

# GIZA TO THE GALÁPAGOS: A CRITIQUE OF THE CURRENT UNESCO WORLD HERITAGE SYSTEM AND HOW TO FIX IT

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## INTRODUCTION

In 1959, the Egyptian government began work to construct the Aswan Dam.<sup>1</sup> The construction of this dam would flood the Nile Valley, home to the Abu Simbel temples.<sup>2</sup> The temples and related artifacts were of immense historical value to the Egyptian people seeking to save the priceless relics from submersion. To save these irreplaceable items, the temples and other monuments were dismantled or carved up, and then transported to safety.<sup>3</sup> The cost of such a salvation project was immense and the advanced mechanics made it nearly impossible for Egypt to undertake such a project.<sup>4</sup>

With such history at risk the Egyptian government requested international assistance from the United Nations Educational, Scientific and Cultural Organization (UNESCO).<sup>5</sup> The director of UNESCO then approached the Member States to provide funding and man power.<sup>6</sup> Several Member States responded to this call for help, most notably, the United

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1. STEFANIA FERRUCCI, UNESCO'S WORLD HERITAGE REGIME AND ITS INTERNATIONAL INFLUENCE 11 (2012).

2. *Id.*

3. *The Rescue of Nubian Monuments and Sites*, UNESCO, <http://whc.unesco.org/en/activities/173/> (last visited May 17, 2017).

4. *50th Anniversary of Nubia Campaign*, UNESCO (Mar. 31, 2009), <http://whc.unesco.org/en/news/497/>; FERRUCCI, *supra* note 1.

5. Elizabeth Betsy Keough, *Heritage in Peril: A Critique of UNESCO's World Heritage Program*, 10 WASH. U. GLOBAL STUD. L. REV. 593, 594 (2011).

6. *Id.*

States, Italy, the Netherlands, and Spain.<sup>7</sup> In total, the mission to save the monuments and artifacts under threat from the Aswan Dam project cost approximately \$80,000,000, half of which was donated by over 50 countries worldwide.<sup>8</sup> Not only did this project constitute UNESCO's first attempt to save cultural heritage, but also it was a huge success in terms of historical preservation, international recognition, and cooperation, and it lent credence to UNESCO's mission.<sup>9</sup>

UNESCO emerged in the wake of World War II.<sup>10</sup> In 1945, the United Nations held a conference with the purpose of establishing an educational, scientific, and cultural organization.<sup>11</sup> This conference yielded the United Nations Educational, Scientific and Cultural Organization (UNESCO).<sup>12</sup> Thirty-seven countries signed the organization's Constitution,<sup>13</sup> and it entered into force in 1946 by ratification of the 20th state.<sup>14</sup> As part of the Constitution, the mission of UNESCO is to "[m]aintain, increase and diffuse knowledge: By assuring the conservation and protection of the world's inheritance of books, works of art and monuments of history and science, and recommending to the nations concerned the necessary international conventions."<sup>15</sup> The 1954 Hague Convention echoed this commitment, stating that, "damage to cultural property belonging to any people whatsoever means damage to the cultural heritage of all mankind."<sup>16</sup>

As UNESCO's influence grew, so too did the need for greater UNESCO involvement. In 1972, UNESCO adopted the Convention

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7. *The Rescue of Nubian Monuments and Sites*, *supra* note 3.

8. Diana Zacharias, *The UNESCO Regime for the Protection of World Heritage as Prototype of an Autonomy-Gaining International Institution*, 9 GERMAN L.J. 1833, 1835 (2008).

9. Keough, *supra* note 5. See also *infra* text at note 15 (describing UNESCO's mission).

10. *Administration: About UNESCO*, UNESCO, [http://www.unesco.org/archives/multimedia/?s=films\\_details&pg=33&id=15](http://www.unesco.org/archives/multimedia/?s=films_details&pg=33&id=15) (last visited May 17, 2017).

11. *Id.*

12. *Id.*

13. Constitution of the United Nations Educ., Sci. & Cultural Org. (Nov. 16, 1945) (entered into force Nov. 4, 1946), [http://portal.unesco.org/en/ev.php-URL\\_ID=15244&URL\\_DO=DO\\_TOPIC&URL\\_SECTION=201.html](http://portal.unesco.org/en/ev.php-URL_ID=15244&URL_DO=DO_TOPIC&URL_SECTION=201.html) [hereinafter UNESCO Constitution].

