); self-determination; and rights to lands, territories and resources (LTRs).⁹ The human rights framework has been used effectively by the international Indigenous movement, with the increasing use of international monitoring and complaint procedures proving integral in the path towards adoption of the UNDRIP. The next section will look at protection of the other key rights identified by Åhrén via an examination of the UNDRIP and the International Labour Organization (ILO) Convention 169 (Indigenous and Tribal Peoples Convention).¹⁰

2.2 ILO Convention 169 and UNDRIP

The ILO Convention 169 and the UNDRIP are often referred to together as whilst the UNDRIP is more recent and comprehensive, it is not legally-binding, unlike the 1989 ILO Convention. It is important to consider, however, that, as of June 2023, the ILO Convention has only been ratified by 24 countries, whilst 148

⁸ James Anaya in Foley Institute, ‘The rights of indigenous peoples - James Anaya’ (YouTube, 20 February 2015) <www.youtube.com/watch?v=OK9tCC3A4go> accessed 4 March 2023.

⁹ Mattias Åhrén, ‘The Provisions on Land, Territories and Natural Resources in the UN Declaration on the Rights of Indigenous Peoples: An Introduction’ in Claire Charters and Rodolfo Stavenhagen (eds), *Making the Declaration Work: The United Nations Declaration on the Rights of Indigenous Peoples* (IWGIA 2009) 202.

¹⁰ Indigenous and Tribal Peoples Convention (adopted 27 June 1989, entered into force 5 September 1991) 1650 UNTS 383 (ILO C169).

states approved the UNDRIP. This reflects the limited application of the ILO Convention, whilst implying international preference for aspirational rather than binding documents. Further limitations of international law regarding Indigenous rights will be demonstrated by a consideration of the key differences between the two instruments.

2.2.1 Defining Indigenous

Necessarily, there is no universally accepted definition of Indigenous, owing to the vast differences in Indigenous experiences by Peoples who are nevertheless entitled to the same rights. Both the ILO Convention and the UNDRIP mention self-identification as a key factor in defining who is Indigenous, but where the UNDRIP intentionally omits a definition, the ILO Convention offers one, which incorporates ‘descent from the populations which inhabited the country, or a geographical region to which the country belongs, at the time of conquest or colonisation or the establishment of present state boundaries’ and retention of ‘some or all of their own social, economic, cultural and political institutions’.¹¹ This definition is generally consistent with the common elements of defining Indigenous as identified in 1996 by the Working Group on Indigenous Populations: priority in time; cultural distinctiveness; self-identification and experience of subjugation.¹²

However, the issue here comes from the fact that the legally binding document has a narrower application than the UNDRIP owing to the inclusion of a definition.

2.2.2 Self-determination

The most controversial yet the most important right of Indigenous Peoples under international law is self-determination. It is a right possessed by all people, protected by article 1 of the International Covenant on Civil and Political Rights (ICCPR).¹³ The ICCPR was developed in a colonial context; thus, article 1 was intended to affirm the right of occupied or colonised states to independence. Professor Helen Quane surmises that ‘when many States affirmed the right of peoples everywhere to self-determination, they did not

¹¹ Indigenous and Tribal Peoples Convention (n 10) art 1.

¹² Erica-Irene A Daes, ‘Working paper on the concept of “indigenous people”’ (10 June 1996) UN Doc E/CN.4/Sub.2/AC.4/1996/2.

¹³ International Covenant on Civil and Political Rights (adopted 16 December 1966, entered into force 23 March 1976) 999 UNTS 171 (ICCPR) art 1.

intend to affirm the universality of the right as commonly understood. For them, peoples in independent States had already exercised the right to self-determination'.¹⁴ This view considers only external self-determination, not the internal self-determination – self-government within a sovereign state – that is now detailed as a right of Indigenous Peoples in the UNDRIP. Before the adoption of the UNDRIP, Indigenous Peoples' right to self-determination was unclear, resulting in uneven application; notably, it is not mentioned in the ILO Convention 169, which is a key limitation of this document.

Article 3 of the UNDRIP states that 'Indigenous peoples have the right to self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development',¹⁵ whilst article 4 details that self-determination also includes 'the right to autonomy or self-government'.¹⁶ Whilst article 3 echoes article 1 of the ICCPR, article 4 is the distinguishing element in the conversation around Indigenous rights. Whilst the UNDRIP explicitly excludes the right to external self-determination, it has nevertheless been interpreted as potentially destabilising to sovereign states, which illuminates the basis on which Australia, Canada, New Zealand, and the US initially voted against it. This attitude is criticised by Anaya, who says that the equation of self-determination with independent statehood 'rests on a narrow state-centred vision of humanity and the world'.¹⁷

The centrality of the state in international law since its inception is a key issue faced by Indigenous Peoples as this is often incompatible with their worldview and social structures. Exercising their right to self-determination also 'requires the ability for indigenous peoples to establish and develop their influence

¹⁴ Helen Quane, 'The United Nations and the Evolving Right to Self-Determination' (1998) 47(3) *International and Comparative Law Quarterly* 537, 571 <www.jstor.org/stable/761423> accessed 2 March 2023.

¹⁵ United Nations Declaration on the Rights of Indigenous Peoples (adopted 13 September 2007) UNGA Res 61/295 (UNDRIP) art 3.

¹⁶ *ibid* art 4.

¹⁷ James Anaya, 'The Right of Indigenous Peoples to Self-Determination in the Post-Declaration Era' in Claire Charters and Rodolfo Stavenhagen (eds), *Making the Declaration Work: The United Nations Declaration on the Rights of Indigenous Peoples* (IWGIA 2009) 188.

in decision-making processes affecting them across and beyond states boundaries’,¹⁸ as expressed by Professor Dorothee Cambou, illustrating the irrelevance of states as central in the field of Indigenous rights.

2.2.3 Rights to LTRs

The third of the most important Indigenous rights according to Åhrén is the right upon which most of the discussion of this thesis will focus: the right to lands, territories and natural resources. It is widely acknowledged that Indigenous Peoples often enjoy a special relationship with their lands that is central to their culture and way of life. The UN Economic and Social Council (ECOSOC) recognises that land is linked to Indigenous Peoples’ right to self-determination, as well as the right to take part in cultural life.¹⁹

Article 26 of the UNDRIP establishes Indigenous land rights: ‘Indigenous peoples have the right to the lands, territories and resources which they have traditionally owned, occupied or otherwise used or acquired’.²⁰ This includes the right to ‘own, use, develop and control’ their LTRs, which states must recognise,²¹ as well as ‘the right to maintain and strengthen their distinctive spiritual relationship’ with LTRs, covered in article 25.²² Notably for this thesis, article 10 states that:

Indigenous peoples shall not be forcibly removed from their lands or territories. No relocation shall take place without the free, prior and informed consent of the indigenous peoples concerned and after agreement on just and fair compensation and, where possible, with the option of return.²³

¹⁸ Dorothee Cambou, ‘The UNDRIP and the legal significance of the right of indigenous peoples to self-determination: a human rights approach with a multidimensional perspective’ (2019) 23(1-2) *The International Journal of Human Rights* 34, 48.

¹⁹ ECOSOC, ‘General comment No 26 (2022) on land and economic, social and cultural rights’ (24 January 2023) UN Doc E/C.12/GC/26.

²⁰ UNDRIP art 26.

²¹ *ibid.*

²² *ibid* art 25.

²³ *ibid* art 10.

In contrast, the ILO Convention says:

1. Subject to the following paragraphs of this Article, the peoples concerned shall not be removed from the lands which they occupy. 2. Where the relocation of these peoples is considered necessary as an exceptional measure, such relocation shall take place only with their free and informed consent. Where their consent cannot be obtained, such relocation shall take place only following appropriate procedures established by national laws and regulations, including public inquiries where appropriate, which provide the opportunity for effective representation of the peoples concerned.²⁴

The wording of the UNDRIP is much more assertive in this regard, with the ILO Convention providing a contingency if consent cannot be achieved, whereas the UNDRIP appears to imply a veto right for Indigenous Peoples.

2.2.4 Free Prior and Informed Consent

There is continued disagreement over whether Free Prior and Informed Consent (FPIC) is ‘a right, a principle or a safeguard’;²⁵ in 2018, a UN report based on a study by the Expert Mechanism on the Rights of Indigenous Peoples (EMRIP) expressed it as ‘a human rights norm grounded in the fundamental rights to self-determination and to be free from racial discrimination’.²⁶ Some clarity on the aspects of the definition was offered by the UN Permanent Forum on Indigenous Issues (UNPFII) at the 35th Session of the World Heritage Committee: such consent should be:

²⁴ ILO C169 art 16.

²⁵ ECOSOC, ‘Implementing free, prior and informed consent in the context of Indigenous Peoples: Note by the Secretariat’ (26 January 2023) UN Doc E/C.19/2023/6 para 1.

²⁶ UNGA, ‘Free, prior and informed consent: a human rights-based approach: Study of the Expert Mechanism on the Rights of Indigenous Peoples’ (10 August 2018) UN Doc A/HRC/39/62 para 3.

given freely, without coercion, intimidation or manipulation (free); sought sufficiently at all stages, including from inception to final authorization and implementation of activities (prior); based on an understanding of the full range of issues and implications entailed by the activity, or decision in question (informed); and given by the legitimate representatives of the indigenous peoples concerned.²⁷

The main controversy lies in the question of whether FPIC places obligations on states to obtain consent, giving Indigenous Peoples a veto right, or whether consent must merely be the objective of consultation. Whilst article 10 of the UNDRIP seems to imply the former, there is some room for discrepancy in articles 19 and 32 for instance, which use the phrase ‘shall consult and cooperate in good faith with the indigenous peoples concerned through their own representative institutions in order to obtain their free and informed consent’.²⁸ This wording could be argued as saying that consultation must only have FPIC as the goal; whilst the UNDRIP is open to interpretation in this sense, the ILO Convention specifically says that consultations should be undertaken ‘with the objective of achieving agreement or consent to the proposed measures’.²⁹ The limited clarity about FPIC and the lack of legal protection is a key barrier to Indigenous rights, principally to self-determination.

2.3 Status of Indigenous Peoples in UNESCO and advisory bodies

As a specialised agency of the UN, UNESCO is subject to certain duties concerning engagement with Indigenous Peoples as set out in the UNDRIP. Articles 41 and 42 require UN agencies to contribute to the full realisation and application of the declaration

²⁷ UNPFII, ‘Statement of the UN Permanent Forum on Indigenous Issues at the 35th Session of the World Heritage Committee’ (delivered by Paul Kanyinke Sena) (2011).

²⁸ UNDRIP arts 19 and 32.

²⁹ ILO C169 art 6.

as well as ‘follow up on the effectiveness’ and ensure ‘participation of indigenous peoples on issues affecting them’.³⁰ This is more an aspiration than a reality, particularly concerning the World Heritage programme.

William Logan, a renowned researcher on heritage and human rights, has described the particular difficulty UNESCO faces as an international governmental organisation (IGO) with the General Assembly of States Parties to the World Heritage Convention also functioning as its own IGO. He articulates that ‘[w]hile lying within the “family” of UNESCO structures and working within parameters set by the World Heritage Convention 1972, the General Assembly and its elected subset, the World Heritage Committee, have their own decision-making powers’.³¹ The powers of the World Heritage Committee combined with the fact that IGOs ‘are rarely openly critical of a Member State or State Party’³² leaves UNESCO in a difficult situation when it comes to effectively protecting Indigenous rights. This complex relationship will be discussed further in Chapter 4, but now it remains to establish the position of Indigenous Peoples in the World Heritage system.

2.3.1 Legal documents in the World Heritage system

The foundation of the World Heritage system is the 1972 World Heritage Convention, which establishes the types of natural or cultural sites that can be included on the World Heritage List, and states parties’ duties regarding their protection.³³ The convention does not mention Indigenous Peoples or human rights, instead identifying in the preamble that some parts of heritage are outstanding enough to require preservation ‘as part of the world heritage of mankind as a whole’.³⁴ Whilst this is intended for the benefit of heritage protection, Ana Vrdoljak explains that Indigenous Peoples:

³⁰ UNDRIP arts 41 and 42.

³¹ William Logan, ‘Australia, Indigenous peoples and World Heritage from Kakadu to Cape York: State Party behaviour under the World Heritage Convention’ (2013) 13(2) *Journal of Social Archaeology* 153, 160.

³² *ibid.*

³³ UNESCO, Convention Concerning the Protection of the World Cultural and Natural Heritage (adopted 16 November 1972, entered into force 17 December 1975) 1037 UNTS 151.

³⁴ *ibid.* 1.

categorically reject the interpretation by some states that their cultural heritage (whether on the World Heritage List or not) forms part of the common heritage of mankind (or common domain)—that is, to be enjoyed and exploited by all humanity and, therefore, beyond the control of the relevant Indigenous peoples.³⁵

This exposes how the convention could be used to make decisions on heritage policies without Indigenous involvement or FPIC.

Where the World Heritage Convention excludes Indigenous Peoples, recent revisions to the Operational Guidelines for its implementation have been increasingly inclusive. The guidelines did not include the word ‘Indigenous’ until 2015, despite the 2007 passing of the UNDRIP, but the current version includes provisions covering Indigenous participation and consultation, the extent of which are usefully summarised in Figure 1 below from an article by Carles Jornet Agualeles. Whilst this is a positive development, Indigenous Peoples are referred to as stakeholders throughout rather than rights holders, which reduces the obligations on states.

Table 1. Summary.

THE ROLE OF INDIGENOUS PEOPLES WITHIN THE OPERATIONAL GUIDELINES	
Indigenous Participation	<ul style="list-style-type: none"> ● Partnership approach ● Inclusive, transparent and accountable decision-making to nomination, management and monitoring ● Effective, inclusive and equitable
Indigenous Consultation	<ul style="list-style-type: none"> ● Free, prior and informed consent ● Consult and cooperate through Indigenous representative institutions
Management Systems	<ul style="list-style-type: none"> ● Considering specific type characteristics and needs of sites ● According to different cultural perspectives, the resources available and other factors ● Incorporating traditional practices ● Equitable governance arrangements, collaborative management systems
Capacity Building and Research	<ul style="list-style-type: none"> ● Innovation and local entrepreneurship ● Promotion of sustainable and inclusive economic benefits for local communities and Indigenous
Other Topics	<ul style="list-style-type: none"> ● Integrity: Human activity (including Indigenous interaction) towards environment may be consistent with the Outstanding Universal Value ● World Heritage Fund and International Assistance: Indigenous groups with cultural ties to World Heritage Sites is a key indicator for the assignment of fundings

*Figure 1: The role of Indigenous Peoples within the Operational Guidelines for the implementation of the World Heritage Convention*³⁶

³⁵ Ana Filipa Vrdoljak, ‘Indigenous Peoples, World Heritage, and Human Rights’ (2018) 25(3) *International Journal of Cultural Property* 245, 251.
³⁶ Carles Jornet Agualeles, ‘Indigenous-based heritage management of UNESCO World Heritage Sites: Rapa Nui and the Indigenous governance of the Rapa Nui National Park’ (2023) 29(5) *International Journal of Heritage Studies* 413, 417.

Other key UNESCO documents concerning Indigenous Peoples include the 2001 Universal Declaration on Cultural Diversity, which asserts that '[r]espect for the diversity of cultures, tolerance, dialogue and cooperation, in a climate of mutual trust and understanding are among the best guarantees of international peace and security'.³⁷ Additionally, the Convention on the Protection and Promotion of the Diversity of Cultural Expressions (2005) recognises the importance of Indigenous traditional knowledge systems and that Indigenous cultures must be respected as equal to other cultures.³⁸ The 2015 Policy for the Integration of a Sustainable Development Perspective into the Processes of the World Heritage Convention includes a provision for 'the full respect and participation of all stakeholders and rights holders, including indigenous peoples and local communities'.³⁹

In 2018, UNESCO published its Policy on Engaging with Indigenous Peoples, which, recognises the rights of self-determination, participation and FPIC as referenced in the UNDRIP.⁴⁰ Importantly for this thesis, the policy underscores that 'UNESCO does not support the removal of indigenous peoples from their lands and territories in any conservation or sustainable development project or programme in which UNESCO is involved'.⁴¹ Whilst UNESCO affirms this in writing, its actions have, knowingly or unknowingly, contributed to the eviction of Indigenous Peoples across World Heritage Sites.

2.3.2 Indigenous Peoples and World Heritage advisory bodies

The World Heritage Committee has three advisory bodies: the International Union for the Conservation of Nature (IUCN), the International Council on Monuments and Sites (ICOMOS) and the International Centre for the Study of the Preservation and Restoration of Cultural Property (ICCROM), which are involved in

³⁷ UNESCO, Universal Declaration on Cultural Diversity (2 November 2001) preamble.

³⁸ UNESCO, Convention on the Protection and Promotion of the Diversity of Cultural Expressions (adopted 20 October 2005, entered into force 18 March 2007) 2440 UNTS 311.

³⁹ UNESCO-WHC (World Heritage Centre), Policy for the Integration of a Sustainable Development Perspective into the Processes of the World Heritage Convention (2015) WHC-15/20.GA/INF.13 para 9.

⁴⁰ UNESCO, Policy on Engaging with Indigenous Peoples (2018) para 11.

⁴¹ *ibid* para 44b.

evaluating sites nominated for inclusion on the World Heritage List, advisory missions, and state of conservation reporting. Consideration of Indigenous rights by the advisory bodies therefore has a knock-on effect for inscription and conservation activities.

ICCROM makes no mention of Indigenous Peoples or any related terms in its basic texts, despite its declared aim to ‘promote the conservation of all forms of cultural heritage in every region of the world’.⁴² ICOMOS’ Statutes and Rules of Procedure also do not mention Indigenous Peoples, the most applicable element of the statutes being article 13 which requires national committees to ‘take local needs into account’.⁴³ However, in 2007 the Our Common Dignity Rights-Based Approaches Working Group was founded by ICOMOS, which, in 2011, became a cooperative initiative for the three advisory bodies focused on:

building awareness of rights issues in World Heritage and heritage management in general, to promote ‘good practice’ approaches and to develop and promote relevant tools and guidelines, in particular for World Heritage from tentative lists and nominations through conservation and management of the sites.⁴⁴

This is a promising initiative that could lead to increased recognition of Indigenous Peoples’ rights and has to date undertaken several case studies.

Whilst ICCROM and ICOMOS are focused on cultural heritage, IUCN is focused on natural heritage, which may seem like it has less to do with Indigenous Peoples, but when considering land rights and Indigenous habitation of areas designated as national parks or natural World Heritage Sites, this body has in fact been the most engaged with Indigenous Peoples. Where the other two bodies don’t mention Indigenous Peoples specifically in their basic texts, Indigenous Peoples’ organisations were added as

⁴² ICCROM, ‘What is ICCROM’ (*ICCROM*, 2023) <www.iccrom.org/about/what-iccrom> accessed 20 May 2023.