14. *The Organization's History*, UNESCO, <http://www.unesco.org/new/en/unesco/about-us/who-we-are/history/> (last visited May 17, 2017). See also UNESCO Constitution, *supra* note 13 (noting the ratifying states: Australia, Brazil, Canada, China, Czechoslovakia, Denmark, the Dominican Republic, Egypt, France, Greece, India, Lebanon, Mexico, New Zealand, Norway, Saudi Arabia, South Africa, Turkey, the United Kingdom, and the United States).

15. UNESCO Constitution, *supra* note 13, at art. I, § 2(c).

16. Convention for the Protection of Cultural Property in the Event of Armed Conflict, May 14, 1954, S. TREATY DOC. NO. 106-1(A) (1999).

Concerning the Protection of the World Cultural and Natural Heritage (the Convention).<sup>17</sup> This Convention states that,

Each State Party to this Convention recognizes that the duty of ensuring the identification, protection, conservation, presentation and transmission to future generations of the cultural and natural heritage . . . [and] [i]t will do *all it can* to this end, to the utmost of its own resources and, where appropriate, with any international assistance and co-operation, in particular, financial, artistic, scientific and technical, which it may be able to obtain.<sup>18</sup>

Importantly, the Convention established both the World Heritage Fund<sup>19</sup> and the World Heritage Committee (the Committee), the primary topic at hand.<sup>20</sup> With 193 states as parties to this Convention, UNESCO's mission has flourished and spread across the world.<sup>21</sup>

Fairness underscores the entire UNESCO ideal. It must be a cornerstone for an organization that acknowledges the importance of cultural and natural heritage “for all the peoples of the world . . . to whatever people it may belong.”<sup>22</sup> Simply because a heritage location resides in one part of the world does not mean that it “belongs” to that country. Instead, the location “need[s] to be preserved as part of the world heritage of mankind as a whole.”<sup>23</sup> As a legal principle, “fair” is “[c]haracterized by honesty, impartiality, and candor” so that it is “[f]ree of bias or prejudice.”<sup>24</sup> Fairness is the only means through which an international conservation regime can find success.

However, it is more complicated than something just being “fair.” Fairness in the international system is divided into two pieces: first, procedural fairness, and second, substantive fairness.<sup>25</sup> This means a system

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17. Convention Concerning the Protection of the World Cultural and Natural Heritage, Nov. 16, 1972, 1037 U.N.T.S. 151 [hereinafter Convention].

18. *Id.* at art. 4. (emphasis added).

19. *Id.* at art. 15.

20. *Id.* at art. 8.

21. *States Parties Ratification Status*, UNESCO, (last updated Jan. 31, 2017), <http://whc.unesco.org/en/statesparties/>. The Convention entered into force upon ratification of the 20th state. The first 20 states included: The United States, Egypt, Iraq, Bulgaria, Sudan, Algeria, Australia, the Democratic Republic of the Congo, Nigeria, Niger, Iran, Tunisia, Jordan, Ecuador, France, Ghana, Syria, Cyprus, Switzerland, and Morocco.

22. Convention, *supra* note 17 at pmbl.

23. *Id.*

24. *Fair*, BLACK'S LAW DICTIONARY (10th ed. 2014).

25. THOMAS M. FRANCK, FAIRNESS IN INTERNATIONAL LAW AND INSTITUTIONS 7 (1995).

may be unfair procedurally in its rules and regulations,<sup>26</sup> or that it may be fair procedurally but yield an unfair or unbalanced outcome.<sup>27</sup> Substantively, each piece of heritage must have the same, impartial chance to be protected and each state must have an equal chance to protect *its* heritage. Procedurally, in order for fairness to occur, this protection needs to be free of bias, meaning that it must offer equal opportunity to all those invested, and be free of any economic interests or undue influence.<sup>28</sup>

The purpose of this Note is to provide criticisms and, more importantly, solutions to the problems plaguing the World Heritage Committee. These solutions ensure the continued commitment to a fair process safeguarding the locations of invaluable world heritage. The idea of fairness, or lack thereof, arises in every problem and underlies every solution. Understanding the Convention, the operational mechanics of the committee implementing the Convention, and the list of protected properties is vital to successfully protecting world heritage. After a complete introduction of each of these aspects, the Note discusses the multitude of issues surrounding the conservation process. Finally, once the issues are clear, this Note provides practical solutions that, if implemented, will guarantee the conservation of irreplaceable human and natural heritage.