⁴³ ICOMOS, ICOMOS Statutes (adopted 22 June 1965, amended 22 May 1978; 12 November 2014; 12 December 2017; 28 October 2022) art 13(d1).

⁴⁴ ICOMOS, “‘Our Common Dignity’ - Rights-Based Approaches’ (*ICOMOS*, 2023) <www.icomos.org/en/focus/our-common-dignity-initiative-rights-based-approach/57947-our-common-dignity-initiative-rights-based-approach> accessed 20 May 2023.

a membership category in the IUCN Statutes in 2016.⁴⁵ IUCN also hosts the World Conservation Congress every four years which informs the organisation's policy and the way it carries out its advisory functions, so the activities of the Congress are highly relevant to World Heritage processes. The 2021 Congress saw increasing recognition of Indigenous Peoples with motions calling for FPIC and other rights as set out in the UNDRIP, as well as referencing the historic harms caused by fortress conservation.⁴⁶ This exclusionary model of conservation is the topic of Chapter 3.

This section has sought to clarify the rights to which Indigenous Peoples are entitled under international law and the limitations of this protection, as well as the particular policies relating to Indigenous Peoples within the World Heritage system.

⁴⁵ IUCN, IUCN Statutes, including Rules of Procedure of the World Conservation Congress, and Regulations (adopted 5 October 1948, revised 22 October 1996, amended 10 September 2021) para 4.

⁴⁶ Helen Tugendhat, 'Indigenous rights key to conservation: IUCN listens to indigenous peoples as it sets new conservation policy and grapples with historic harms' (*Forest Peoples Programme*, 1 October 2021) <www.forestpeoples.org/en/news/2021/iucn-new-conservation-policy> accessed 2 May 2023.

3. The concept of conservation

The concept of conservation is in and of itself a fundamental barrier to the effective participation and inclusion of Indigenous Peoples in World Heritage Site management. This chapter is mainly applicable to sites inscribed on the World Heritage List under natural criteria, with cultural and mixed sites generally providing more opportunity for Indigenous participation, if they are mentioned in the site listing that is – this will be elaborated on in Chapter 4.

Fortress conservation entails the creation of ‘protected areas’ without human habitation, and has historic roots dating back to the royal hunting reserves of the Assyrians in 700BCE.⁴⁷ The use of protected areas for conservation is considered to have first been promoted by US national policy through the creation of Yellowstone National Park in 1872, where ‘the Native Americans who had lived there for centuries were initially allowed to remain, but five years later they were forced to leave’.⁴⁸ Given the state-centric nature of international law, Marcus Colchester reflects that ‘[w]hen the International Union for Conservation of Nature (IUCN) developed a global system for protected areas, the presumption was that these areas should be owned by the State and run by government agencies’.⁴⁹ This model of conservation, run by governments and erasing Indigenous Peoples, has remained

⁴⁷ Marcus Colchester, ‘Indigenous Peoples and Protected Area: Towards Reconciliation?’ in Stefan Disko and Helen Tugendhat (eds), *World Heritage Sites and Indigenous Rights* (IWGIA, Forest Peoples Programme, Gundjeihmi Aboriginal Corporation 2014) 40.

⁴⁸ Survival International, ‘Parks need peoples: Why evictions of tribal communities from protected areas spell disaster for both people and nature’ (2014) 3.

⁴⁹ Colchester (n 47) 40.

the dominant approach until very recently, with increasing discussion around the potentially beneficial role of human-nature relationships, which goes hand in hand with the development of legal protection for Indigenous Peoples.

The underlying idea that has justified fortress conservation for centuries is that people are the enemies of nature. In many cases, this is true, with exploitative industries destroying nature in pursuit of commercial interests, but as Arzucan Askin points out '[l]ong before the word "conservation" was even coined, tribal peoples were employing highly effective strategies for maintaining the richness of their lands'.⁵⁰ It is therefore necessary to deconstruct what is labelled as conservation and expose the power dynamics and paradoxes within.

3.1 'Wilderness'

The idealisation of 'wilderness' is at the core of fortress conservation, which is not only dangerous as it gives the 'false perception that no humans ever traversed or lived there',⁵¹ but is also inaccurate in relation to the landscapes. Survival International's 2014 report on the mutually beneficial relationship between people and national parks points out that the Yellowstone idea of conservation 'was based on an arrogant misreading of the land, which totally failed to recognize how tribal peoples had shaped and nurtured these "wildernesses"'.⁵² Indeed, many ecosystems we consider as wholly natural have been shaped by Indigenous intervention; in a major 2013 study, Erle Ellis and others review evidence on the history of human land use, citing examples such as the Amazon rainforest where around 10% of trees grow on man-made 'dark earths'.⁵³

⁵⁰ Arzucan Askin, 'Ecotourism and Neocolonialism: The human cost of wildlife conservation' (*LSE Blogs: International Development*, 25 April 2019) <<https://blogs.lse.ac.uk/internationaldevelopment/2019/04/25/we-need-to-stop-turning-a-blind-eye-to-the-human-cost-of-wildlife-conservation/>> accessed 11 March 2023.

⁵¹ Chrissy Grant, 'Australia: Tasmanian Wilderness And Wet Tropics World Heritage Area' in Amund Sinding-Larsen and Peter Bille Larsen (eds), *Case Studies Carried out within the Our Common Dignity Initiative 2011-2016: Rights-Based Approaches in World Heritage* (ICOMOS Norway 2017) 6.

⁵² Survival International (n 48) 3.

⁵³ Fred Pearce, 'True Nature: Revising Ideas On What is Pristine and Wild' (*Yale Environment360*, 13 May 2013) <https://e360.yale.edu/features/true_nature_revising_ideas_on_what_is_pristine_and_wild> accessed 11 March 2023.

Using wilderness terminology is a choice that undermines Indigenous contributions to conservation as well as their rights over their ancestral lands. This conversation has played out in relation to the Tasmanian Wilderness Zone in Australia, as discussed in a case study conducted by the ICOMOS Our Common Dignity initiative. Indigenous Peoples in Australia have voiced their opposition to the use of ‘wilderness’, which was notably acknowledged in 1997 via the Manjimup Statement – a statement signed by Indigenous Peoples and government staff regarding the perceptions associated with wilderness terminology.⁵⁴ With this background, it is natural that the Indigenous Peoples of Tasmania desire to change the name from ‘Tasmanian Wilderness Zone’ as it ‘disconnects the Aboriginal habitation and use of this and similar areas from established history’.⁵⁵ The proposition of changing the name or establishing a dual name for the property is being explored in consultation with the Aboriginal community, who have been involved in reviewing the management plan since 2013.⁵⁶

This example demonstrates a changing narrative around the idea of wilderness, but it is a recent and somewhat isolated incident, not accounting for the harm that Western ideas of land and value have had on Indigenous Peoples.

3.2 The value of land

The differences between Indigenous and Western land practices have made it easier to remove Indigenous Peoples from history and from the lands themselves. Lara Domínguez and Colin Luoma argue that conservation policy is a colonial legacy, with exclusionary conservation justified by the same rationales as colonisation.⁵⁷ Their analysis is convincing as they identify that different land practices, not solely focused on cultivation, ‘served as a pretext to treat such lands as “unoccupied” and thus free for the taking’.⁵⁸ This echoes the artificial construction of wilderness that

⁵⁴ Grant (n 51) 5.

⁵⁵ *ibid* 6.

⁵⁶ *ibid* 5.

⁵⁷ Lara Domínguez and Colin Luoma, ‘Decolonising Conservation Policy: How Colonial Land and Conservation Ideologies Persist and Perpetuate Indigenous Injustices at the Expense of the Environment’ (2020) 9(3) *Land* 65, 70 <<http://dx.doi.org/10.3390/land9030065>> accessed 15 March 2023.

⁵⁸ *ibid* 69.

underlies the persisting ideas of conservation. Domínguez and Luoma also discuss the colonisers' emphasis on production, and that only productive land use was considered worth protecting.⁵⁹ I would argue that this need to be 'productive', which is ingrained in Western capitalist societies, is the fundamental departure point between Western and Indigenous worldviews in this conversation.

Indigenous Peoples have historically enjoyed a mutually beneficial relationship with their ancestral lands, which are often also central to the culture of the Nation. As mentioned, this is recognised in article 25 of the UNDRIP, which states:

Indigenous peoples have the right to maintain and strengthen their distinctive spiritual relationship with their traditionally owned or otherwise occupied and used lands, territories, waters and coastal seas and other resources and to uphold their responsibilities to future generations in this regard.⁶⁰

The 'distinctive spiritual relationship' and 'responsibilities to future generations' documented by the UNDRIP allude not to a 'productive' method of land use but to a sustainable and culturally embedded one.

This is articulated by Indigenous Peoples themselves, for example the Haudenosaunee Nations of North America, who 'believe that we borrow the earth from our children's children and it is our duty to protect it and the culture for future generations'.⁶¹ The question is then, what effect does it have on Indigenous Peoples when the land they have carefully protected for generations is deemed 'free for the taking', even if it is for the seemingly benevolent purpose of conservation?

3.2.1 Ecocolonialism

In her book, *Fresh Banana Leaves: Healing Indigenous Landscapes through Indigenous Science*, Indigenous scholar Jessica Hernandez explores the concept of 'ecocolonialism'. This manifests in three layers:

⁵⁹ Domínguez and Luoma (n 57) 67.

⁶⁰ UNDRIP art 25.

⁶¹ Haudenosaunee Confederacy, 'Historical Life as a Haudenosaunee' (*Haudenosaunee Confederacy*, 2023) <www.haudenosauneeconfederacy.com/historical-life-as-a-haudenosaunee/> accessed 10 February 2023.

1. White people governing over our natural resources and Indigenous lands without consulting Indigenous peoples of those lands or respecting Indigenous sovereignty; 2. The severe altering of our landscapes due to settler colonialism and the ideologies it introduces, including climate change impacts; and 3. The lack of resources offered to Indigenous or communities of color who are already experiencing the impacts of climate change that oftentimes results in displacement.⁶²

Hernandez goes on to explain that the loss caused by ecocolonialism leads to ‘ecological grief’ ‘rooted in the relationships we hold with nature and our environments and how we manage these resources when they are under our stewardship and care’.⁶³ Whilst displacement due to climate change is outside the scope of this thesis, several key elements can be extracted from Hernandez’s articulation of ‘ecocolonialism’ and applied to the case of establishing World Heritage Sites on Indigenous lands. Doing so without consultation or respecting Indigenous sovereignty over land; altering their landscapes; and not offering adequate resources to people who are displaced by the creation of these sites, have damaging consequences on Indigenous Peoples, leading to grief and compromising identity, as well as violating their human rights as protected by international law.

Along the same lines as Domínguez and Luoma, Hernandez argues that conservation is a colonial legacy, but goes more into detail about how she considers conservation to be intended to undo colonial wrongs of taking land and natural resources and degrading these environments by exploiting them for economic gain.⁶⁴ Despite the intention, she concludes that settler colonialism remains embedded in conservation science and that ‘Western conservation focuses on the usefulness of nature to humans’ whilst Indigenous Peoples ‘never associate a value to our environments’.⁶⁵

⁶² Jessica Hernandez, *Fresh Banana Leaves: Healing Indigenous Landscapes through Indigenous Science* (North Atlantic Books 2022) 42.

⁶³ *ibid* 58-59.

⁶⁴ *ibid* 70-72.

⁶⁵ *ibid* 78.

This may appear contradictory – Indigenous Peoples’ relationships with their lands are considered distinctive and central to their identity, yet Hernandez argues that their environments do not have value. However, I believe this is the crux of the argument – lands do not exist for humans to gain, rather they may also benefit from humans, creating a mutual relationship rather than conflating land with value. Here the conceptual difficulty is illuminated: associating a value, namely OUV, is the entire basis of the World Heritage system.

3.3 The search for wilderness in the modern world

One of the criteria for establishing a site as World Heritage Site is ‘to contain superlative natural phenomena or areas of exceptional natural beauty and aesthetic importance’.⁶⁶ Interestingly, Hernandez explicitly identifies beauty as one of the values that Indigenous Peoples do not associate with their environments. This links back to the Western idealisation of ‘wilderness’, which Colchester discusses in relation to the alienation of industrialised human societies from their environment – because of detachment from the earth, Western conservation places value on that which is different or has unique value to them. This is articulated by Colchester as follows:

The ills of urban society have long spawned a longing for escape and, with the growth of industrialism, notions of wilderness preservation became prominent as poets, recreational hunters and nature-lovers left the cities to rejuvenate their souls.⁶⁷

Whilst this sounds romantic, it has been far from it for Indigenous Peoples that did not leave nature behind, so to speak. The three main elements of fortress conservation in practice have been scathingly expressed as:

⁶⁶ UNESCO-WHC, Operational Guidelines for the Implementation of the World Heritage Convention (31 July 2021) WHC.21/01 (Operational Guidelines) para 77vii.

⁶⁷ Colchester (n 47) 40.

local people dependent on the natural resource base are excluded; enforcement is implemented by park rangers patrolling the boundaries, using a ‘fines and fences’ approach to ensure compliance; and only tourism, safari hunting, and scientific research are considered as appropriate uses within protected areas.⁶⁸

This is not a dramatisation of the truth as will be demonstrated by case studies throughout this thesis.

Although not productive in the traditional sense of the word, tourism and safari hunting are productive financially – a key motivation for governments to establish protected areas and inscribe them as World Heritage Sites. Survival International has concluded that, although costly to governments in money and popularity, evictions of Indigenous Peoples ‘are justified in the interests of the lucrative tourist trade and the belief that tourists want to see wilderness and wildlife, not people’.⁶⁹ This belief is also embedded in the World Heritage List as most sites have information about their ‘integrity’ detailing the level of human disturbance.

3.4 State of conservation

A factor to consider that influences UNESCO policy advice is the ‘state of conservation’ – reports are made on threats to existing heritage sites along with UNESCO recommendations for states parties to follow. Given the theoretical background of Western conservation, we can hypothesise that sites experiencing greater threats may be encouraged to evict, or encourage ‘voluntary’ resettlement of, Indigenous Peoples in the view that nature will be better protected by a ‘fortress’.

Interestingly, article 90 of the World Heritage Convention’s Operational Guidelines recognises that:

⁶⁸ Sage, ‘Fortress Conservation’ (*Encyclopedia of Environment and Society*, 2007) 5, 432 <<https://sk.sagepub.com/reference/environment/n432.xml>> accessed 3 May 2023.

⁶⁹ Survival International (n 48) 4.

no area is totally pristine and that all natural areas are in a dynamic state, and to some extent involve contact with people. Biological diversity and cultural diversity can be closely linked and interdependent and human activities, including those of traditional societies, local communities and indigenous peoples, often occur in natural areas. These activities may be consistent with the Outstanding Universal Value of the area where they are ecologically sustainable.⁷⁰

While this demonstrates the artificiality of ‘wilderness’, it also raises questions about the judgement of whether Indigenous Peoples’ activities are ‘ecologically sustainable’ or not. The emphasis on OUV highlights a basis on which cases may be treated differently – indeed, Joseph King, a senior professional at ICCROM, has spoken about the ‘unbundling’ of the work of the World Heritage Committee concerning nominations and state of conservation reporting.⁷¹ This amounts to a focus solely on the OUV rather than a holistic consideration of the site; if Indigenous Peoples are not recognised as part of the OUV, they may be classified as a threat.

The threats identified in state of conservation reporting that place Indigenous inhabitants as dangers include: crop production; fishing/collecting aquatic resources; livestock farming/grazing of domesticated animals; subsistence hunting; subsistence wild plant collection; changes in traditional ways of life and knowledge system; identity, social cohesion, changes in local population and community; Indigenous hunting, gathering and collecting; and ritual/spiritual/religious and associative uses.⁷² Identifying Indigenous Peoples as threatening to the OUV of sites has proven to encourage policies in violation of Indigenous rights. Ultimately, states parties will implement measures in order to gain or retain their place on the World Heritage List, which in essence functions as an international tourist board. The next chapter will

⁷⁰ Operational Guidelines para 90.

⁷¹ Joseph King, personal communication (31 August 2012) as cited in William Logan, ‘Australia, Indigenous peoples and World Heritage from Kakadu to Cape York: State Party behaviour under the World Heritage Convention’ (2013) 13(2) *Journal of Social Archaeology* 153, 162.

⁷² UNESCO-WHC, ‘List of factors affecting the properties’ (*UNESCO-WHC*, 2023) <<https://whc.unesco.org/en/factors/>> accessed 10 February 2023.

look at how the World Heritage Committee has become increasingly politicised in their decision-making, with countries pursuing their own interests to the detriment of effective conservation and human rights.

4. Political dynamics of the World Heritage process

While the World Heritage List is intended to make sure places considered of OUV are ‘protected for future generations to appreciate and enjoy’,⁷³ the World Heritage Committee is becoming increasingly politicised. National interests have individual dimensions but in general, all countries want their nominated properties inscribed and those already inscribed to stay off the List of World Heritage in Danger. This has negatively impacted Indigenous Peoples through inscription without FPIC, such as the recent controversy surrounding Kaeng Krachan Forest Complex (KKFC) in Thailand. This chapter will demonstrate the impacts politicisation can have on Indigenous rights, first by exploring the relationship between UNESCO, the World Heritage Committee, and the advisory bodies.

4.1 Relationship between UNESCO, the World Heritage Committee and advisory bodies

As cited in Chapter 2, Logan discusses how UNESCO’s powers over the World Heritage Committee are limited by the decision-making powers the Committee possesses. In the same article, he also identifies the trend in recent literature to criticise UNESCO and the World Heritage system, whilst in fact UNESCO has no real policing powers regarding the actions of state parties to the World Heritage Convention, which tend to be the real subjects of

⁷³ UNESCO-WHC, ‘What is World Heritage?’ (*UNESCO-WHC*, 2023) <<https://whc.unesco.org/en/faq/19/>> accessed 10 February 2023.

criticism.⁷⁴ Whilst this encompasses the actions of national governments, it is also applicable to members of the World Heritage Committee, which increasingly make decisions against the advice of UNESCO and the advisory bodies.

This trend has been analysed in various studies, one of the most recent being a 2019 World Wide Fund for Nature (WWF) report entitled *Our Natural World at Risk*, which analyses how politicisation is limiting the effectiveness of the World Heritage Convention. The report identifies that 46% of Committee decisions concerning the nomination of natural and mixed sites, between 2014 and the writing of the report, went against advisory bodies' suggestions.⁷⁵ When a site is nominated for inscription on the World Heritage List, these nominations are presented by the advisory bodies, which will accordingly recommend one of four courses of action: inscription, referral, deferral, or not to inscribe. Referral is the softest of the non-inscription options, which means that 'additional information [from the submitting state party] is necessary to determine the Outstanding Universal Value of the nominated property,'⁷⁶ whilst deferral requires 'more in-depth assessment or study, or a substantial revision by the State Party'.⁷⁷ A trend has emerged of the Committee upgrading the recommendations of the advisory bodies, as can be seen in Figure 2 from the WWF report.