#### I. OPERATION OF THE CONVENTION, THE WORLD HERITAGE COMMITTEE, AND THE WORLD HERITAGE LIST

Once a state ratifies the Convention, the terms of the Convention become binding upon that state.<sup>29</sup> The Convention is binding on nearly every single state in the world.<sup>30</sup> Each party is legally bound to ensure “the identification, protection, conservation, presentation and transmission to

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26. See *infra* text accompanying notes 119–36 (explaining how the current voting system unfairly benefits developed nations and how a change in the process would result in greater fairness).

27. FRANCK, *supra* note 25, at 7.

28. See *infra* text accompanying note 91 (discussing how concerns other than conservation prejudice the preservation system).

29. *Convention on the Rights of the Child: Signature, Ratification and Accession*, UNICEF, [http://www.unicef.org/crc/index\\_30207.html](http://www.unicef.org/crc/index_30207.html) (last updated May 19, 2014). See also UNITED NATIONS OFFICE OF THE HIGH COMMISSIONER FOR HUMAN RIGHTS & INTER-PARLIAMENTARY UNION, FROM EXCLUSION TO EQUALITY: REALIZING THE RIGHTS OF PERSONS WITH DISABILITIES 39 (2007) (describing how a country becomes legally bound to an international document).

30. See *States Parties Ratification Status*, *supra* note 21 (showing that 193 states are bound to the Convention); *How Many Countries are in the World?*, WORLDATLAS, <http://www.worldatlas.com/nations.htm> (noting that the actual number of countries in the world varies depending on the source, but that 196 is the highest estimate) (last modified May 3, 2016); *States Parties Ratification Status*, *supra* note 21 (comparing the list of all recognized countries in the world to the list of countries who have ratified the Convention).

future generations . . . .”<sup>31</sup> As part of this agreement, the states agree to cede some of their sovereignty under the Convention.<sup>32</sup> The Committee fully respects the state’s sovereignty, but must legally infringe upon it to ensure preservation and conservation of the world’s properties of outstanding universal value.<sup>33</sup> As a Party, each state is required to uphold certain obligations outlined in the Convention, such as: undertaking scientific studies on the heritage sites, adopting a comprehensive planning program, and setting up the infrastructure to ensure preservation, among others.<sup>34</sup>

The Committee meets once a year and consists of 21 representatives.<sup>35</sup> The Parties to the Convention elect the governing delegations to the Committee.<sup>36</sup> The term of office prescribed in the Convention is six years, but often States Parties voluntarily reduce their term to four years.<sup>37</sup> The Committee holds elections every two years in which one-third of the Committee is elected.<sup>38</sup> The Committee annually elects a seven-member Bureau from its own set of 21 representatives.<sup>39</sup> The Bureau and the World Heritage Centre must prepare the next meeting of the Committee and manage day-to-day operations.<sup>40</sup>

The World Heritage Fund, created along with the Committee, is a vitally important body within the UNESCO structure.<sup>41</sup> On a biennial basis all States Parties must contribute to the World Heritage Fund.<sup>42</sup> This contribution is a uniform percentage determined by the General Assembly of the Convention.<sup>43</sup> However, this amount is not to exceed 1% of all

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31. Convention, *supra* note 17, at art. 4.

32. *Id.* at art. 6.