⁷⁴ William Logan, 'Australia, Indigenous peoples and World Heritage from Kakadu to Cape York: State Party behaviour under the World Heritage Convention' (2013) 13(2) *Journal of Social Archaeology* 153, 154.

⁷⁵ Wijnand de Wit and others (Dalberg Advisors), *Our Natural World at Risk: How politicization is limiting the effectiveness of the World Heritage Convention* (WWF 2019) 4.

⁷⁶ Operational Guidelines para 159.

⁷⁷ *ibid* para 160.

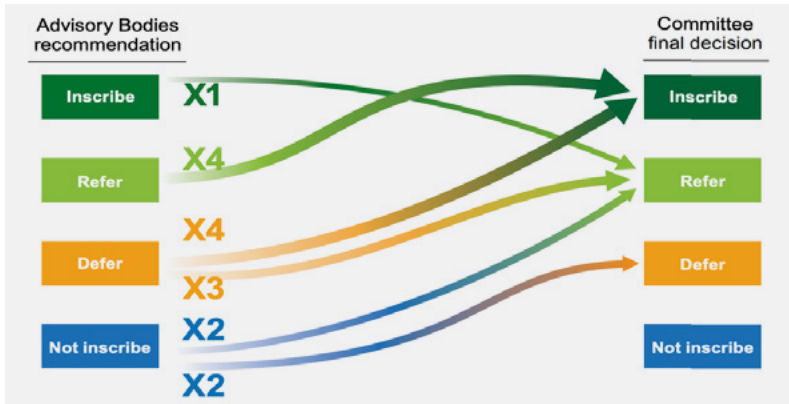


Figure 2: Changes the Committee made to Advisory Bodies' recommendations regarding nomination of sites to the World Heritage List (2014-2018)⁷⁸

The report also identified that upgraded sites were not fulfilling conservation criteria to the same extent as not-upgraded sites: from the same dataset, the report concluded 'while 88 per cent of not upgraded sites met the criterion of proper site management, only 25 per cent of upgraded sites did'.⁷⁹ This demonstrates that the aim to protect sites 'for future generations to appreciate and enjoy' is being undermined by the Committee going against technical evaluations. Politicisation is evident from this brief look at disagreements over inscription decisions, but what political factors exactly are influencing the World Heritage process?

⁷⁸ Dalberg Advisors (n 75) 20.

⁷⁹ *ibid.*

4.2 Political factors influencing World Heritage decisions

The ability to influence decisions of the World Heritage Committee is favourable to countries' national interests, but the extent of this ability rests on a number of factors. Collaboration between anthropologists Claudia Liuzza and Lynn Meskell and economists Enrico Bertacchini and Donatella Saccone has produced useful studies in this area, with conclusions drawn from empirical and data analysis.⁸⁰

The first, and perhaps most obvious, factor is serving on the Committee. The World Heritage Committee is composed of 21 members elected from the states parties to the convention by the General Assembly.⁸¹ Given that the Committee is the decision-making body of the General Assembly, it is predictable that countries represented on the Committee could use this position to pursue their own interests. A 2021 review of the meeting of the Committee by World Heritage Watch noted that seven nominations were introduced by countries sitting on the Committee, although UNESCO has requested them not to submit nominations due to conflict of interest, but in the author's words 'the race for more and more world heritage sites does not seem to know moral considerations'.⁸² Bertacchini and others identified that serving on the Committee increases the probability of improving a final decision (on inscription of sites) by 15%. Another factor rated at 10% significance is the size of the national delegation.⁸³ A larger national delegation amounts to a greater level of informal influence, providing favourable results for the countries in question, whether this be an upgraded nomination decision or sites being kept off the in-danger list. Interestingly, the study also showed

⁸⁰ Lynn Meskell and others, 'Multilateralism and UNESCO World Heritage: decision-making, States Parties and political processes' (2015) 21(5) *International Journal of Heritage Studies* 423; Enrico Bertacchini and others, 'The politicization of UNESCO World Heritage decision making' (2016) 167 *Public Choice* 95; Enrico Bertacchini, Claudia Liuzza and Lynn Meskell, 'Shifting the balance of power in the UNESCO World Heritage Committee: an empirical assessment' (2017) 23(3) *International Journal of Cultural Policy* 331.

⁸¹ Operational Guidelines para 19.

⁸² Stephan Doempke, 'The World Heritage is on a Dangerous Path: A critical review of this year's meeting of UNESCO's World Heritage Committee' (*World Heritage Watch*, 1 August 2021) <<https://world-heritage-watch.org/content/wp-content/uploads/2021/08/The-World-Heritage-is-on-a-Dangerous-Path.pdf>> accessed 1 April 2023.

⁸³ Bertacchini, Liuzza and Meskell (n 80) 111.

that a nominating country's temporary membership on the UN Security Council increased likelihood of an upgraded decision by 16%, implying the permeation of international political influence into the World Heritage process.⁸⁴

Other relevant aspects revolve around the political relationships between countries – Bertacchini and others analysed the instances of verbal intervention from Committee members to identify patterns with some interesting results. They summarise their findings as follows:

close international political and economic ties between countries have a positive impact on expressing supportive statements for an upgrade of the initial advisory bodies' recommendation, while cultural proximity with and being an ex-colony of a nominating country reduce the likelihood of supportive statements by Committee members.⁸⁵

From this, it is evident that statements of support are rooted in international political alliance but that inclusion on the list remains competitive. Cultural proximity as a factor decreasing the likelihood of supportive statements seems at odds with close political ties, but the inclusion of sites that are culturally similar is a threat to states' own sites being inscribed given that a sense of uniqueness is embedded in the concept of OUV.

Addressing the 'coloniser legacy' variable, Bertacchini and others explain that while ex-colonisers are more likely to support inscription or upgrade of nominated sites for ex-colonies, the opposite is true concerning ex-colonies, who are less likely to verbally support ex-colonisers or may even support a downgrade compared to the initial advisory bodies' recommendation.⁸⁶ The authors explain this by noting that 'former colonies often nominate sites of their colonial past that are also historically linked with their former colonizer'.⁸⁷ In this sense, a statement of support for ex-colonies is also a statement of support for their own cultural heritage. However, considering this combined with the authors' observation that less politically integrated countries are more likely to

⁸⁴ Bertacchini, Liuzza and Meszell (n 80) 111.

⁸⁵ *ibid* 125.

⁸⁶ *ibid* 124.

⁸⁷ *ibid* 118.

have sites inscribed,⁸⁸ it could also be argued that there are some efforts being made to create a more inclusive World Heritage List – this hypothesis will be examined in Chapter 5 relating to the category of cultural landscapes.

4.2.1 Dominant countries in World Heritage decision-making

Bertacchini, Liuzza and Meskell group countries that have served on the Committee for at least three years from 2003 to 2013 into four clusters, which illuminate the divergent objectives of countries in the World Heritage process.

Cluster	1	2	3	4
Countries	Argentina, Australia, Bahrain, Benin, Cambodia, Canada, Chile, Cuba, Ethiopia, France, Israel, Lithuania, Kuwait, Madagascar, Mauritius, Mexico, New Zealand, Norway, Oman, Peru, Portugal, Saint Lucia, South Korea, Spain, Sweden, US	Brazil, Colombia, Iraq, Jordan, Kenya, Lebanon, Mali, Morocco, Netherlands, Tunisia, UAE	China, Egypt, India, Japan, Nigeria, Russia, South Africa, Thailand	Estonia, Switzerland, UK

Figure 3: Categorisation of Committee members into clusters⁸⁹

Cluster 1, although consisting of the most countries, is the least notable concerning the extent of political influence. Although it includes ‘some of the most influential States Parties in the history of the World Heritage Convention for both the number of properties inscribed in the List and their active role in the World Heritage Committee’, in the authors’ examination these states do not currently ‘exhibit a high position in the dimensions of political influence’.⁹⁰ Clusters 2 and 4 are identified as being

⁸⁸ Bertacchini, Liuzza and Meskell (n 80) 110.

⁸⁹ *ibid.*

⁹⁰ *ibid* 344.

the most vocal in formal discussions with divergent reactions to recommendations by advisory bodies. Whilst Cluster 2, largely comprising developing nations from the Arab states group, has often challenged recommendations other than Inscription, Cluster 4 has supported decisions based upon the expert assessments by the advisory bodies.⁹¹ It can be summarised that the emerging nations of Cluster 2 – largely Arab states – are less supportive of the advisory bodies and more involved in the politicisation of world heritage, whilst the ‘so-called “neutral” nations such as Estonia and Switzerland continue to argue for scientific and expert-based decision-making’.⁹²

The article mainly focuses on Cluster 3, however, which ‘leads in several aspects of formal and informal influence’.⁹³ The composition of this group is notable in that it shows the increasing influence of Asian nations, as well as five members of the BRICS group (Brazil, Russia, India, China and South Africa). The BRICS countries have been grouped together due to their similar stage of economic development, which has shifted global economics – this is reflected by the countries’ similar opinions on needs for reform in global foreign policy.⁹⁴ The World Heritage Committee has become an arena for these countries to ‘gain international legitimization’.⁹⁵ The same trends seem to have persisted in this sense as World Heritage Watch’s review of the 2021 Committee meeting identified ‘an ever-same phalanx of states whose stooges and spokesmen were Russia, China, Brazil, Egypt, South Africa, Nigeria, Ethiopia, Thailand and Saudi Arabia’ as contributing to the result of zero out of seven suggested sites making it onto the List of World Heritage in Danger,⁹⁶ these states being largely in alignment with Cluster 3. A case in point that demonstrates the influence of these countries is keeping Selous Game Reserve in Tanzania on the World Heritage List despite the compromise of its OUV caused by the construction of a hydropower dam inside the site; it is no coincidence that the dam is funded by Chinese and Egyptian state-owned companies.⁹⁷

⁹¹ Bertacchini, Liuzza and Meskell (n 80) 344.

⁹² *ibid.*

⁹³ *ibid* 341.

⁹⁴ *ibid* 333.

⁹⁵ *ibid* 341.

⁹⁶ Doempke (n 82).

⁹⁷ Stefan Disko in Dwayne Mamo (ed), *The Indigenous World 2022* (IWGIA 2022) 791-92.

4.3 Kaeng Krachan Forest Complex and the Great Barrier Reef

The World Heritage Committee has recently attracted international criticism concerning the simultaneous inscription of Thailand's KKFC and the decision to keep the Great Barrier Reef off the List of World Heritage in Danger in 2021.⁹⁸ Although intended as a form of assistance, inscription on the in-danger list has gained negative connotations and is something countries actively try to avoid. Indeed, Australia kept the Great Barrier Reef off the list despite multiple mass coral bleaching events by entering into 'unholy' pacts.⁹⁹

4.3.1 Australia's 'unholy' conduct

In many ways, Australia has become an exemplary model of more inclusive World Heritage management, as seen in consultations with the Aboriginal community regarding the Tasmanian Wilderness Zone,¹⁰⁰ and recognition of Aboriginal Peoples as contributing to the OUV of Kakadu National Park, Willandra Lakes Region, Uluru-Kata Tjuta National Park and Budj Bim Cultural Landscape.¹⁰¹ However, this latest controversy around the Great Barrier Reef can be compared to the Jabiluka Crisis in Kakadu, illuminating a trend of prioritising political interests even by the 'benevolent' Australia.

A World Heritage Site since 1981, Kakadu National Park is co-managed by the Mirarr traditional owners alongside the government-owned Director of National Parks.¹⁰² However, in 1998 construction of a mine at the Jabiluka uranium deposit adjacent to the World Heritage Site began, having been approved by the Australian government, although strongly opposed by the Mirarr. This

⁹⁸ Graham Readfearn, "Low point" in world heritage committee history as politics "tramples" human rights of the Karen people' (*The Guardian*, 6 August 2021) <www.theguardian.com/environment/2021/aug/06/low-point-in-world-heritage-committee-history-as-politics-tramples-human-rights-of-the-karen-people> accessed 13 April 2023.

⁹⁹ *ibid.*

¹⁰⁰ See Chrissy Grant, 'Australia: Tasmanian Wilderness And Wet Tropics World Heritage Area' in Amund Sinding-Larsen and Peter Bille Larsen (eds), *Case Studies Carried out within the Our Common Dignity Initiative 2011-2016: Rights-Based Approaches in World Heritage* (ICOMOS Norway 2017).

¹⁰¹ See 'Kakadu National Park'; 'Willandra Lakes Region'; 'Uluru-Kata Tjuta National Park'; 'Budj Bim Cultural Landscape' at UNESCO-WHC, 'World Heritage List' (*UNESCO-WHC*, 2023) <<https://whc.unesco.org/en/list/>> accessed 10 March 2023.

¹⁰² UNESCO-WHC, 'Kakadu National Park' (*UNESCO-WHC* 2023) <<https://whc.unesco.org/en/list/147>> accessed 10 March 2023.

began a conflict between the Mirarr and the government which played out on the stage of the World Heritage Committee. Justin O'Brien summarises that 'No other single Indigenous group has lobbied the World Heritage Committee so intensely, networked so effectively or so challenged the Convention and its administration'.¹⁰³ The Mirarr used the World Heritage status of Kakadu to effectively air their disagreement with the government on an international platform – in 2000, Mirarr Senior Traditional Owner Yvonne Margarula addressed the Committee:

She spoke about her country (her traditional lands) and of the sacred sites and 'dangerous sites' (djang) at Jabiluka. She said that her country was "in danger" because the Government of Australia said that they were lying when they said the site was sacred and the Mirrar appealed for help from the World Heritage Committee.¹⁰⁴

After several years of disagreements, an agreement was reached between the mining company and the Gundjehmi Aboriginal Corporation that any mining was subject to agreement of the Mirarr.¹⁰⁵

The similarities between this case and the Great Barrier Reef stem from Australia's bids to keep the sites off the List of World Heritage in Danger. Regarding Kakadu, Australia led a three-year campaign to remove the Committee's power to place a site on the in-danger list without the consent of the state party in question, being considered 'by many in UNESCO, the Committee and the World Heritage Centre as threatening the credibility of the

¹⁰³ Justin O'Brien, 'No Straight Thing: Experiences of the Mirarr Traditional Owners of Kakadu National Park with the World Heritage Convention' in Stefan Disko and Helen Tugendhat (eds), *World Heritage Sites and Indigenous Rights* (IWGIA, Forest Peoples Programme, Gundjehmi Aboriginal Corporation 2014) 314.

¹⁰⁴ UNESCO-WHC, *Report of the twenty-fourth session of the World Heritage Committee* (Cairns, Australia, 27 November – 2 December 2000) (2001) WHC-2000/CONF.204/21 25.

¹⁰⁵ UNESCO-WHC, 'Decision 28 COM 15B.35' in *Decisions Adopted at the 28th Session of the World Heritage Committee* (Suzhou, 2004) (UNESCO 2004) WHC-04/28.COM/26 92.

World Heritage program'.¹⁰⁶ Whilst this campaign was unsuccessful, Australia has in essence managed to remove this power from the Committee regarding the reef through vote-trading, and even hosting ambassadors on a snorkelling trip.¹⁰⁷

This has been documented by environment reporter Graham Readfearn in *The Guardian Australia*. 12 Committee members supported an amendment keeping the reef off the List of World Heritage in Danger; some examples of vote-trading undertaken are summarised in Figure 4.

Committee members that supported Australia	What Australia offered in return
Hungary	Blocked 'in danger' recommendation for site in Budapest
Saudi Arabia	Support for inscription of Ḥimā Cultural Area
Spain	Support for inscription of Paseo del Prado and Buen Retiro
Thailand	Support for inscription of KKFC (?)

Figure 4: Vote trading examples regarding the 2021 'In Danger' recommendation of the Great Barrier Reef¹⁰⁸

When Australia became a member of the World Heritage Committee most recently, it seemed as if they were committed to tackling its detrimental politicisation – in 2018, the head of the delegation said Australia would be an 'advocate for upholding the technical integrity of the Committee' and would not 'support an inscription placed on the World Heritage List where the advice before us is that it should not be inscribed'.¹⁰⁹ However, in 2021, Australia raised no objections to the inscription of KKFC despite being aware of the human rights issues experience by the Indigenous Karen People; in fact, the only member of the Committee

¹⁰⁶ Logan (n 74) 161.

¹⁰⁷ Graham Readfearn and Daniel Hurst, 'Australia to host ambassadors at Great Barrier Reef ahead of "in danger" list vote' (*The Guardian*, 14 July 2021) <www.theguardian.com/environment/2021/jul/14/australia-to-fly-ambassadors-to-great-barrier-reef-ahead-of-in-danger-list-vote> accessed 13 April 2023.

¹⁰⁸ Readfearn (n 98).

¹⁰⁹ UNESCO-WHC, *Summary Record (Forty-second session Manama, Bahrain)* (24 June-4 July 2018) WHC/18/42 COM/INF.18 40.

that defended official advice against inscription from the UN human rights agency and UNESCO was Norway.¹¹⁰ This goes to show that despite pro-human rights rhetoric, political concerns trump rights concerns in the behaviour of Committee members.

4.3.2 The case of KKFC

KKFC became ‘possibly the first case where rights concerns resulted in a formal decision to delay inscription in the World Heritage List’.¹¹¹ This delay amounted to nothing however as the Committee bowed to political interests before the rights concerns were addressed, setting a dangerous precedent, and practically endorsing the violation of Indigenous rights. These are described by the Karen community as follows: ‘they continue to arrest and prosecute us without justifiable reasons, and violate our rights and dignity as human beings and as members of the Karen community who have been, for hundreds of years, living in the area which is about to be listed as a World Heritage site’.¹¹² A 2021 Joint Statement by 14 Indigenous organisations and international non-governmental organisations (NGOs) epitomised the contradiction between UNESCO’s mandate and the policies in KKFC:

The lack of protection and regard for the traditional livelihoods and land rights of the Karen and the intentional destruction of Karen cultural heritage, as well as the forced evictions and other human rights violations that have occurred during the nomination process, run counter to some of the most fundamental principles, purposes and values of UNESCO, such as the furthering of respect for human rights, the protection of cultural heritage, the safeguarding of cultural diversity, the fostering of sustainable development, and the promotion of a culture of peace.¹¹³

¹¹⁰ Readfearn (n 98).

¹¹¹ Peter Bille Larsen and Kristal Buckley, ‘Approaching Human Rights at the World Heritage Committee: Capturing Situated Conversations, Complexity, and Dynamism in Global Heritage Processes’ (2018) 25(1) *International Journal of Cultural Property* 85, 98.

¹¹² IWGIA, ‘Thai authorities disregard for human rights by arresting and prosecuting members of the Karen community and excluded them from participating in the World Heritage site proposal’ (IWGIA, 24 May 2021) <www.iwgia.org/images/documents/Letters/Letter_to_the_world_heritage_committee_24052021.pdf> accessed 14 April 2023.