33. *Id.*

34. Convention, *supra* note 17, at art. 5.

35. UNESCO, Intergovernmental Comm. for the Prot. of the World Cultural & Nat. Heritage, *Operational Guidelines for the Implementation of the World Heritage Convention*, WHC.15/01, at § 19 (July 8, 2015), <http://whc.unesco.org/en/guidelines/> [hereinafter *Operational Guidelines*]; *The World Heritage Committee*, UNESCO, <http://whc.unesco.org/en/committee/> (last visited May 17, 2017) [hereinafter *World Heritage Committee*]. The current representatives on the World Heritage Committee are: Angola, Azerbaijan, Burkina Faso, Croatia, Cuba, Finland, Indonesia, Jamaica, Kazakhstan, Kuwait, Lebanon, Peru, Philippines, Poland, Portugal, the Republic of Korea, Tunisia, Turkey, the United Republic of Tanzania, Vietnam, and Zimbabwe. *Id.*

36. Convention, *supra* note 17, at art. 8; KARIN BAAKMAN, TESTING TIMES: THE EFFECTIVENESS OF FIVE INTERNATIONAL BIODIVERSITY-RELATED CONVENTIONS 168 (2011).

37. BAAKMAN, *supra* note 36, at 168.

38. Convention, *supra* note 17, at art. 9.

39. *Id.*; BAAKMAN, *supra* note 36, at 168.

40. BAAKMAN, *supra* note 36, at 168.

41. Convention, *supra* note 17, at art. 15.

42. *Id.* at art. 16.

43. *Id.*

contributions to UNESCO as a whole.<sup>44</sup> The role of the World Heritage Fund is to supply funds at the request of States Parties who are in need of international assistance to ensure preservation of their sites.<sup>45</sup> Ultimately, the Committee sets the priorities and makes all decisions regarding which projects will receive funding and which will not.<sup>46</sup>

One of the main purposes of the Convention and the Committee is to establish a World Heritage List (List).<sup>47</sup> The purpose of this List is to create a system of conservation and preservation for properties considered to have outstanding universal value.<sup>48</sup> The outstanding universal value must be of “cultural heritage” or “natural heritage,” as defined in the Convention.<sup>49</sup> Outstanding universal value is defined as, “cultural and/or natural significance which is so exceptional as to transcend national boundaries and to be of common importance for present and future generations of all humanity.”<sup>50</sup>

To construct the List, States Parties must create a “Tentative List,” which includes an inventory of properties that each state wishes to have considered.<sup>51</sup> A property must appear on the Tentative List before the Committee considers it for a place on the List.<sup>52</sup> Additionally, each property must fall under one of the definitions provided in the Convention,<sup>53</sup> and under at least one of ten selection criteria to be eligible for the List.<sup>54</sup> However, some of the selection criteria for a property require change, primarily to the following listed below to:

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

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44. *Id.*

45. *Funding*, UNESCO, <http://whc.unesco.org/en/funding/> (last visited May 17, 2017).

46. Convention, *supra* note 17, at art. 13.

47. *Id.* at art. 11.

48. Operational Guidelines, *supra* note 35, § 7.

49. Convention, *supra* note 17, at art. 1–2.

50. Operational Guidelines, *supra* note 35, § 49.

51. *World Heritage List Nominations*, UNESCO, <http://whc.unesco.org/en/nominations> (last visited May 17, 2017).

52. *Id.*

53. Convention, *supra* note 17, at art. 1–2.

54. Operational Guidelines, *supra* note 35, §§ 77(i)–(x).

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

(x) contain the most important and significant natural habitats for in-situ conservation of biological diversity, including those containing threatened species of Outstanding Universal Value from the point of view of science or conservation.<sup>55</sup>

Two of UNESCO's advisory bodies, the International Council on Monuments and Sites (ICOMOS) and the International Union for Conservation of Nature (IUCN), review the Tentative Lists.<sup>56</sup> The process entails an evaluation of the nominated sites and a recommendation to the Committee. The Committee reviews the site's adherence to the evaluation criteria and the viability of the site's preservation.<sup>57</sup>

The benefits of inscription on the List are abundant, and this Note discusses some arising issues. The largest and most persuasive reason to get a property listed with the Committee is increased tourism.<sup>58</sup> The World Heritage List is an internationally recognized brand to which tourists flock.<sup>59</sup> An increase in the number of visitors means an increase in revenue and economic prosperity—particularly for Parties that are developing

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55. *Id.*; see also Appendix I, *infra* (displaying the newly proposed changes to the ten criteria set by the Committee). The remaining criteria that will not need change include: "(iii) bear a unique or at least exceptional testimony to a cultural tradition or to a civilization which is living or which has disappeared; (iv) be an outstanding example of a type of building, architectural or technological ensemble or landscape which illustrates (a) significant stage(s) in human history; (v) be an outstanding example of a traditional human settlement, land-use, or sea-use which is representative of a culture (or cultures), or human interaction with the environment especially when it has become vulnerable under the impact of irreversible change; . . . (vii) contain superlative natural phenomena or areas of exceptional natural beauty and aesthetic importance; (viii) be outstanding examples representing major stages of earth's history, including the record of life, significant on-going geological processes in the development of landforms, or significant geomorphic or physiographic features; (ix) be outstanding examples representing significant on-going ecological and biological processes in the evolution and development of terrestrial, fresh water, coastal and marine ecosystems and communities of plants and animals." Operational Guidelines, *supra* note 35, §§ 77(iii)–(v), (vii)–(ix).

56. *World Heritage List Nominations*, *supra* note 51; *Advisory Bodies*, UNESCO, <http://whc.unesco.org/en/advisorybodies/> (last visited May 17, 2017); Convention, *supra* note 17, at art. 8, 14.

57. *World Heritage List Nominations*, *supra* note 51; *Advisory Bodies*, *supra* note 56; Convention, *supra* note 17, at art. 8. See also BAAKMAN, *supra* note 36, at 168–69 (outlining each responsibility of the advisory bodies).

58. FERRUCCI, *supra* note 1, at 58.

59. Keough, *supra* note 5, at 608.

nations.<sup>60</sup> Additionally, developing countries may receive economic funding from the Committee and World Heritage Fund to help restore and promote a site.<sup>61</sup>

The second largest benefit gained from inscription on the list is international prestige and reputation.<sup>62</sup> The status of a property on the List directly reflects upon the competency and reputation of a state.<sup>63</sup> The state's commitment to preservation for future generations prompts a more favorable status within the international community.<sup>64</sup> Particularly for developing countries, the listing of a property within their state indicates a readiness to step onto the international platform. These two benefits are the primary drivers behind states' quests to get as many properties listed as possible.

## II. PROBLEMS FACING THE WORLD HERITAGE COMMITTEE

The problems facing the Committee and the World Heritage system as a whole are intertwined, and in some cases very complex. Therefore, this Note will cover only those problems inherent within the Committee. The list of issues includes: the consolidation of power in a small group; the excessively broad and ambiguous selection criteria; the lack of influence over which properties Parties nominate; and the inequality in distribution of the listed properties. Each issue presents its own set of problems and requires a targeted solution. After a discussion of the individual issues, this Note will offer suggestions to remedy the highlighted problems.

The distribution of sites is perhaps the most recognizable issue within the Committee's preservation model. The distribution of the 1,052 total sites shows a distinct disparity between members, particularly on the basis of national development.<sup>65</sup> The table below displays how the majority of properties are located in developed regions, mainly in Europe, North America, and Asia.<sup>66</sup> Approximately 70% of the total properties reside within these regions.<sup>67</sup> Additionally, there are 7 states with over 30 sites,

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60. *Id.*

61. *The World Heritage Convention*, UNESCO, <http://whc.unesco.org/en/convention/> (last visited May 17, 2017).

62. Keough, *supra* note 5, at 595.

63. *Id.* at 608.

64. Zacharias, *supra* note 8, at 1837.

65. *World Heritage List*, UNESCO, <http://whc.unesco.org/en/list/> (last visited May 17, 2017).

66. *World Heritage List Statistics*, UNESCO, <http://whc.unesco.org/en/list/stat#s1> (last visited May 17, 2017).