¹¹³ IWGIA and others, ‘Joint Statement on the persistent human rights abuses occurring in the context of the World Heritage nomination of the Kaeng Krachan Forest Complex (Thailand) – A Submission to UNESCO’s World Heritage Committee’ (30 June 2021) para 9.

The statement also identifies the link between the violations and the efforts to inscribe the site under natural criteria, citing the misconception of the Karen as enemies of the area rather than partners.¹¹⁴ By inscribing KKFC, the Committee has ensured the continuity of the mindset of fortress conservation.

The Thai government also did not seek the FPIC of the Karen during the nomination process, which was noted by the Committee during its first deliberation in 2015. Indeed, diverging views emerged about whether to include reference to FPIC in its decision; whilst Portugal argued for its inclusion in order to protect human rights, Vietnam disagreed, being of the opinion that members of the Committee are ‘not in Geneva on the Human Rights Council’.¹¹⁵ In the same year, amendments to the Operational Guidelines affirmed Indigenous rights to FPIC,¹¹⁶ demonstrating a divergence between policy and implementation. Indeed, the Joint Submission by the IWGIA, IIPFWH and IPACC to the SRRIP in 2022 wrote that the inscription of KKFC was distinctive from other sites inscribed without Indigenous FPIC because it occurred after this amendment to the guidelines and the introduction of other mechanisms meant to better protect Indigenous rights.¹¹⁷

A noteworthy voice among international pressure not to inscribe the site was the UN Human Rights Agency, quoting UN experts who said:

¹¹⁴ IWGIA and others (n 113) para 6.

¹¹⁵ UNESCO, ‘World Heritage - 39th World Heritage Committee 2015-07-03 9:30-13:00’ (YouTube, 3 July 2015) 2:26:10 <www.youtube.com/watch?v=2cxqbXJAG4U> accessed 20 April 2023.

¹¹⁶ UNESCO-WHC, ‘Decision 39 COM 11’ in *Decisions adopted by the World Heritage Committee at its 39th session (Bonn, 2015)* (UNESCO 2015) WHC-15/39.COM/19, 243.

¹¹⁷ IWGIA, IIPFWH and IPACC, ‘Submission to the UN Special Rapporteur on the Rights of Indigenous Peoples for his report to the 77th Session of the UN General Assembly: Indigenous Peoples’ Rights and UNESCO World Heritage Sites’ (IWGIA, 19 April 2022) <www.iwgia.org/en/news/4721-unsrrip-77unga-protectedareas.html> accessed 2 February 2023.

We are particularly concerned that the UNESCO World Heritage Committee has adopted commitments towards indigenous peoples on paper but in practice does not have working methods that allow indigenous peoples to participate effectively and have their voices heard in the nomination process.¹¹⁸

The gap between methods and implementation is indeed a concern, but the case of KKFC illuminates that even when Indigenous voices are heard by the Committee, they are easily disregarded. It is no coincidence that KKFC gained its much sought-after inscription when the concerned state party was a member of the Committee. As of June 2023, KKFC is inscribed under natural criteria only with no mention of the Karen community in the listing.¹¹⁹

4.4 Potential for Indigenous involvement in decision-making

Whilst the involvement of Indigenous Peoples in decision-making regarding the nomination and management of sites is largely the arena of states parties, there are opportunities for greater involvement in the work of the Committee. For instance, at the 2021 Committee meeting, Indigenous organisations and the SRRIP were only able to speak after decisions had already been adopted, providing the illusion of inclusion but without any real powers of influence.¹²⁰

A way to increase involvement was proposed in 2000 in the form of the World Heritage Indigenous Peoples Council of Experts (WHIPCOE) – a committee to advise the World Heritage Committee on Indigenous issues. This idea was rejected in 2001, due to concerns about how this would impact the processes of inscription and management; interestingly, Thailand was one of the states that voiced opposition to the idea, instead claiming that

¹¹⁸ José Francisco Cali Tzay, David R Boyd and Mary Lawlor, 'Thailand: UN experts warn against heritage status for Kaeng Krachan national park' (*United Nations Office of the High Commissioner for Human Rights (OHCHR)*, (23 July 2021) <www.ohchr.org/en/press-releases/2021/07/thailand-un-experts-warn-against-heritage-status-kaeng-krachan-national-park> accessed 12 March 2023.

¹¹⁹ UNESCO-WHC, 'Kaeng Krachan Forest Complex' (*UNESCO-WHC*, 2023) <<https://whc.unesco.org/en/list/1461>> accessed 10 March 2023.

¹²⁰ Disko (n 97) 790.

‘internal agreements among the heritage authorities and the indigenous communities themselves would be more appropriate’.¹²¹ Beatriz Barreiro Carril raised questions about how effectively UNESCO and the World Heritage Committee can in fact involve Indigenous Peoples given its state-centric nature, ‘especially because some States have supported an outdated and manifestly wrong interpretation of sovereignty’.¹²² Whilst this foundation is clearly of detriment to the inclusion of Indigenous Peoples, some Peoples have seen more effective inclusion.

Considering the ‘unbundling’ of World Heritage considerations mentioned in Chapter 3 and the overriding focus on OUV, if Indigenous Peoples are recognised as contributing to this then their potential involvement in decision-making is drastically enhanced – the next chapter will examine exactly what qualifies Indigenous Peoples as ‘worthy’ of OUV.

¹²¹ Lynn Meskell, ‘UNESCO and the Fate of the World Heritage Indigenous Peoples Council of Experts (WHIPCOE)’ (2013) 20(2) *International Journal of Cultural Property* 155, 162.

¹²² Beatriz Barreiro Carril, ‘Indigenous Peoples’ participation in decision-making in the context of World Heritage Sites: how International Human Rights Law can help?’ (2016) 7(2-3) *The Historic Environment: Policy & Practice* 224, 225.

5. When are Indigenous Peoples of Outstanding Universal Value?

In order to be inscribed on the World Heritage List, a site must be of OUV, meaning ‘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’.¹²³ It must also meet at least one of ten criteria, three of which are most relevant to Indigenous Peoples. These are:

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

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

(vi) to 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).¹²⁴

Whilst there is considerable scope here for Indigenous Peoples to be recognised as part of the OUV of World Heritage Sites, there are certain issues. These criteria bring Indigenous Peoples into competition with each other through the requirement to be

¹²³ Operational Guidelines para 49.

¹²⁴ *ibid* para 77.

‘unique or at least exceptional’ or ‘an outstanding example’ (over others) whilst criteria (vi) demonstrates that association with living traditions is not considered sufficient to inscribe a site, given that it should be combined with other criteria.

5.1 Classification as unique

This issue was exposed by a controversy concerning the nomination of Pimachiowin Aki in Canada. Pimachiowin Aki was first nominated in 2012 under criteria (v) and (ix), the latter concerning natural values, notably with the explicit FPIC of the Anishinaabeg.¹²⁵ The 2013 evaluation by ICOMOS found that the relationship between the Anishinaabeg and land:

is not unique and persists in many places associated with indigenous peoples in North America and other parts of the world ... What has not been demonstrated is how this strong association between the Anishinaabeg and the land in the area nominated can be seen to be exceptional – in other words of wider importance than to the Anishinaabeg themselves.¹²⁶

As part of evaluating the qualification of sites for the World Heritage List, the advisory bodies conduct comparative analyses in order to prove the OUV. The requirement to be exceptional is ingrained in the concept of OUV and cannot be avoided without considerable revisions of the World Heritage system, yet Chapter 4 demonstrated how this leads to competition within the Committee. For Indigenous Peoples to enjoy potential benefits of World Heritage status, they too must unwillingly partake

¹²⁵ Gord Jones, ‘The Pimachiowin Aki World Heritage Project: A Collaborative Effort of Anishinaabe First Nations and Two Canadian Provinces to Nominate a World Heritage Site’ in Stefan Disko and Helen Tugendhat (eds), *World Heritage Sites and Indigenous Rights* (IWGIA, Forest Peoples Programme, Gundjeihmi Aboriginal Corporation 2014) 442.

¹²⁶ ICOMOS, *Evaluations of Nominations of Cultural and Mixed Properties: ICOMOS report for the World Heritage Committee 37th ordinary session, Phnom Penh, June 2013* (2013) WHC-13/37.COM/INF.8B1 39.

in this competition. In the case of Pimachiowin Aki, the Anishinaabeg made it clear that they did not wish to be considered exceptional ‘as they did not want to make judgements about the relationships of other First Nations’ with their lands and thus make comparisons’.¹²⁷

Despite the Anishinaabeg’s opposition, ICOMOS’ 2018 evaluation of the revised nomination of the site identified four comparable sites in Canada, concluding that the case for inscribing Pimachiowin Aki was that ‘it has the most complete representation of the attributes and is thus an exceptional example and has the strongest claim to Outstanding Universal Value over and above the four others’.¹²⁸ This demonstrates how the Anishinaabeg’s uncompetitive way of thinking is incompatible with the World Heritage process; the site was inscribed in 2018 under revised criteria (iii), (vi) and (ix).

This case shows the exclusivity inherent in recognising sites as ‘outstanding’ enough to be of ‘common importance’ for humanity – uniqueness is one relevant factor, whilst another similarly, if not more, controversial is authenticity.

5.2 The quest for authenticity

The Operational Guidelines state that a site ‘may be understood to meet the conditions of authenticity if their cultural values (as recognized in the nomination criteria proposed) are truthfully and credibly expressed through a variety of attributes’.¹²⁹ The World Heritage Convention draws on The Nara Document on Authenticity, which claims that authenticity is ‘the essential qualifying factor concerning values’.¹³⁰ The document argues that consideration of authenticity serves to ‘clarify and illuminate the collective memory of humanity’ in the face of ‘the forces of globalization and homogenization’.¹³¹ Whilst the plight of many In-

¹²⁷ ICOMOS, *Evaluations of Nominations of Cultural and Mixed Properties: ICOMOS report for the World Heritage Committee 42nd ordinary session, Manama, 24 June - 4 July 2018* (2018) WHC-18/42.COM/INF.8B1 39.

¹²⁸ *ibid* 25.

¹²⁹ Operational Guidelines para 82.

¹³⁰ Raymond Lemaire and Herb Stovel (eds), ‘Nara Document on Authenticity’ (Nara Conference on Authenticity in Relation to the World Heritage Convention 1994) para 10.

¹³¹ *ibid* para 4.

digenous Peoples is indeed to maintain their traditional ways of life, assessing sites on authenticity presents an unrealistic expectation on Indigenous societies – they are expected to be ‘authentic’ despite having been exposed to assimilation policies of colonisers, or indeed simply existing in connection with the modern world.

Hannah Strauss and Nuccio Mazzullo have commented on the damaging narratives around Indigenous Peoples in an examination of resource governance in Finnish Lapland. The points they make are universally applicable in considering the harms of ‘authenticity’ as a qualifying factor of value. They state that ‘the term “traditional” should not be understood as “unchanging”’,¹³² and indeed this places pressure on Indigenous Peoples to remain fixed in time. Similarly, the authors write – concerning Sámi reindeer herding – that the ‘trend to fix indigenous culture to a specific form of traditional livelihood excludes conceptual space for indigenous engagement with non-traditional activities’.¹³³ Certainly the conceptual space for Indigenous Peoples in general has often been limited to that which fulfils the ‘quest for authenticity’.

Concerns about the application of authenticity were communicated at the 2011 session of the UNPFII by over 70 Indigenous groups and organisations:

We are concerned that the concepts of ‘outstanding universal value’, ‘integrity’ and ‘authenticity’ are interpreted and applied in ways that are disrespectful of Indigenous peoples and their cultures, inconsiderate of their circumstances and needs, preclude cultural adaptations and changes, and serve to undermine their human rights.¹³⁴

¹³² Hannah Strauss and Nuccio Mazzullo, ‘Narratives, bureaucracies and indigenous legal orders: resource governance in Finnish Lapland’ in Richard C Powell and Klaus Dodds (eds), *Polar Geopolitics? Knowledges, Resources and Legal Regimes* (Edward Elgar 2014) 299.

¹³³ *ibid.*

¹³⁴ Endorois Welfare Council and others, ‘Joint Statement on Continuous violations of the principle of free, prior and informed consent in the context of UNESCO’s World Heritage Convention’ (Statement, UNPFII, Tenth Session New York, 16-27 May 2011) s 13.

The sentiments of disrespect and preventing ‘cultural adaptations and changes’ in the application of these concepts essentially objectifies Indigenous Peoples. Using these concepts in a cultural heritage setting is not dissimilar to the concept of the ‘human zoo’ that was so popular in the high times of colonialism.

Marta Kania argues that the search for the ‘traditional’ and ‘authentic’ leads to ‘static and artificial representation of their “re-invented” (or sometimes invented) and “sterile” heritage, with more folklore and performance than tradition and authenticity’.¹³⁵ She links this to Western ideas of conservation, which amount to sites being preserved how they ‘should be’, rather than how they are. Recognising a site as heritage often entails the opening of an ‘open-space museum’.¹³⁶ If Indigenous Peoples are present within the site, they must fit with the ‘accepted discourse on national heritage’ – this amounts to *endocolonialismo* or internal colonialism, with Indigenous Peoples subject to oppression from a narrative that is intended to protect.¹³⁷ An ‘open-space museum’ with Indigenous inhabitants is essentially the opening of a modern-day ‘human zoo’ but with the ‘exhibits’ in question in their ‘natural habitat’.

5.2.1 Manú National Park

Limitations on the activities of the Indigenous Peoples living in Manú National Park in Peru exemplify how pursuit of the acceptable narrative is detrimental in practice. When it was designated as a national park in 1973, the Indigenous inhabitants were ‘allowed’ to remain in the park but only if they engaged in ‘traditional’ subsistence activities.¹³⁸ The 1985 ‘master plan’ reflected

¹³⁵ Marta Kania, ‘Indigenous Peoples’ Rights and Cultural Heritage: Threats and Challenges for a New Model of Heritage Policy’ (2019) 68 *Latinoamérica Revista de Estudios Latinoamericanos* 121, 141 <<http://dx.doi.org/10.22201/cialc.24486914e.2019.68.57064>> accessed 1 March 2023.

¹³⁶ *ibid* 132.

¹³⁷ *ibid* 135.

¹³⁸ Glenn Shepard and others, ‘Trouble in Paradise: Indigenous Populations, Anthropological Policies, and Biodiversity Conservation in Manu National Park, Peru, *Journal of Sustainable Forestry*’ (2010) 29(2-4) *Journal of Sustainable Forestry* 252, 258.

this idea that, as phrased by Daniel Rodriguez and Conrad Feather, ‘there were only two acceptable options for its inhabitants: either to conserve their “traditional lifestyles” and remain in the Park; or to opt for further integration into national society and leave’.¹³⁹

The site was inscribed as World Heritage in 1987 under natural criteria, with the Indigenous inhabitants listed within the criteria that merited the park as worthy of a place on the list, despite their lack of involvement in the nomination process. The nomination described that ‘Native populations living in the park are still largely unaffected by modern civilization and provide special opportunity for anthropological study’.¹⁴⁰ This embodies the ‘open-space museum’ concept and is particularly problematic given that many of the Indigenous Peoples concerned were not ‘unaffected by modern civilization’ so to speak. The particularities of the policy that restricts inhabitants of the park were noted by IUCN in 2005: ‘This policy specifically prohibited the use of firearms and mechanized implements, particularly, motorboats and chainsaws’.¹⁴¹

Shaping the narrative in this way is in clear violation of Indigenous Peoples’ rights to ‘own, use, develop and control’ their LTRs¹⁴² – one effect of this is the requirement to travel outside the area to address financial needs as there is limited scope for economic activities within the imposed limitations of the park.¹⁴³ Although pressure from communities led to changes in the master plan in 2002, particularly regarding a new focus to protect ‘the self-determination of the indigenous peoples of the area’, this did not lift restrictions as the plan was careful to note that self-determination was conditional on being ‘in concordance with the rest of the objectives of the Park’.¹⁴⁴

¹³⁹ Daniel Rodriguez and Conrad Feather, ‘A Refuge for People and Biodiversity: The Case of Manu National Park, South-East Peru’ in Stefan Disko and Helen Tugendhat (eds), *World Heritage Sites and Indigenous Rights* (IWGIA, Forest Peoples Programme, Gundjeihmi Aboriginal Corporation 2014) 466.

¹⁴⁰ IUCN, *World Heritage Nomination – IUCN Summary 402: Manu National Park (Peru)* (June 1987) para 5a.

¹⁴¹ IUCN, *IUCN Evaluation of Nominations of Natural and Mixed Properties to the World Heritage List: IUCN Report for the World Heritage Committee, 33rd Session, Sevilla, Spain, June 2009* (April 2009) WHC-09/33.COM/INF.8B2, 74.

¹⁴² UNDRIP art 26.

¹⁴³ Rodriguez and Feather (n 139) 471.

¹⁴⁴ Instituto Nacional de Recursos Naturales (INRENA), *Plan Maestro del Parque Nacional del Manu* (INRENA 2003) 8 (author’s translation) cited in Rodriguez and Feather (n 139) 468.

Interestingly, the park was initially inscribed under the old criteria (ii) and (iv) with criteria (ii) referencing ‘man’s interaction with his natural environment’.¹⁴⁵ With the revision of the criteria in 2004, Manú National Park is now inscribed under criteria (ix) and (x) which contain no reference to human interaction. The current description of the site also dispels the myth that the Indigenous inhabitants are ‘unaffected by modern civilization’: on the Indigenous inhabitants, UNESCO says ‘Some of them are sedentary and in regular contact with the “modern world”, while others maintain a semi-nomadic lifestyle as hunter-gatherers in so-called “voluntary isolation” or “initial contact”, respectively’.¹⁴⁶ Rather than being recognised in the reasoning for OUV, the Indigenous inhabitants are mentioned in the ‘Integrity’ section of the listing, which states that ‘Provided that they maintain a lifestyle compatible with conservation objectives, their presence is not believed to negatively affect the conservation values of Manu National Park’.¹⁴⁷

The case of Manú National Park shows how narratives around Indigenous People have been used to limit their activities, prioritising the ‘traditional’ and what authorities deem to be best for the park over Indigenous rights to their LTRs. It is ironic that contact with the ‘modern world’ makes Indigenous People a possible threat when the arrival of ‘modern’ Western conservationists is perceived as a force of saviour.

5.3 Natural, cultural and mixed sites

Of the ten selection criteria, (i) to (vi) are cultural and (vii) to (x) are natural; sites can be inscribed as cultural, natural or mixed. When sites are inscribed solely under natural criteria, Indigenous Peoples are not considered part of the OUV; however, Meskell argued that this classification is actually beneficial during the nomination process. She says ‘[indigenous authorities] are more likely to be given a voice regarding the natural heritage properties than in cultural properties, because their plight has garnered

¹⁴⁵ Rodriguez and Feather (n 139) 467.

¹⁴⁶ UNESCO-WHC, ‘Manú National Park’ (*UNESCO-WHC*, 2023) <<https://whc.unesco.org/en/list/402/>> accessed 10 March 2023.