67. *Id.*



followed by an additional 3 states with over 20 sites, and another 16 states with over 10 sites.<sup>68</sup> These 26 states with 10 or more sites represent 57.41% of all sites, yet they only constitute 15.75% of the Convention's membership.<sup>69</sup> The inequality is even clearer when there are more states with zero sites (28) than there are states with 10 or more sites.<sup>70</sup> Ten of these states without a single site are located in Africa; in fact, no African state has more than 9 sites.<sup>71</sup> Of the states with more than 10 sites, only 4 of them are outside of Europe, North America, or Asia.<sup>72</sup>

Table 1. Geographic distribution of listed World Heritage sites by region.<sup>73</sup>

Regions	Cultural	Natural	Mixed	Total	%	States Parties with Inscribed Parties
Africa	48	37	5	90	9%	33
Arab States	73	5	3	81	8%	18
Asia and the Pacific	172	62	12	246	23%	36
Europe and North America	426	62	10	498	47%	50
Latin America and the Caribbean	95	37	5	137	13%	28
TOTAL	814	203	35	1,052	100%	165

Additionally, the Committee suffers from unequal distribution in regard to the type of property on the list. The two primary types of properties on the list are cultural and natural.<sup>74</sup> However, the number of cultural properties (814) is more than quadruple the number of natural sites (203).<sup>75</sup> This distribution shows a stark discrepancy between the values held by Parties and the Committee, and the outstanding universal value provided by natural properties. An important aspect of the List as a whole is an

68. *Id.*

69. *Id.* The 26 states maintain a total of 604 out of a possible 1,052 sites, and represent only 26 of 165 member states.

70. *Id.*

71. *Id.*

72. *Id.*

73. *Id.*

74. *Id.*

75. *World Heritage List*, *supra* note 65. As noted earlier, the total number of sites is 1,052, which includes mixed sites of both cultural and natural properties.

appropriate balance between these values, along with an increase in mixed cultural and natural sites.<sup>76</sup>

These distribution inconsistencies demonstrate a lack of equality and the Committee's failure to appropriately tackle the problem. In an attempt to solve this problem, the Committee launched its Global Strategy for a Balanced, Representative and Credible World Heritage List.<sup>77</sup> This strategy sought to create a fairer representation of the Committee's membership through a multifaceted approach.<sup>78</sup> While the Committee did not place a cap on the total number of sites allowed on the List, it did take other measures.<sup>79</sup> The Committee first asked States Parties to relax their rate of new submissions (through Tentative Lists) if the list already well-represented their heritage.<sup>80</sup> This strategy attempted to persuade States Parties to increase the timing between nominations, combine their submissions with an underrepresented State Party, or even voluntarily suspend all of their nominations.<sup>81</sup>

The Committee also took further concrete steps toward achieving a more balanced List. The Committee decided to examine only two nominations per State Party and 45 total nominations per year.<sup>82</sup> This system includes an order of priorities.<sup>83</sup> The Committee prioritizes States Parties with no sites on the List.<sup>84</sup> Next, it gives priority to States Parties with less than three sites, and then sites previously excluded due to the 45 nomination limit.<sup>85</sup> Lastly, the list ranks nominations of natural heritage sites.<sup>86</sup> On its face, the ranking approach appears to offer a logical solution. Conversely, all accounts of the strategy conclude that the List fails to provide for a more balanced and representative approach.<sup>87</sup>

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76. Bart J.M. van der Aa, *Preserving the Heritage of Humanity? Obtaining World Heritage Status and the Impacts of Listing 26* (May 26, 2005) (unpublished thesis, University of Groningen) (on file with Wadden Academie), [http://www.waddenacademie.nl/fileadmin/inhoud/pdf/06-wadwetent/Proefschriften/thesisBart\\_van\\_der\\_Aa\\_verkl.pdf](http://www.waddenacademie.nl/fileadmin/inhoud/pdf/06-wadwetent/Proefschriften/thesisBart_van_der_Aa_verkl.pdf).

77. U.N. World Heritage Convention., *Expert Meeting on the "Global Strategy" and Thematic Studies for a Representative World Heritage List*, WHC-94/CONF.003/INF.6 (Oct. 13, 1994).

78. *Id.*

79. Operational Guidelines, *supra* note 35, § 58.

80. *Id.* § 59.

81. *Id.*

82. *Id.* §§ 61(a)–(b). In order for a State Party to submit two nominations, at least one must be a natural site. UNESCO, *WORLD HERITAGE CHALLENGES FOR THE MILLENNIUM 41* (2007).