¹⁴⁷ *ibid.*

the support of environmental NGOs and agencies worldwide'.¹⁴⁸ Whilst there is a greater body of literature in this area, the support of environmental NGOs is not necessarily always positive for Indigenous rights.

5.3.1 When Indigenous Peoples are not of OUV: natural sites

Strauss and Mazzullo's aforementioned article considers the narratives of Indigenous Peoples as the 'noble savage' or 'original steward'.¹⁴⁹ Whilst these narratives do not see Indigenous Peoples as enemies of nature, they are dangerous in that they promote a paternalistic attitude, which does not lend itself to self-determination. This is embodied by the tendency of environmental groups to:

speaking on behalf and in favour of indigenous peoples, stating that the protection of wilderness entails the protection of indigenous livelihood. Indigenous peoples are assumed to be part of the nature that requires protection, and visualizations of wilderness in political campaigns offer the role of the noble savage to the indigenous living in the area.¹⁵⁰

Rather than working to protect Indigenous rights to LTRs through amplifying Indigenous voices, environmental NGOs effectively mute Indigenous Peoples in such cases. This does not help Indigenous Peoples to become recognised as contributing to OUV, without which they are easily labelled as a threat.

While NGO support can be beneficial in bringing attention to violations, given the World Heritage trend of adopting a tunnel vision approach centred on OUV, violations against Indigenous Peoples become more likely and less of concern in purely natural

¹⁴⁸ Lynn Meskell, 'UNESCO and the Fate of the World Heritage Indigenous Peoples Council of Experts (WHIPCOE)' (2013) 20(2) *International Journal of Cultural Property* 155, 161.

¹⁴⁹ Strauss and Mazzullo (n 132) 295.

¹⁵⁰ *ibid* 300.

sites. This has recently been exposed by a WWF report in 2020, which examined human rights abuses in protected areas – of the eight areas examined, five of them are World Heritage Sites, all inscribed solely under natural criteria.¹⁵¹

The opinions of UNESCO and the World Heritage Committee concerning OUV and natural sites have been demonstrated by the case of Canaima National Park in Venezuela. As well as being considered a threat to the OUV – without being consulted in the nomination process – the Pemon communities of Canaima are considered to have diminished the value of the eastern sector of the park. Indeed, prior to its inscription, the IUCN and UNESCO requested the government to revise the boundaries of the site to reflect this opinion, but the government refused, and the site was inscribed anyway.¹⁵²

The differing considered levels of value were displayed by the erecting of a power line in the eastern sector of the park despite protests from the Pemon, based on the assessment that the eastern area has less conservation value than the west due to transformation ‘into a human-dominated landscape’.¹⁵³ Had the site been classified differently, a human-dominated landscape could have merited value worth protecting.

5.3.2 Cultural Landscapes

As mentioned at the start of this chapter, there is considerable scope for Indigenous Peoples to be considered of OUV under cultural criteria. In 1992, a new classification was introduced to recognise ‘combined works of nature and of man’ under the label Cultural Landscape.¹⁵⁴ Sites with this designation can be cultural or mixed. This is an increasingly popular category making up around 10% of sites on the World Heritage List and has been forwarded as a way to address European dominance of the list.¹⁵⁵

¹⁵¹ WWF Independent Panel of Experts, ‘Embedding Human Rights in Nature Conservation: From Intent to Action’ (WWF Independent Panel of Experts of the Independent Review of allegations raised in the media regarding human rights violations in the context of WWF’s conservation work, 17 November 2020).

¹⁵² IUCN, *World Heritage Nomination – IUCN Summary: Canaima National Park (Venezuela)* (March 1994) 117-18.

¹⁵³ *ibid* 117.

¹⁵⁴ Operational Guidelines para 47.

¹⁵⁵ Christoph Brumann and Aurélie Éliisa Gfeller, ‘Cultural landscapes and the UNESCO World Heritage List: perpetuating European dominance’ (2022) 28(2) *International Journal of Heritage Studies* 147, 147.

In a 2022 paper, Christoph Brumann and Aurélie Éliisa Gfeller exposed that whilst it has made way for the inscription of more non-Western sites, European countries have also been able to take advantage of this classification. In fact, although suggesting a shift from the wilderness narrative, it is still rooted in this idea as expressed by the French delegate in Brumann and Gfeller’s research: “old rural countries like France, Italy, and the United Kingdom” were “in an uncomfortable situation” because they did not have the American concept of “wilderness” that had shaped the definition of natural World Heritage.¹⁵⁶ Whilst exposing the limited interpretation of natural criteria, this also shows how states have been able to manipulate the World Heritage system for their own benefit. For instance, European countries were able to take advantage of the Cultural Landscape category to inscribe vineyard landscapes.¹⁵⁷

Nevertheless, Cultural Landscapes do offer protection of Indigenous land rights with Indigenous Peoples serving as the entire basis of nomination for some sites such as Budj Bim Cultural Landscape in Australia, †Khomani Cultural Landscape in South Africa and the Sacred Mijikenda Kaya Forests in Kenya for instance. There are critics who say that these may project a simplistic image of Indigenous groups,¹⁵⁸ but unfortunately this is somewhat unavoidable when equating an entire culture with a list of criteria.

5.3.3 Mixed sites: the problem of separating natural and cultural

The possibility of a site to be nominated as mixed brings into question the separation between natural and cultural heritage. Why does the World Heritage system insist on drawing this distinction given that culture and nature do not often exist in isolation from each other?

¹⁵⁶ Christina Cameron and Mechtild Rössler, *Many Voices, One Vision: The Early Years of the World Heritage Convention* (Ashgate 2013) 61.

¹⁵⁷ Brumann and Gfeller (n 155).

¹⁵⁸ See Baird, Kawharu and Labadi as cited in Meskell (n 148) 161.

The IWGIA, IIPFWH and IPACC discussed this in their 2022 submission to the UN SRRIP, concluding – like many aspects of the World Heritage system – that this division is effectively incompatible with Indigenous cultures.¹⁵⁹ The report cites the EMRIP which articulates that ‘[f]or indigenous peoples, cultural and natural values are inseparably interwoven and should be managed and protected in a holistic manner’.¹⁶⁰ As mentioned, before the 2004 revision, the natural criteria included reference to ‘man’s interaction with his natural environment’ but as shown with the case of Manú National Park, revision of the criteria has removed the chance of recognising and protecting Indigenous Peoples’ relationships with their LTRs in natural sites, in contradiction of the UNDRIP.

In this sense, the Cultural Landscape category is a poor substitute for the old criteria, given that this requires more conscious effort of states parties to recognise and involve Indigenous Peoples, as well as, similarly to mixed sites, more logistical difficulties. The joint submission expresses that:

While it is possible to nominate sites as ‘mixed’ cultural/natural sites, there are significant practical and financial implications that may discourage States Parties from doing so ... Nominating a site as a mixed site essentially involves preparing two nominations (one for natural criteria and one for cultural criteria), each of which is evaluated separately (by IUCN and ICOMOS respectively) and each of which may be accepted without reference to the other.¹⁶¹

From the perspective of chasing inscription on the World Heritage List for national interests, it is therefore conceivable that states would choose the ‘easier’ route. The attempts to divide and classify heritage is one of the most detrimental aspects of the World Heritage process for Indigenous rights.

¹⁵⁹ IWGIA, IIPFWH and IPACC, ‘Submission to the UN Special Rapporteur on the Rights of Indigenous Peoples for his report to the 77th Session of the UN General Assembly: Indigenous Peoples’ Rights and UNESCO World Heritage Sites’ (*IWGIA*, 19 April 2022) <www.iwgia.org/en/news/4721-unsrrip-77unga-protectedareas.html> accessed 2 February 2023.

¹⁶⁰ EMRIP, ‘Promotion and protection of the rights of indigenous peoples with respect to their cultural heritage’ (19 August 2015) UN Doc A/HRC/30/53 20 as cited in IWGIA, IIPFWH and IPACC (n 159).

¹⁶¹ IWGIA, IIPFWH and IPACC (n 159).

5.4 Different treatments in similar cases

Whether Indigenous Peoples are considered part of OUV is highly individualised, incorporating the elements discussed so far in this chapter. Naturally, Indigenous Peoples themselves are also highly individualised, but a comparison of cases from similar cultures serves to demonstrate the application of OUV and related concepts.

One particular comparison involves sites in Sápmi – the area in Northern Europe stretching across Norway, Sweden, Finland and Russia, which is the traditional region of the Sámi People. Despite differences across state and community boundaries, the Sámi share much common culture and history. The inclusion/exclusion of Sámi People in World Heritage Sites is therefore particularly interesting.

The Laponian Area in Sweden is often cited as an exemplary case of the involvement of Indigenous Peoples in World Heritage management. It was inscribed in 1996 as a mixed site, described as ‘the largest area in the world (and one of the last) with an ancestral way of life based on the seasonal movement of livestock’, referring to Sámi reindeer herding.¹⁶² The Laponiatjuottjudus Association has been responsible for joint management since 2011, which has majority Sámi representation and operates on the basis of consensus decision-making. The listing does exhibit some of the damaging elements of OUV, such as the emphasis on the site being unique and the concern about the use of motorised transport by reindeer herders,¹⁶³ but the Sámi in and around Laponia are in a far better position to protect their land rights than the Sámi in the Røros region of Norway.

Røros Mining Town and the Circumference is a cultural World Heritage Site, initially inscribed in 1980 and extended in 2010. It does not recognise Sámi heritage in the OUV, despite consultation with the Sámi community in the extension process of the site – this is explained due to the intention of the extension to reinforce ‘the mining town narrative from the 1980 inscription, rather than to revise and broaden the scope of the OUV with an

¹⁶² UNESCO-WHC, ‘Laponian Area’ (*UNESCO-WHC*, 2023) <<https://whc.unesco.org/en/list/774/>> accessed 2 April 2023.

¹⁶³ *ibid.*

additional indigenous dimension’.¹⁶⁴ Therefore, inclusion of Sámi issues was decided on the basis of sources ‘describing functional and mutually beneficial relationships with the mining community’.¹⁶⁵ This demonstrates the power of the accepted narrative of a site – because Røros’ value comes from its mining history, the Sámi can only be included from this angle. The local World Heritage board does include one Sámi representative, who uses this position ‘to promote consciousness about Sami issues in relation to the OUV’¹⁶⁶ but unlike in the Laponian Area, the Sámi do not enjoy decision-making powers that can enhance rights to their LTRs.

This comparison serves to demonstrate the power of the OUV narrative; both the Sámi around Røros and around Lapponia carry out reindeer husbandry, which is deemed to be of OUV by UNESCO in one case, where it enhances the narrative of the landscape in Lapponia, but not in the other where it does not relate to the recognised history of the mining community. Here it is clear that the protection of Indigenous Peoples is not related to any inherent merits of their culture, but more how they ‘fit’ – this is particularly true when considering tourism and commercial interests.

¹⁶⁴ Erlend Gjelsvik, ‘Norway: Negotiating Sami Rights and Heritage in Røros World Heritage Area’ in Amund Sinding-Larsen and Peter Bille Larsen (eds), *Case Studies Carried out within the Our Common Dignity Initiative 2011-2016: Rights-Based Approaches in World Heritage* (ICOMOS Norway 2017) 22.

¹⁶⁵ *ibid.*

¹⁶⁶ *ibid.* 23.

6. Tourism and resource exploitation

While Indigenous rights may be restricted for the protection of OUV, restrictions seem to be somewhat irrelevant when tourism is at stake. The key difference between tourists and Indigenous inhabitants is that tourists bring money – Indigenous Peoples must either be able to exist alongside, or generate, tourism or else they are considered as a threat. Much of the underlying reasoning for states parties' efforts to inscribe as many sites as they can, and to keep them off the List of World Heritage in Danger, centres around the economic benefits that tourism related to World Heritage listing can bring.

6.1 World Heritage as a global tourist brand

In an article on the Mayan site of Palenque in Mexico, international expert in World Heritage Management Amilcar Vargas discusses World Heritage as a tourist brand, surmising that 'UNESCO has unintentionally contributed to building one of the best known global brands'.¹⁶⁷ The inclusion of a site on the World Heritage List is naturally attractive to travellers, given that they must be of OUV. This branding is evident in, for example, UNESCO's guides to the World Heritage List; the description of *The World's Heritage: The Definitive Guide to All 1073 World Heritage Sites* boasts that 'only the world's most spectacular and extraordinary sites make it on to the List'.¹⁶⁸

¹⁶⁷ Amicar Vargas, 'The tourism and local development in world heritage context. The case of the Mayan site of Palenque, Mexico' (2018) 24(9) *International Journal of Heritage Studies* 984, 986.

¹⁶⁸ UNESCO, *The World's Heritage: The Definitive Guide to All 1073 World Heritage Sites* (Collins 2017) publisher's summary.

Vargas does however explain that ‘the World Heritage brand is not enough by its own to create tourism growth, especially when events, such as social uprisings, lack of security or natural disasters, may discourage people from visiting them’.¹⁶⁹ It is nevertheless a brand that is chased by states parties to the convention, and serves as a foundation for an increase in tourism growth – being on the list boosts international visibility, such as in *The Definitive Guide*, for instance. Considering ‘social uprisings’ and ‘lack of security’ as threats to tourism could be seen to include Indigenous Peoples’ protests for their rights, and violent conflict between Indigenous Peoples and park guards, for instance, providing some rationale as to why states may turn to evictions or other measures to reduce the intrusion of Indigenous issues in their sites.

In contradiction to Vargas, a 2022 thematic study on protected areas by the SRRIP argues that World Heritage listing has a ‘guaranteed’ impact on tourism:

The inclusion of a site in the UNESCO World Heritage List essentially guarantees a sustained increase in tourism and associated economic benefits in the State ... If designed and managed with the inclusion and full and effective participation of indigenous peoples, and with respect for their collective rights, World Heritage sites could serve to support indigenous peoples’ livelihoods and self-determined development.¹⁷⁰

Whilst these two sources contradict each other in this sense, it is possible to conclude that interest in tourism increases at least, and if sites are considered safe then visitor numbers will likely rise. More relevant to the discussion, however, is that the intention of states is certainly to reap the ‘associated economic benefits’ – unfortunately, Indigenous Peoples’ effective inclusion is rarely protected; instead, tourism often receives priority.

¹⁶⁹ Vargas (n 167) 986.

¹⁷⁰ UNGA, ‘Report of the Special Rapporteur on the rights of indigenous peoples, José Francisco Calí Tzay: Protected areas and indigenous peoples’ rights: the obligations of States and international organizations’ (19 July 2022) UN Doc A/77/238 para 38.

6.2 Prioritisation of tourism

Despite rights to the LTRs they have often inhabited and cared for long before international tourism development, Indigenous Peoples find themselves increasingly disrespected in favour of tourists. This manifests in different policies, but the overriding message tends to be that Indigenous Peoples must fit with tourism rather than the other way around.

6.2.1 Ngorongoro Conservation Area

A case that shows this trend to the detriment of Indigenous Peoples is Ngorongoro Conservation Area (NCA) in Tanzania. The semi-nomadic Maasai pastoralists of the NCA were relocated from their traditional lands, including neighbouring Serengeti National Park, in the mid-twentieth century; they were offered resettlement in the NCA and the neighbouring Loliondo region but have faced a history of evictions even from these areas.

The main tourist attraction of the site is the Ngorongoro crater, the largest caldera in the world, yet the Maasai's access to the crater is severely restricted. They have been forbidden from settling in the crater since 1975 after being evicted without warning: 'paramilitary personnel simply arrived one morning and evicted the families from the Crater, dumping their belongings on a roadside'.¹⁷¹ More recently in 2016, the Maasai were also ordered to stop grazing and watering their livestock in the crater following 'numerous complaints from tourism and conservation stakeholders that cattle present an imminent threat to the fragile slopes and floor of the crater and that tourists are coming for wildlife not livestock'.¹⁷² While the Maasai are forced out, tourism is only increasing; in 2014, NCA received around 650,000 visitors¹⁷³ – IUCN reported that 'Visitors tend to concentrate around the world famous Ngorongoro Crater, which covers less than 5% of the total area

¹⁷¹ Survival International, 'Parks need peoples: Why evictions of tribal communities from protected areas spell disaster for both people and nature' (2014), 23.

¹⁷² Kokel Melubo and Brent Lovelock, 'Living Inside a UNESCO World Heritage Site: The Perspective of the Maasai Community in Tanzania' (2019) 16(1) *Tourism Planning and Development* 1, 7.

¹⁷³ Asantael Williams Melita, 'Tourism and the Target of the Convention on Biological Diversity: Community Acceptance for Involvement – A Case Study of the Ngorongoro Conservation Area, Tanzania' (2014) 2(1) *World Journal of Social Science Research* 1 as cited in IUCN, *Ngorongoro Conservation Area: 2020 Conservation Outlook Assessment* (2020) 4.

and reportedly oftentimes become heavily congested'.¹⁷⁴ A Maasai community leader has been quoted as saying 'to my disappointment the craters are exclusive[ly] open for those who bring money, I mean the tourists and wawekezaji (investors). Residents and their cattle have become strangers and are prevented from going down with their livestock'.¹⁷⁵

A further example of the prioritisation of tourists is the distribution of limited resources: 'The low quantity of available water is often supplied first to lodges on the Ngorongoro crater rim. When tanks and swimming pools are full, water is diverted to villages for live-stock and human beings to use'.¹⁷⁶ This demonstrates very clearly where priorities lie, with the Maasai being denied access to the resources they were promised when they left their traditional lands behind. It is evident that the driving factor behind these policies is economic gain, but this was also explicitly stated by Tanzania's Deputy Minister for Tourism and Natural Resources in 2009: 'NCA being a World Heritage site and a major tourist allure, generates revenues amounting to USD 30million annually. Now tell me, can our subsistence farming earn us such amount?'.¹⁷⁷

International attention has recently been directed towards the Loliondo Division of Ngorongoro District just outside the World Heritage Site. The government has led several evictions in 2009, 2013 and 2017, and renewed its efforts in 2022.¹⁷⁸ This is under the guise of environmental protection, but the area has in fact been designated for tourism. The Pololeti Game Reserve 'was created during the government's violent demarcation exercise in June 2022 and dedicated for trophy hunting by the United Arab

¹⁷⁴ IUCN, *Ngorongoro Conservation Area: 2020 Conservation Outlook Assessment* (2020) 4.

¹⁷⁵ Participant 6 – Community Leader in Melubo and Lovelock (n 172) 11-12.

¹⁷⁶ Melubo and Lovelock (n 172) 8.

¹⁷⁷ Ezekiel Maige (as quoted in Adam Ihucha, 'Ngorongoro crater issue tough – govt' (*The Guardian*, 5 May 2009) cited in William Olenasha, 'A World Heritage Site in the Ngorongoro Conservation Area: Whose World? Whose Heritage?' in Stefan Disko and Helen Tugendhat (eds), *World Heritage Sites and Indigenous Rights* (IWGIA, Forest Peoples Programme, Gundjeilmi Aboriginal Corporation 2014) 204).

¹⁷⁸ The Oakland Institute, 'Over 70,000 Maasai in Loliondo, Tanzania Face Renewed Eviction Threat to Make Way for Safari Tourism and Trophy Hunting' (*The Oakland Institute*, 27 January 2022) <www.oaklandinstitute.org/maasai-loliondo-tanzania-face-renewed-eviction-threat> accessed 2 May 2023.

Emirates (UAE)-based Otterlo Business Company (OBC)'.¹⁷⁹ This is despite the OBC's history of violence against the Maasai and killing thousands of rare animals.¹⁸⁰ Given this, it cannot be argued that evicting the Maasai is for any motivation other than profit.

The Maasai have attempted to co-exist with tourism as demonstrated by a 2011 proposal led by the community to Thomson Safaris, which owns Tanzania Conservation Limited (TCL) that operates in the area. The proposal was as follows:

The village members agree that Thomson Safaris could retain exclusive land ownership on 2,000 acres around the MOROGWA area [immediately surrounding the company's camp]. The community members are to acquire back the ownership of 10,617 acres of the land and then enter into direct agreement with Thomson Safaris to allow company's continued use of some of the land for tourism purposes.¹⁸¹

The company did not enter into negotiations with the Maasai.

The pastoralists have been able to reap some benefits from cultural tourism within the NCA: 'through cultural bomas, around 1,500 Maasai residents have been employed as beaded handicrafts sellers, cultural performers, local guides, interpreters, administrators and herders'.¹⁸² Other positive impacts of tourism have been the emancipation of Maasai women through generation of their own income, as well as the building of two secondary schools and health facilities.¹⁸³ However, compared to the loss of land for touristic purposes and the lack of Maasai involvement in these pursuits, the message that tourists are the priority seems to continue.

UNESCO and the World Heritage Committee have certainly had a role to play in the violations against the Maasai through not recognising the Maasai cultural landscape as part of the OUV although it was proposed by Tanzania – albeit without FPIC or

¹⁷⁹ The Oakland Institute, 'URGENT ALERT: Tanzanian Government Resorts to Cattle Seizures to Further Restrict Livelihoods of Maasai Pastoralists' (*The Oakland Institute*, 24 January 2023) <www.oaklandinstitute.org/urgent-tanzania-government-cattle-seizures-maasai> accessed 2 May 2023.

¹⁸⁰ The Oakland Institute, 'Over 70,000 Maasai in Loliondo, Tanzania Face Renewed Eviction Threat' (n 178).

¹⁸¹ Anuradha Mittal and Elizabeth Fraser, 'Losing the Serengeti: The Maasai Land That Was to Run Forever' (*The Oakland Institute* 2018) 14 <www.oaklandinstitute.org/sites/oaklandinstitute.org/files/losing-the-serengeti.pdf> accessed 15 April 2023.

¹⁸² Melubo and Lovelock (n 172) 12.

¹⁸³ *ibid* 13.

substantiated justification – in 2010,¹⁸⁴ and through the repeated recommendation of ‘voluntary’ relocation.¹⁸⁵ The recognition of the site for natural OUV, as well as paleontological and archaeological values (added in 2010),¹⁸⁶ and the continuing concern about the human capacity of the site has provided Tanzania with the justification for more and more restrictions on the Maasai, whilst its touristic attractions are enhanced.

6.3 Potential benefits of tourism

Like governments, Indigenous Peoples do stand to benefit from tourism, but it is a balancing act, as referenced in the case of the NCA: the Maasai have lost a lot more than they have gained. As well as economic prosperity, tourism also provides the opportunity for Indigenous Peoples to gain recognition and understanding of their cultures.

The predicament about whether tourism’s benefits outweigh the dangers falls into many of the same traps discussed in relation to authenticity. A place is only considered authentic when it fits with the traditional narrative of the site – if the recognised values ‘are truthfully and credibly expressed’.¹⁸⁷ Whilst the unrealistic nature of this has already been shown, the usual reason for unwavering commitment to preservation of the ‘authentic’ is also a major threat to this.

With the development of tourism that is seen to go hand in hand with World Heritage recognition, Josephine Caust and Marilena Vecco examine this, seeking to answer the question ‘Is UNESCO World Heritage recognition a blessing or burden?’ in an Asian context. They explain the difficult relationship between tourists and local people:

¹⁸⁴ See United Republic of Tanzania, ‘The Nomination File for the Ngorongoro World Heritage Mixed Site’ (*WHC Nomination Document*, February 2009) <<https://whc.unesco.org/uploads/nominations/39bis.pdf>> accessed 15 April 2023.

¹⁸⁵ See UNESCO-WHC, ‘State of Conservation – Ngorongoro Conservation Area’ (*UNESCO-WHC*) <https://whc.unesco.org/en/soc/?action=list&id_site=39> accessed 27 April 2023.

¹⁸⁶ UNESCO-WHC, ‘Decision 34 COM 8B.13’ in *Decisions adopted by the World Heritage Committee at its 34th session (Brasília, 2010)* (UNESCO 2010) WHC-10/34.COM/20 190.

¹⁸⁷ Operational Guidelines para 82.

The visitors may bring economic prosperity to a community that was formerly subsistent, yet their presence may simultaneously destroy or undermine unique features of the local culture. Over time, a co-dependent economic relationship between the community and the tourists develops so that the community cannot survive without the presence of the tourists. Ironically, this then affects the attractions of the destination as it is increasingly given over to serving the needs of the tourist, and by doing, loses its intrinsic difference or local culture.¹⁸⁸

Relating this to World Heritage Sites specifically, the question is: how can tourist interests, Indigenous rights and interests, and the preservation of OUV exist in harmony?

6.3.1 Aboriginal tourism in Canada

Excluding Indigenous groups in voluntary isolation, direct engagement between tourists and Indigenous Peoples is more likely to provide an accurate and respectful cultural experience. A 2011 ICOMOS report looked at how to promote cultural tourism for development purposes and incorporate Indigenous ‘spirit of place’ effectively into sites, using Canada as an example of good practice.¹⁸⁹

The key elements of ‘aboriginal tourism’ are defined as:

Tourism connected with indigenous culture, values and traditions; Tourism products owned and operated by indigenous people; Tourism based on indigenous land and cultural identity, controlled [from] within by indigenous groups; Tourism which includes the indigenous 4Hs: ‘habitat, heritage, history and handicrafts’; Typically involves small business[es] owned by tribes or families; and Tourism focused on indigenous knowledge of culture and nature.¹⁹⁰

¹⁸⁸ Josephine Caust and Marilena Vecco, ‘Is UNESCO World Heritage recognition a blessing or burden? Evidence from developing Asian countries’ (2017) 27 *Journal of Cultural Heritage* 1, 1.

¹⁸⁹ Daniel Arsenaault and Fergus Maclaren, ‘Reinforcing the Authenticity and Spirit of Place of Indigenous Peoples to Promote Cultural Tourism at World Heritage Sites as a Development Approach: Learning from the Canadian Experience’ (ICOMOS 2012) in *ICOMOS 17th General Assembly* [Conference of Workshop Item] 575 <https://openarchive.icomos.org/id/eprint/1138/1/III-2-Article2_Arsenaault_Maclaren.pdf> accessed 1 April 2023.

¹⁹⁰ *ibid* 576.

These elements combine to form an inclusive theoretical model that can maximise the potential benefits for all parties. Whilst there are still dangers here of moulding cultures into a tourist-friendly version, the emphasis on ‘spirit of place’ in this report presents a possibility of an experience far removed from an ‘open-space museum’. The 2008 Québec Declaration on the Preservation of the Spirit of Place defines this concept as ‘the physical and the spiritual elements that give meaning, value, emotion and mystery to place’.¹⁹¹ This combination of the tangible and the intangible addresses the damaging divisions within the World Heritage process; just as natural and cultural are divided, so are tangible and intangible. The existence of a separate convention on safeguarding intangible cultural heritage¹⁹² further complicates the process and undermines the possibilities for Indigenous involvement.

An example given of Canadian aboriginal tourism is SGang Gwaay where partnership between the Indigenous Haida Nation and Parks Canada has seen effective involvement in park management, which has resulted in visitors ‘able to better understand the Haida way of life as they used to be when the village was occupied, their worldview, their ritual practices, and other cultural traits’.¹⁹³ Understanding is at the heart of creating a better relationship between Indigenous Peoples and tourists: an increase in understanding over time via Indigenous-tourist interactions is also demonstrated by the case of Uluru-Kata Tjuta National Park.

6.3.2 Uluru-Kata Tjuta National Park

The Anangu People are the traditional owners of Uluru-Kata Tjuta National Park in Australia and form the basis of the site’s OUV.¹⁹⁴ The site is jointly managed by the Anangu and the Director of National Parks, enabling issues with tourism to be addressed from an Indigenous lens:

¹⁹¹ ICOMOS, Québec Declaration on the Preservation of the Spirit of Place (4 October 2008) preamble.

¹⁹² UNESCO, Convention for the Safeguarding of the Intangible Cultural Heritage (adopted 17 October 2003, entered into force 20 April 2006) 2368 UNTS 3.

¹⁹³ Arsenault and Maclaren (n 189) 581.

¹⁹⁴ UNESCO-WHC, ‘Uluru-Kata Tjuta National Park’ (*UNESCO-WHC*, 2023) <<https://whc.unesco.org/en/list/447>> accessed 20 April 2023.

This includes locating tourist accommodation and airport facilities outside of the Park. Access roads have been redirected so that visitors approach Uluru and Kata Tjuta from the 'right way' providing culturally appropriate access. Interpretive materials and appropriate infrastructure protect the sacred places around the base of Uluru and at Kata Tjuta.¹⁹⁵

An article by Michael Adams on the site looked at, amongst other things, the impact of tourism and the opinions of the Anangu. The Anangu Working Group that Adams collaborated with 'wanted visitors to learn about their land and their law from Anangu. This was the proper way'.¹⁹⁶ The 'proper way' refers to being in accordance with the Tjukurpa – the traditional law which acts as the foundation of the Anangu culture. One particular example of tourism being at odds with the 'proper way' is the climbing of the monolith: the monolith is of great cultural significance to the Anangu but many tourists in the past visited for the sole purpose of climbing Uluru.¹⁹⁷ Despite opposition from the Anangu, pressure from the tourist industry kept the climb open. As well as cultural disrespect, this inflicted further harm on the Anangu as over 30 people died whilst attempting the climb, and according to Tjukrupa, 'when visitors are killed or injured on the climb, Anangu participate in the grieving'.¹⁹⁸

Since the publication of Adams' article, however, the climb has been permanently closed. It was observed that '[a]s visitors learned more about Anangu culture and their wishes, the number of visitors climbing Uluru began to drop'.¹⁹⁹ This demonstrates a shift in dynamics, with more emphasis on the cultural elements of the site and how, with effective involvement, it is possible for tourism and culture to co-exist respectfully.

¹⁹⁵ UNESCO-WHC, 'Uluru-Kata Tjuta National Park' (UNESCO-WHC, 2023) <<https://whc.unesco.org/en/list/447>> accessed 20 April 2023.

¹⁹⁶ Michael Adams, 'Pukulpa pitjama Ananguku ngurakutu – Welcome to Anangu land: World Heritage at Uluru-Kata Tjuta National Park' in Stefan Disko and Helen Tugendhat (eds), *World Heritage Sites and Indigenous Rights* (IWGIA, Forest Peoples Programme, Gundjeihmi Aboriginal Corporation 2014) 304.

¹⁹⁷ *ibid* 302.

¹⁹⁸ *ibid* 302-303.

¹⁹⁹ Parks Australia, 'Uluru climb closure' (*Parks Australia*, 2023) <<https://parksaustralia.gov.au/uluru/discover/culture/uluru-climb/>> accessed 20 April 2023.

In a 2011 article on the Mongomi Wa Kolo Rock Paintings in Tanzania, Emmanuel Bwasiri cited Uluru-Kata Tjuta National Park as a contrasting example to the treatment of Indigenous Peoples and their cultural heritage. The Warangi and Wasi Peoples of the site do not experience the same kind of relationship with tourism – their ritual practices of throwing animal fat and beer over the paintings is listed as a threat when ‘the deterioration of the paintings is predominantly caused by tourists touching the art and by natural decay from flaking, dust and rainwater (all exacerbated by poorly managed tourist visitation)’.²⁰⁰ Predictably, the difference in inclusion and protection of culture is that while the Anangu are effectively involved in management, ‘[t]he consultants who compiled the Kondoa nomination file also knowingly or unknowingly forgot to identify people with rights and interests in Mongomi wa Kolo, especially traditional practitioners’.²⁰¹

Whilst Uluru-Kata Tjuta National Park represents a largely mutually beneficial relationship with tourism rooted in full and effective participation, there does remain some concern as touristic popularity is seen to infringe upon the continuation of cultural traditions:

Anangu mentioned that, over time, it had become more difficult to access some sites at Uluru and teach the younger people in the proper way. The number of tourists and their proximity to sacred sites made Anangu anxious about conducting activities there.²⁰²

Co-existence of tourism and cultural activities presents a key challenge to a site which otherwise is benefitting Indigenous rights via revenue and appreciation of Anangu culture.

²⁰⁰ Emmanuel J Bwasiri, ‘The Implications of the Management of Indigenous Living Heritage: The Case Study of the Mongomi Wa Kolo Rock Paintings World Heritage Site, Central Tanzania’ (2011) 66(193) *The South African Archaeological Bulletin* 60, 61 <www.jstor.org/stable/41408533> accessed 20 April 2023.

²⁰¹ *ibid* 63.

²⁰² Adams (n 196) 305.

6.4 The importance of FPIC

The previous section has explained how Indigenous Peoples can benefit from tourism, but a prerequisite for this possibility is FPIC, as noted in the case of the Mongomi Wa Kolo Rock Paintings. Without the involvement and consent of Indigenous Peoples in the nomination of sites for the World Heritage List, any form of tourism is not in a position to help Indigenous Peoples, whether they are included in the OUV or not.

This is demonstrated by Khangchendzonga National Park in India: India's first mixed site inscribed in 2016 includes the Lepcha people in its OUV, recognising the sacred nature of the landscape. The description of the property states 'Mythological stories are associated with this mountain and with a great number of natural elements (caves, rivers, lakes, etc.) that are the object of worship by the indigenous people of Sikkim' whilst reasoning for criteria (iii) includes 'The indigenous traditional knowledge of the properties of local plants and the local ecosystem, which is peculiar to local peoples, is on the verge of disappearing'.²⁰³ When comparing the description to the elements of 'aboriginal tourism', there is certainly scope given this inclusive OUV to develop tourism 'focused on indigenous knowledge of culture and nature', to choose one factor.²⁰⁴

However, a key limitation of this potential is that the Indigenous People felt 'disappointed and let down as they were neither consulted nor were their views considered during the entire process of nomination'.²⁰⁵ An article published in the 2018 edition of *World Heritage Watch* gave an Indigenous perspective on the nomination, and it was far less inclusive than the description makes it seem. Despite not being consulted, the Lepchas were initially optimistic about the nomination:

²⁰³ UNESCO-WHC, 'Khangchendzonga National Park' (*UNESCO-WHC*, 2023) <<https://whc.unesco.org/en/list/1513>> accessed 23 May 2023.

²⁰⁴ Arsenault and Maclaren (n 189) 576.

²⁰⁵ Tseten Lepcha, Gyatso Lepcha and Shweta Wagh, 'Undermining Cultural Values: An Indigenous Perspective on the Khangchendzonga Nomination' in Stephan Doempke (ed), *World Heritage Watch Report 2018* (World Heritage Watch 2018) 54.

we believed that the inscription would empower local communities in the region, provide international acknowledgement and recognition to our sacred landscape and cultural practices, strengthen our rights over forests and landscapes that we inhabit, prevent destructive development activity and the ongoing desecration of our sacred sites.²⁰⁶

World Heritage listing has the capacity to achieve the above but without FPIC, the Lepcha People of the region have seen that being on the list ‘seems to have mainly benefited government officials and the tourism industry while undermining the rights of the Lepcha communities and our role as custodians of the landscape’.²⁰⁷ These rights have been undermined through excluding important Indigenous sacred sites from the property boundaries; this certainly seems contradictory given the heavy focus on Indigenous culture in the listing.

There is a question of intention here: were the Indigenous Peoples included in the site’s description in order to enhance its value, or out of genuine enthusiasm for the role that the culture plays in the landscape? This is a matter of speculation, but the latter would imply necessity of, and desire for, consultation and participation of the Lepchas in the nomination and management of the site. The potential benefits to the Lepchas from tourism generated or supported by World Heritage listing are minimised when their rights are not effectively protected.

As well as tourism, Khangchendzonga demonstrates the interaction between World Heritage and commercial interests. In the same article, the omission of Sikkim’s sacred rivers from the site is noted: ‘One cannot help but wonder if this deliberate omission has something to do with the dams’.²⁰⁸ Indeed, hydropower projects have plagued the Lepcha People both before and after inscription on the list.²⁰⁹ While World Heritage has a positive relationship with tourism, it has the inverse with resource exploitation.

²⁰⁶ Tseten Lepcha, Gyatso Lepcha and Shweta Wagh, ‘Undermining Cultural Values: An Indigenous Perspective on the Khangchendzonga Nomination’ in Stephan Doempke (ed), *World Heritage Watch Report 2018* (World Heritage Watch 2018) 52.

²⁰⁷ *ibid* 56.

²⁰⁸ *ibid* 55.

²⁰⁹ Saptak Choudhury, ‘The Paradise Worth Preserving: How The Lepcha Community Has Built Up Resistance Against Dams in Sikkim’ (*Outlook India*, 25 January 2023) <www.outlookindia.com/travel/the-paradise-worth-preserving-how-the-lepcha-community-has-built-a-resistance-against-dams-in-sikkim-news-200449> accessed 20 May 2023.

Preserving sites for ‘present and future generations of all humanity’²¹⁰ is at odds with exploiting the land and resources. Whilst Indigenous Peoples have effectively weaponised World Heritage status to protect their LTRs from extractive industries, such as in the case of Kakadu, Indigenous rights remain subsidiary to money-making ventures of tourism and commercial interests.

6.5 Observations from the Laponian Area

As mentioned in the previous chapter, the Laponian Area is generally considered one of the best examples of Indigenous engagement in World Heritage. I observed this myself on my trip to the area in June 2023, during which I stayed with professional Lulesami dancer Liv Aira and was able to gain some insight into how the Sámi are involved in both management and tourism.

In the town of Jokkmokk, the seat of the Laponiatjuottjudus Association just outside the site’s boundaries, there are many Sámi-owned businesses as well as the Ájtee Sámi Museum, which houses a collection on Sámi history and culture, in addition to an exhibition about UNESCO and Lapponia. Naturum – the Lapponia Visitor Centre – also has a large exhibition about the site; the ‘My Lapponia’ section is particularly inclusive, featuring videos of reindeer herders, artists, researchers, and tourists discussing their relationship with Lapponia.

Conversations I had during my visit generally expressed positive sentiments about the site and how it incorporates Sámi culture, as well as for the majority Sámi representation on the site’s management board. However, there was a high level of concern about the use of land in Sápmi for hydropower and mining. In a similar way to exclusion of rivers from the Khangchendzonga site, I learnt that boundaries of the national parks that make up the Laponian Area used to incorporate areas which now have hydroelectric dams and the boundaries have been adapted accordingly. Hydropower is the largest form of renewable energy in Sweden,

²¹⁰ Operational Guidelines para 49.

generating around 45% of Sweden's electricity.²¹¹ In Sápmi, however, this has been to the detriment of Indigenous rights, with some traditional Indigenous lands being submerged completely underwater through these projects.

The main issue of concern currently is the proposed opening of a mine in Gallok on Sámi grazing lands just outside the World Heritage Site. In the words of Jåhkågaska tjiellde (the community in question), this mine 'would cause massive, irreversible damage to the environment, which would lead to many bad [consequences] for animals, people and especially for the reindeer herding that has been present in the area since time immemorial'.²¹² Indeed, it would completely cut off the route followed by the Jåhkågaska tjiellde and their reindeer in their migration to the mountains in the summer. This would not only violate Indigenous rights but also threaten the listing of the site as World Heritage, which has been articulated by UN Experts.²¹³ It remains to be seen whether UNESCO and the Committee use the threat of losing World Heritage status effectively to prevent the opening of this mine.

The Laponian Area in this sense serves to show that even with recognition as part of the OUV, management rights and involvement in site tourism, Indigenous land rights are not secure. They have international protection but remain vulnerable to national interests, and while UNESCO and the Committee have a significant role to play in the treatment of Indigenous Peoples, it is states parties to the convention who ultimately shape this.

²¹¹ Energimyndigheten, 'El från vattenkraft' (*Energimyndigheten*, 2023) <www.energimyndigheten.se/energisystem-och-analys/elproduktion/vattenkraft/> accessed 22 December 2023.

²¹² Jåhkågaska tjiellde, 'Welcome!' (*Jåhkågaska tjiellde*, 2023) <www.gallok.se/en-gb/> accessed 20 June 2023.

²¹³ OHCHR, 'Sweden: Open pit mine will endanger indigenous lands and the environment – UN experts' (*OHCHR*, 10 February 2022) <www.ohchr.org/en/press-releases/2022/02/sweden-open-pit-mine-will-endanger-indigenous-lands-and-environment-un> accessed 20 June 2023.

7. Differences in national policies

This chapter will explore rationales behind national policies, with a particular focus on colonial history, to identify the commonalities between countries exhibiting good practices. The detrimental elements of the World Heritage process have been exposed, but differing treatments of Indigenous Peoples in and around World Heritage Sites are largely due to attitudes of state governments. These cannot be controlled by UNESCO and the Committee; it is more a case of how World Heritage listing can offer better protection of land rights in countries that are less concerned with Indigenous rights, and not promote worse treatment in countries with established legal frameworks.

7.1 A state perspective: rationales for eviction

Governments like conservation because there is a lot of money in it. It brings money from the Global Environment Facility and elsewhere. But when your economic priority is to generate money from conservation, you want to get rid of people from these protected areas. That is what is now happening,²¹⁴

²¹⁴ Victoria Tauli-Corpuz (as quoted in John Vidal, 'The tribes paying the brutal price of conservation' (*The Observer*, 28 August 2016) <www.theguardian.com/global-development/2016/aug/28/exiles-human-cost-of-conservation-indigenous-peoples-eco-tourism> accessed 25 May 2023).

This quote from the past SRRIP Victoria Tauli-Corpuz summarises the argument forwarded throughout this thesis that Indigenous rights are subsidiary to economic pursuits. Evicting Indigenous Peoples is an unpopular policy, the justifications for which have been summarised by Survival International. The first has already been discussed at length – the pursuit of wilderness in the name of tourism – but the others provoke further examination:

Control The desire of a government to have complete control over both the area and the people. This is made a great deal easier by separating one from the other.

Paternalism and racism Some governments have evicted tribal peoples from parks in a paternalistic, and racist, attempt to force them to assimilate into the mainstream society.²¹⁵

Paternalism has been discussed previously in relation to the narratives of Indigenous Peoples weaponised by environmental NGOs to argue against eviction, but it can also be used for the opposite. The root remains the same: arguing for or implementing policies deemed to be in Indigenous Peoples' best interest without consultation or self-determination. Paternalism towards other Peoples is a dangerous legacy of colonialism, given the 'civilisation mission' that European colonial powers undertook throughout the world, supposedly in the best interests of the colonies. This assumption that assimilation is desirable by all parties is grounded in a lack of understanding. As explored in relation to tourism, there can be no respect or peaceful coexistence without understanding.

Unlike tourists, however, whose experience can be enhanced by understanding of Indigenous cultures, governments often face further difficulties when considering Indigenous Peoples. They have specific rights, particularly over LTRs, which states also have interests in controlling; therefore, 'separating one from the other' certainly makes sense in that it effectively removes Indigenous Peoples from the equation. Seeking control under paternalistic and racist sentiments manifesting in practice as human rights

²¹⁵ Survival International, 'Parks need peoples: Why evictions of tribal communities from protected areas spell disaster for both people and nature' (2014), 4.

violations has all the characteristics of colonialism. The examination of fortress conservation in Chapter 3 identified the colonial legacy of conservation: this is especially evident when considering how past colonialism has impacted national policies.

7.2 Impact of history on conservation policy

Through an examination of the cases I identified on or around Indigenous lands, all of which I have not been able to discuss, the following countries emerged as having respectively the best and worst treatment of Indigenous Peoples and their land rights in relation to World Heritage. Divisions are problematic within the World Heritage process and remain so here; to present my findings in this way is reductive, given the individual differences between sites even within countries, and the complicated relationships between Indigenous Peoples and states in every case. The purpose of doing this is to explore historic trends:

'Best' examples	'Worst' examples
Australia New Zealand Canada United States Sweden	Tanzania Kenya Democratic Republic of Congo Central African Republic Cameroon India Nepal Thailand

Figure 5: 'Best' and 'worst' countries in the contemporary protection of Indigenous land rights concerning their World Heritage Sites

7.2.1 Best examples: trends

Historically, these five states have not treated the Indigenous Peoples within their boundaries well; as noted, evictions from Yellowstone National Park spread the dangerous practice of fortress conservation. Despite the exclusively Western composition of the 'best' examples, it is not my intention to equate Western states with 'best' practices towards Indigenous Peoples. In fact, as will be analysed in this chapter, other regions of the world generally offer

greater legal protection of Indigenous land rights. Although policies concerning World Heritage Sites form part of national policy, there is a specificity about chasing the ‘global tourist brand’ that influences practices. The human rights violations committed against Indigenous Peoples in the ‘best examples’ have recently been revealed or are currently being investigated via truth and reconciliation commissions.²¹⁶ This demonstrates a recent shift in attitudes and policies towards Indigenous Peoples, with efforts being made to redress historic injustices, which has translated into good practices concerning World Heritage.

It is worth noting Sweden as an anomaly among these states. The Truth Commission for the Sami People is currently underway²¹⁷ but the relationship between the Sámi and the Swedish State is still very tense; in the case of the Laponian Area, ‘Only through difficult, determined, activism, the [Sami] did manage to achieve most of what they hoped for’.²¹⁸ This is not to say that Indigenous Peoples in sites in the other four states have not fought for their rights, but there is a more visible trend of sites becoming more inclusive in reflection of national conversations. There is more to draw upon to see this trend in the other four states, given that they all have multiple inscribed sites recognising Indigenous cultures, whilst Sweden only has one.

Australia, New Zealand, Canada and the US also share several historical similarities. They were all British colonies that evolved as settler societies, undertaking frontier expansion to establish new settlements, involving conflicts with Indigenous Peoples and forced evictions. It is interesting here to refer back to Hernandez’s assessment that settler colonialism is embedded in contemporary conservation, focusing on the ‘usefulness’ of nature. It is not a

²¹⁶ National Centre for Truth and Reconciliation, ‘National Centre for Truth and Reconciliation’ (*NCTR*, 2023) <<https://nctr.ca/>> accessed 20 June 2023; Truth Commission for the Sami People, ‘The Truth Commission for the Sami People’ (*Truth Commission For the Sami People*, 2023) <<https://sanningskommissionensamer.se/en/start-en/>> accessed 20 June 2023; Wabanki REACH, ‘Maine Wabanaki-State Child Welfare Truth and Reconciliation Commission’ (*Wabanki REACH*) <www.wabanakireach.org/maine_wabanaki_state_child_welfare_truth_and_reconciliation_commission> accessed 20 June 2023; Waitangi Tribunal, ‘Waitangi Tribunal: Te Rōpū Whakamana i te Tiriti o Waitangi’ (*Waitangi Tribunal*, 2023) <www.waitangitribunal.govt.nz/> accessed 20 June 2023; Yoorrook Justice Commission, ‘Yoorrook Justice Commission’ (*Yoorrook Justice Commission*, 2023) <<https://yoorrookjusticecommission.org.au/>> accessed 20 June 2023.

²¹⁷ Truth Commission for the Sami People, ‘About the Commission’ (*Truth Commission for the Sami People*, 2023) <<https://sanningskommissionensamer.se/en/about-the-commission/>> accessed 20 June 2023.

²¹⁸ IIPFWH, ‘Europe’ (*IIPFWH*) <<https://iipfwh.org/europe/>> accessed 10 March 2023.

stretch to apply this to people and hypothesise that settler colonial history has manifested in assessing the ‘usefulness’ of people to World Heritage Sites. It may simply be that Indigenous Peoples are more ‘useful’ to the image of sites in these countries, given their well-known history of rights violations against them, than in other places. In more recent history, these were also the four member states that originally voted against the UNDRIP, ‘motivated by a fear of Indigenous land claims and the exercise of the right to self-determination as a call for secession’ according to Vrdoljak.²¹⁹ History certainly seems contradictory to being the ‘best examples’, demonstrating how recent the efforts for reconciliation are.

I would argue that as all states do, these states are pursuing their national interests. Given their developed economies, relative political stability, global influence, and strong human rights records (human rights indexes ranked 0.92-0.97 by Our World in Data),²²⁰ their interests mainly centre on maintaining and building their international and national reputation. This is supported by Australia’s inclusion of Indigenous Peoples in its own heritage policy whilst ignoring violations against the Karen in KKFC for instance. The commonalities between the ‘best examples’ I would say is not necessarily that they are the ‘best’ at all, as deeper analysis could uncover, but that their interests centre around redressing past injustices, which mainly involved Indigenous Peoples. This redress is for the sake of their reputation, and their socioeconomic resources enable them to do so in an effective way, using World Heritage as an arena. There is also a higher level of international awareness about the Indigenous Peoples in these countries and greater interest, enabling them to fit more easily with tourist desires.

7.2.2 Worst examples: trends

Of the eight countries I have recognised, six of them were subject to European colonisation; however, unlike Australia, New Zealand, Canada and the US, they were not settler colonies but exploited colonies. The result of colonialism was therefore not the importation of people that violated Indigenous rights, but rather

²¹⁹ Ana Filipa Vrdoljak, ‘Indigenous Peoples, World Heritage, and Human Rights’ (2018) 25(3) *International Journal of Cultural Property* 245, 247.

²²⁰ Bastian Herre, Pablo Arriagada and Max Roser, ‘Human Rights - Data from Varieties of Democracy project (v13)’ (*Our World in Data*, 2022) <<https://ourworldindata.org/human-rights>> accessed 10 June 2023.

the importation of ideas, which amounted to the same thing. The timeline is also important to consider – the settler colonies achieved independence far earlier and were also afforded a greater degree of independence under colonialism. On the contrary, the listed African countries gained independence only in the early 1960s, while India became independent in 1947. The colonial legacy is therefore far more recent and intense in these countries, especially considering that the colonisers destabilised the countries and prevented economic development by using resources for their own gain. Given this history, ‘developed economies, relative political stability, global influence, and strong human rights records’ are not things the ‘worst examples’ have in common.

The creation of the first national park in Africa was orchestrated by King Albert I of Belgium in 1925: Albert National Park in the present Democratic Republic of the Congo, now named Virunga National Park and recognised as a World Heritage Site. Albert National Park was an early example of the ‘quest for authenticity’, undertaking evictions against thousands of Indigenous Peoples but allowing the Batwa to stay ‘who were framed as part of the “pristine” natural equilibrium and who were seen as subjects of scientific interest themselves’.²²¹ The park’s formation was certainly inspired by Yellowstone among other examples, and served as an inspiration itself for the use of Africa as a playground for European interests. This is accurately summarised by Joseph Lee as part of a larger project on ‘The Human Cost of Conservation’ co-published by Grist and Indian Country Today:

For Europeans, creating protected parks in Africa allowed them to expand their dominion over the continent and quench their thirst for ‘undisturbed’ nature, all without threatening their ongoing expansion of industrialization and capitalism in their own countries. With each new national park came more evictions of Indigenous people, paving the way for trophy hunting, resource extraction, and anything else they wanted to do.²²²

²²¹ Raf De Bont, ‘Internationalism in the Heart of Africa? The Albert National Park / Virunga National Park’ (2018) 16 Arcadia <www.environmentandsociety.org/arcadia/internationalism-heart-africa-albert-national-park-virunga-national-park> accessed 11 June 2023.

²²² Joseph Lee, ‘How the world’s favourite conservation model was built on colonial violence’ (*Grist*, 13 April 2023) <<https://grist.org/indigenous/30x30-world-conservation-model-colonialism-indigenous-peop/>> accessed 10 May 2023.

Samwel Nangiria, a Maasai leader, expressed his opinion, referring to the persecution of the Maasai in Tanzania, that ‘The colonial government initiated it and the independent government inherited and carried it forward’.²²³ With a history of evictions for control and management of LTRs, it is hardly surprising that post-colonial regimes continue these practices, given that control of people, LTRs and generation of tourism are all within national interests.

Thailand, as well as Nepal, were not colonised but were not immune to the infiltration of colonial ideas. This is explained by Reiner Buergin in an article on the policies towards Indigenous Peoples in Thung Yai World Heritage Site:

evictions, repression, and marginalization cannot be directly traced back to territorial occupations by European colonial powers but were predominantly caused by regional powers in the wake of colonial hegemony in mainland Southeast Asia as well as the spreading of a ‘culture of modernity’ deeply rooted in European and colonial history.²²⁴

While the African examples experienced the imposition of protected areas by European powers, the colonial ideas of the time were influential worldwide. I would argue that the ‘culture of modernity’ is the most important consideration here that links back to the discussion around the value of land and focus on productivity. Modernisation in the European colonial sense is incompatible with the maintenance of traditional cultures and their use of land. The ‘culture of modernity’ and the impact of colonial hegemony in Asia therefore indirectly caused evictions and violations against Indigenous land rights in the name of development. Economic development is a driving factor for the countries deemed the ‘worst’ examples, which can particularly be seen with India being part of

²²³ Samwel Nangiria (as quoted in Joseph Lee, ‘After violent evictions, Indigenous Maasai call human rights investigation a sham’ (*Grist*, 13 February 2023) <<https://grist.org/global-indigenous-affairs-desk/after-violent-evictions-indigenous-maasai-call-human-rights-investigation-a-sham/>> accessed 20 April 2023).

²²⁴ Reiner Buergin, ‘Contested Rights of Local Communities and Indigenous Peoples in Conflicts over Biocultural Diversity: The case of Karen communities in Thung Yai, a World Heritage Site in Thailand’ (2015) 49(6) *Modern Asian Studies* 2022, 2050.

the BRICS group of fast-growing economies. Although India was colonised by the British, Britain only opened one national park during the British Raj; the legacy has been far more influential on conservation policy, rather than the colonial period itself.

7.3 Conflicting trends: Law vs practice

As mentioned, although the assumption would be that the ‘best’ examples would have better legal protection of Indigenous land rights in protected areas, this is not necessarily the case, as seen in Figure 6. The map was generated from LandMark, which is building a database on the protection of Indigenous and community land rights.²²⁵ The overall picture presented here is somewhat conflicting to the observed ‘best’ and ‘worst’ cases. For instance, the United States and Canada’s laws are not assessed to effectively ‘uphold indigenous land rights in the ownership and governance of national parks and other protected areas’,²²⁶ whilst India and Tanzania are rated highly.

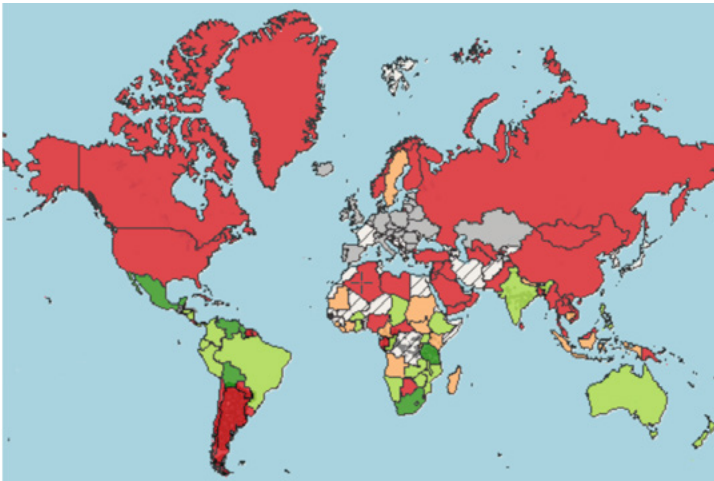


Figure 6: World map showing legal protection of Indigenous land rights in protected areas²²⁷

²²⁵ LandMark, ‘Maps’ (LandMark 2022) <www.landmarkmap.org/map/> accessed 10 June 2023.

²²⁶ *ibid* description of ‘Land Rights in Protected Areas’ criteria.

²²⁷ Map generated using LandMark, generated 20 June 2023.

Taking India as an example, the 2006 Forest Rights Act (FRA) does indeed recognise ‘the rights of the forest dwelling tribal communities and other traditional forest dwellers to forest resources, on which these communities were dependent for a variety of needs, including livelihood, habitation and other socio-cultural needs’.²²⁸ One of the objectives of this act is ‘[t]o undo the historical injustice occurred to the forest dwelling communities’,²²⁹ however, its implementation, particularly in protected areas, has been described as ‘negligible and tardy’.²³⁰ This has been attributed to poor understanding of the Act amongst implementation agencies.²³¹ As well as this, the introduction of new Forest (Conservation) Rules concerned with deforestation in 2022 demonstrate the lack of commitment to Indigenous rights. The rules are set to remove the requirement to gain Indigenous consent before beginning forest clearing, which will only increase existing violations of the FRA. There is ongoing conflict between the Indian government and the National Commission for Scheduled Tribes on this issue.²³² This specific case demonstrates that legal infrastructure does not necessarily relate to practice.

One commonality that can be drawn from the map is the recognition of Indigenous Peoples in accordance with international frameworks. Red areas include the Middle East, as well as Russia and China for instance²³³ – all areas which do not recognise Indigenous Peoples using the same terminology, as well as having generally bad human rights records.²³⁴ In this sense, the lack of legal protection for land rights in protected areas makes sense given the ultimate lack of national legal recognition.

²²⁸ Ministry of Tribal Affairs: Government of India, ‘Forest Rights Act’ (*Ministry of Tribal Affairs: Government of India*, 2023) <<https://tribal.nic.in/FRA.aspx>> accessed 11 May 2023.

²²⁹ *ibid.*

²³⁰ Eleonora Fenari and Neema Pathak Broome, ‘The Status of the Forest Rights Act (FRA) in Protected Areas of India: A Draft Report Summary’ (*United Nations Department of Economic and Social Affairs*, 2019) 1 <www.un.org/development/desa/indigenouspeoples/wp-content/uploads/sites/19/2019/01/Summary-Final-Implementation-of-FRA-in-PAs.-Final-14.11.2017-as-printed.pdf> accessed 10 June 2023.

²³¹ Gurmeet Sangha Rai, ‘India: The Western Ghats World Heritage in Amund Sinding-Larsen and Peter Bille Larsen (eds), *Case Studies Carried out within the Our Common Dignity Initiative 2011-2016: Rights-Based Approaches in World Heritage* (ICOMOS Norway 2017) 11.

²³² CR Bijoy, ‘How New Forest Diversion Rules Deal a Body Blow to the Forest Rights Act’ (*The Wire Science*, 11 July 2022) <<https://science.thewire.in/environment/2022-forest-conservation-rules-fra/>> accessed 14 May 2023.

²³³ The difficulty of defining ‘Indigenous’ in the Middle Eastern context is the reason that I have not included any case studies from the Middle East in this thesis.

²³⁴ Herre, Arriagada and Roser (n 220).

An area with a particularly good record on the map that has not yet been discussed in this chapter is Latin America and the Caribbean, which is the most protected region in the world, with over 21% of the total area protected.²³⁵ Around 277 million hectares of land have been formally recognised by governments in the region as property of Indigenous and Tribal Peoples, of which 200 million hectares have forest; generally, deforestation rates are lower in these territories.²³⁶ Despite a high level of legal protective mechanisms compared with other areas, and international recognition that Indigenous Peoples – particularly in the Amazon region – have an important role to play in biodiversity conservation, intentions still supersede the reality.

An interesting study on the origins of national parks in Brazil and Argentina by Olaf Kaltmeier and Frederico Freitas argues that ‘national parks were primarily conceived of as tools for state development, territorialization, and modernization’ rather than for nature conservation purposes.²³⁷ This supports the conclusions drawn from motivations behind evictions, yet there has been an ‘attempt to propose Latin America as an alternative model of parks with people’.²³⁸ The authors note that in their examinations they consulted case studies that ‘both erased people (indigenous and locals) and promoted settlements (of white-ish “model citizens”’).²³⁹ This demonstrates that various repressive measures of conservation have been employed across Latin America; the ‘touristification of landscape’²⁴⁰ was demonstrated by the discussion of Manú National Park in this thesis for example.

There is far more that could be said about the particularities of law vs practice in regional and national contexts, but the same conclusion emerges in each case: legal protection does not matter if it is not implemented effectively. For instance, of the eight identified ‘worst’ countries, two (Nepal and Central African Republic)

²³⁵ IUCN, ‘The Latin America and Caribbean Protected Planet Report 2020’ (*IUCN*, 29 April 2021) <www.iucn.org/news/protected-areas/202104/latin-america-and-caribbean-protected-planet-report-2020> accessed 2 June 2023.

²³⁶ FAO Regional Office for Latin America and the Caribbean, ‘Forest governance by indigenous and tribal peoples’ (*FAO*, 2023) <www.fao.org/americas/publicaciones-audio-video/forest-gov-by-indigenous/en/> accessed 3 June 2023.

²³⁷ Olaf Kaltmeier and Frederico Freitas, ‘Beyond the “Yellowstone Model:” The Origins of National Parks in Brazil and Argentina’ (2021) 11(3) *Historia Ambiental Latinoamericana y Caribeña* (HALAC) revista de la Solcha 400, 402.

²³⁸ *ibid.*

²³⁹ *ibid.* 403.

²⁴⁰ *ibid.*

have ratified the ILO Convention 169, and all but one (Kenya) have approved the UNDRIP. While both international and national law have proven to have little reflection on practice, Indigenous activism has been and continues to be essential in the achievement and protection of rights. Indigenous Peoples continue to fight for their rights even in the ‘best examples’ as the marginalisation of Indigenous rights persists worldwide. The rise of activism in less economically developed countries, often with a less clear distinction on the definition of Indigenous, is a lot more recent.

7.4 UNESCO responses to ‘worst’ practices: the Endorois case

In 2010, the African Commission on Human and Peoples Rights ruled that by evicting the Indigenous Endorois People from the Lake Bogoria Area in the Great Rift Valley, the Kenyan government had violated the African Charter on Human and Peoples’ Rights.²⁴¹ This was a landmark judgment, providing recommendations for redress, which have still not been adhered to. Despite this judgement, the World Heritage Committee proceeded to inscribe the Kenya Lake System in the Great Rift Valley on the World Heritage List in 2011, even with a request from the Endorois Council for deferral given the lack of FPIC. Indeed, after inscription the African Commission adopted a resolution, saying that inscription ‘contravenes the African Commission’s Endorois Decision and constitutes a violation of the Endorois’ right to development under Article 22 of the African Charter’.²⁴²

Inscription effectively undermined the regional human rights mechanism and approved the actions of the Kenyan government. In 2014, the Committee did request Kenya to ‘ensure full and effective participation of the Endorois in the management and decision-making of the property, and in particular the Lake Bogoria component, through their own representative institutions’.²⁴³

²⁴¹ African Commission on Human and Peoples’ Rights, *Centre for Minority Rights Development (Kenya) and Minority Rights Group International on behalf of Endorois Welfare Council v Kenya* (4 February 2010) Communication No 276/2003.

²⁴² African Commission on Human and Peoples’ Rights, ‘Resolution on the Protection of Indigenous Peoples’ Rights in the Context of the World Heritage Convention and the Designation of Lake Bogoria as a World Heritage site’ (5 November 2011) Res.197(L)2011.

²⁴³ UNESCO-WHC, ‘Decision 38 Com 7B.91’ in *Decisions Adopted by the World Heritage Committee at its 38th Session (Doha, 2014)* (UNESCO 2014) WHC-14/38.COM/16 144.

This shift appeared to influence the signing of the Kabarnet Declaration between the government and the Endorois Council, which recognised the site as ‘part of the Endorois Community ancestral land’ and affirmed decisions must be subject to FPIC.²⁴⁴ While this has not yet manifested in practice, this shows the power of UNESCO and the Committee to influence national policy; their lack of foresight in the Endorois case is emblematic of a dangerous trend to inscribe sites without Indigenous FPIC.

To note some regional differences, the African regional human rights system is increasingly committed to Indigenous land rights, providing Indigenous Peoples with a forum to air their grievances. Indigenous Peoples in Asia do not enjoy this same kind of protection given the Asian focus on state sovereignty and the belief that human rights are a domestic issue. This explains why the international community tends to hear more about violations of Indigenous African rather than Asian Peoples. The differences in national and regional protections afforded to Indigenous Peoples means that UNESCO and the World Heritage Committee are in a powerful position to influence policy by withholding inscription if human rights standards are not met. The ‘unbundling’ of the process however means that this is simply not the Committee’s primary focus.

7.5 UNESCO as an international organisation

This chapter has attempted to give an overview of how different states pursue their national interests through conservation and World Heritage Sites, and how Indigenous Peoples are usually subsidiary to economic considerations. To bring this back to the question about why UNESCO and the Committee adopt different policies, ultimately, UNESCO is an international organisation composed of states. The only thing that unites these states parties within the World Heritage framework is commitment to the World Heritage Convention and preservation of heritage for present and future generations. As this thesis has demonstrated,

²⁴⁴ Kabarnet Declaration on Lake Bogoria National Reserve as a World Heritage Site (26 May 2014) as cited in Korir Sing’Oei Abraham, ‘Ignoring Indigenous Peoples’ Rights: The Case of Lake Bogoria’s Designation as a UNESCO World Heritage Site’ in S Disko and H Tugendhat (eds), *World Heritage Sites and Indigenous Rights* (IWGIA, Forest Peoples Programme, Gundjeihmi Aboriginal Corporation, 2014) 185.

whilst this is a noble pursuit, the politicisation of the Committee for national interests and the quest for inscription has come above commitment to Indigenous rights and technical advice. For many states parties, conservation no longer seems to be the aim – rather it has become manipulation of the World Heritage Convention for their benefit.

The nature of UNESCO as a collection of states means that naturally it will be a platform for state interests. As Logan has described, international organisations ‘are rarely openly critical of a Member State or State Party and much reliance has to be placed on diplomatic manoeuvres to achieve difficult ends’.²⁴⁵ Further than not being openly critical, UNESCO has endorsed ‘voluntary’ relocation, while the Committee has repeatedly inscribed sites without FPIC or with knowledge of gross human rights violations. The case of the Endorois and Lake Bogoria demonstrates that the Committee ignores important decisions even from regional human rights bodies due to this tunnel vision centred on OUV.

Despite not being ‘in Geneva on the Human Rights Council’, as an agency of the UN, UNESCO and the Committee still have obligations to work for the fulfilment of Indigenous rights, whatever the national policy is. In fact, I would argue that by learning about national policies towards Indigenous rights, the Committee would be able to effectively protect Indigenous rights, rather than indirectly sponsoring evictions and the promotion of restrictions on Indigenous Peoples via the pursuit of false authenticity. For instance, for countries that have the legal framework but not the implementation, this could be recommended and promoted by UNESCO, whilst recommendations for introduction or amendment of national laws in countries lacking this could have a similar effect. If the ‘competition’ for inscription on the list focused more on rights protection than wilderness or authenticity, the whole World Heritage system could enhance Indigenous rights.

Having spoken about the impact of colonial legacies and European ideas on the ‘worst’ examples, it is important to note that the World Heritage process itself is ‘Western-oriented’. This has been discussed by ex-ICOMOS member Henry Cleere who argued that ‘[i]t operates in accordance with an aesthetic and historical

²⁴⁵ William Logan, ‘Australia, Indigenous peoples and World Heritage from Kakadu to Cape York: State Party behaviour under the World Heritage Convention’ (2013) 13(2) *Journal of Social Archaeology* 153, 160.

perspective that is grounded in European culture'.²⁴⁶ As of 2023, 47.19% of all World Heritage Sites are in Europe and North America, with 85.9% of these being listed as cultural.²⁴⁷ As noted in Chapter 4, ex-colonies tend to nominate colonial heritage within their states; given that there is a history of such sites being inscribed, states that are pursuing the benefits that come with inscription would naturally nominate sites that fit the 'Western-oriented' vision of World Heritage. It follows from this that states would also seek the inscription of natural sites that offer the 'wilderness' that tourists living in urban centres so desperately seek.

A 2022 UNESCO meeting on modern heritage of Africa, intended to improve the representation of African sites on the World Heritage List, is one example of UNESCO's attempts to tackle the Eurocentrism of World Heritage. A key topic of the meeting was the 'reconceptualization of "the modern" that can be untethered from its Eurocentric, colonial or one-sided universalising origins'.²⁴⁸ It is a positive step that UNESCO is approaching its problematic Eurocentrism and colonial legacies, and certainly that it is tackling the concept of 'the modern' that has driven violations against Indigenous Peoples around the world in the name of development from a Eurocentric lens.

While a Eurocentric lens is damaging for other continents seeking World Heritage listing as well as Indigenous Peoples, the state-centric lens of UNESCO presents a difficulty in itself for Indigenous Peoples, as previously expressed by Carril. From the discussion of self-determination in Chapter 2 and the necessity for Indigenous Peoples 'to establish and develop their influence in decision-making processes affecting them across and beyond states boundaries',²⁴⁹ the state as the primary component presents difficulties for Indigenous rights. If Indigenous Peoples do not 'fit'

²⁴⁶ Henry Cleere, 'The concept of "outstanding universal value" in the World Heritage Convention' (1996) 1(4) *Conservation and Management of Archaeological Sites* 227, 228.

²⁴⁷ UNESCO-WHC, 'World Heritage List Statistics' (*UNESCO-WHC*, 2023) <<https://whc.unesco.org/en/list/statistics>> accessed 24 June 2023.

²⁴⁸ UNESCO-WHC, 'Modern Heritage of Africa: Towards an enhanced representation of the African continent on the World Heritage List' (*UNESCO-WHC*, 15 July 2022) <<https://whc.unesco.org/en/news/2460>> accessed 10 June 2023.

²⁴⁹ Dorothee Cambou, 'The UNDRIP and the legal significance of the right of indigenous peoples to self-determination: a human rights approach with a multidimensional perspective' (2019) 23(1-2) *The International Journal of Human Rights* 34, 48.

with states' intentions for land, that is when their land rights are threatened, and the nature of UNESCO as an international organisation means it cannot directly impact state intentions, merely guide them via use of their global tourist brand.

8. Conclusion

The discussions of this thesis have illuminated how the concepts of the World Heritage process combined with states' pursuit of inclusion on the World Heritage List have driven differing treatments of Indigenous Peoples. Ultimately, the protection of Indigenous land rights relies on compatibility of Indigenous Peoples with 'productive' uses of land. This is rooted in Western conceptions of value and although production implies cultivation and agriculture, it can also relate to extractive industries and tourism. UNESCO and the Committee treat Indigenous Peoples differently on this basis, in accordance with national interests and whether Indigenous Peoples are 'productive' for the site's OUV and visitor experience.

The concepts of OUV, authenticity and wilderness ingrained in the World Heritage process and conservation ideologies are particularly damaging to Indigenous rights and continue colonial sentiments that promote unrealistic narratives. Whilst the treatment of Indigenous Peoples is largely dictated by attitudes and policies of states parties, World Heritage's focus on value equates Indigenous Peoples with a commodity. For a system that supposedly unites 'all humanity', divisions are all too present: Indigenous land rights have been threatened ever since the passing of the World Heritage Convention in 1972 split heritage into natural and cultural, and the division into tangible and intangible further complicates effective Indigenous inclusion.

It is difficult to conclude who to 'blame' for violations against Indigenous Peoples in relation to World Heritage: the politicisation of the World Heritage Committee is a dangerous trend, which has compartmentalised the system into solely what is and is not of value, with states manipulating the system to inscribe as many sites as possible. Whilst countries are naturally the ones to 'blame'

for their own policies towards Indigenous Peoples, precedents set by UNESCO and the Committee provide the platform for states to pursue national interests without effective consideration of human rights. The pursuit of development via economic benefits associated with the World Heritage List is particularly visible in developing economies, but broadly we see all states acting in the pursuit of resources and reputation. The impact of colonial ideas related to conservation continues to permeate contemporary policies, and currently the Committee is doing little to tackle this, despite some initiatives by UNESCO.

UNESCO and the World Heritage Committee, although not responsible for state policy, have considerable influence in the field of heritage and are in a powerful position to use their ‘global tourist brand’ to protect Indigenous land rights through a shift in policy and recommendations.

8.1 Recommendations

From my analysis and the consideration of existing Indigenous recommendations to UNESCO and the World Heritage Committee,²⁵⁰ I would recommend the following:

General recommendation	Specifics
Address the problematic concepts of OUV, authenticity and wilderness	UNESCO should acknowledge the detrimental way in which OUV has been applied and reaffirm its commitment to human rights. There should be an examination into the colonial roots of concepts of authenticity and wilderness, and a decrease in the emphasis placed on human interaction as a threat to World Heritage Sites. These identified concepts should be unlinked from each other, with further study required into how, and if, OUV can be compatible with the protection of Indigenous rights.
Alter the criteria	The division of heritage into cultural and natural criteria has been noted as a key limitation of the World Heritage system. Ideally, the criteria would be unified or abolished entirely and sites evaluated on an individual basis with a holistic consideration of the site. In a less extreme case of reform, the recognition of the interaction between humans and land – as used to be the case – would enhance Indigenous rights in purely natural sites.

²⁵⁰ See for example IWGIA, IIPFWH and IPACC, ‘Submission to the UN Special Rapporteur on the Rights of Indigenous Peoples for his report to the 77th Session of the UN General Assembly: Indigenous Peoples’ Rights and UNESCO World Heritage Sites’ (IWGIA, 19 April 2022) <www.iwgia.org/en/news/4721-unsrrip-77unga-protectedareas.html> accessed 2 February 2023.

General recommendation	Specifics
Changes to the nomination process	Nominations should involve all relevant stakeholders and rights holders, and UNESCO, the Committee and advisory bodies should not consider nominations without proven FPIC of Indigenous Peoples where necessary. Additionally, it should be made easier to nominate a site as mixed to provide more chances for Indigenous inclusion in OUV, and the issues with advisory bodies' comparisons between sites should be addressed.
Incorporation of human rights	UNESCO should take its obligations as an agency of the UN seriously and incorporate human rights into the World Heritage process. This should particularly be the case considering the growing body of literature addressing evictions and human rights violations in and around World Heritage Sites. Human rights protection should inform Committee decisions to a greater extent than national interests.
Measures to 'depoliticise' the Committee	The 'depoliticisation' of World Heritage is a large and impossible ask; where LTR governance and national interests are concerned, the conversations will naturally be political. However, measures such as the removal of Committee members' capacity to nominate their own sites, or a limitation on the number of sites that states can nominate in a given period could influence a less state-centric process, with the focus shifting back to effective conservation.
Effective Indigenous participation	The failure of the materialisation of WHIPCOE is a detriment to Indigenous involvement in World Heritage; effective inclusion of Indigenous Peoples is necessary to address the ongoing human rights violations and ensure a more rights-based approach to heritage. The IIPFWH presents an opportunity for Indigenous engagement in World Heritage; this body should be given powers to act as an advisory body to the Committee. This is in combination with the assumption that states will gain, and prove, effective FPIC concerning nominations.
Influence on state policy	As noted, state policy is always above UNESCO and Committee recommendations. However, there is opportunity to influence states' relationships with Indigenous land rights via changing standards around World Heritage inscription and preservation. For instance, evictions could not only be prevented but past evictions could be addressed as part of the nomination process, with World Heritage becoming a platform for reconciliation. The promotion of participatory management models and drawing on good practices could make World Heritage more inclusive and effective.

Overall, UNESCO and the World Heritage Committee need to work for more Indigenous involvement in the World Heritage process and face up to their obligations, tackling Committee politics, and prioritisation of profit over Peoples.

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