83. Operational Guidelines, *supra* note 35, § 61(c).

84. *Id.* § 61(c)(i).

85. *Id.* §§ 61(c)(ii)–(iii).

86. *Id.* § 61(c)(iv).

87. Bruno S. Frey & Paolo Pamini, *World Heritage: Where are We? An Empirical Analysis 15–16* (Univ. of Zurich, Inst. for Empirical Research in Econ., Working Paper No. 462, 2010). *See also*

The approach to fixing this issue is complex, and like the problem itself, must be multifaceted. A troubling concern further complicates this problem—the concentration of power within the Committee. With the unquestioned power over listing properties, coupled with the power to fund restoration projects, the Committee can act independently of any other authority.<sup>88</sup> Wary of the amount of power within the Committee, it must adopt the proposed changes outlined in this Note, working towards equal representation. One way to resolve this issue of power politics is to address the List's disparities.

The Committee's elected representatives wield immense power and influence. The Committee consists of 21 representatives elected from the States Parties to the Convention.<sup>89</sup> This means that 21 States Parties make the decisions for all 195 members.<sup>90</sup> The power of these 21 representatives intensifies when reduced to a Bureau of 7; this makes "it very easy for the Committee to effectively 'prefer' some projects over others for ideological, political, or pecuniary reasons."<sup>91</sup> Further, the Committee's power is nearly absolute and extends unchecked by outside parties.<sup>92</sup> This power not only includes decisions on property listings, funding, and assistance for States Parties, but also punishment should a State Party refuse to comply with the Committee.<sup>93</sup> With national interests on the line, States Parties on the Committee are corruptible, biased, and self-interested.<sup>94</sup>

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Enrico Bertacchini & Donatella Saccone, *Toward a Political Economy of World Heritage*, 36 J. CULTURAL ECON. 327–52 (2011) (detailing that despite the Committee's attempts to solve inequality in the process, the problem has only worsened); Sarah M. Titchen, *On the Construction of Outstanding Universal Value: UNESCO's World Heritage Convention (Convention Concerning the Protection of the World Cultural and Natural Heritage, 1972) and the Identification and Assessment of Cultural Places for Inclusion in the World Heritage List 143–45 (Apr., 1995)* (unpublished Ph.D. thesis, Australian National University) (on file with Open Research Repository), <https://openresearch-repository.anu.edu.au/handle/1885/10039> (showing that, even after UNESCO attempted to fix the List, it remains unbalanced); Lasse Steiner & Bruno S. Frey, *Imbalance of World Heritage List: Did the UNESCO Strategy Work?* 1–12 (Univ. of Zurich Dept. of Econ., Working Paper No. 14, 2011) (discussing how the UNESCO plan to rebalance the List has been ineffective).

88. Operational Guidelines, *supra* note 35, § 24.

89. Convention, *supra* note 17, at art. 8.

90. *List of the 195 Members (and the 10 Associate Members) of UNESCO and the Date on Which They Became Members (or Associate Members) of the Organization*, UNESCO, [www.unesco.org/eri/cp/ListeMS\\_Indicators.asp](http://www.unesco.org/eri/cp/ListeMS_Indicators.asp) (last visited May 17, 2017).

91. Keough, *supra* note 5, at 600.

92. *Id.*

93. *Id.* at 598; WILLIAM LOGAN, MÁIRÉAD NIC CRAITH & ULLRICH KOCKEL, *A COMPANION TO HERITAGE STUDIES* 385 (2016).

94. Keough, *supra* note 5, at 608–09.

The former Director of the World Heritage Centre, Francesco Bandarin, acknowledged that, “[i]nscription has become a political issue. It’s about prestige, publicity and economic development.”<sup>95</sup> An illustrative example of this political problem occurred in 1997. The Committee, chaired by an Italian, inscribed ten Italian properties on the List.<sup>96</sup> This problem exacerbates the unequal distribution of sites and further skews it in favor of developed nations. The figure below highlights causes of these subsequent issues. Figure 1 shows that developed nations are far more probable—more than twice as likely—to sit on the Committee than developing nations.<sup>97</sup> Because developed nations are more likely to sit on the Committee, their nominations receive preference.

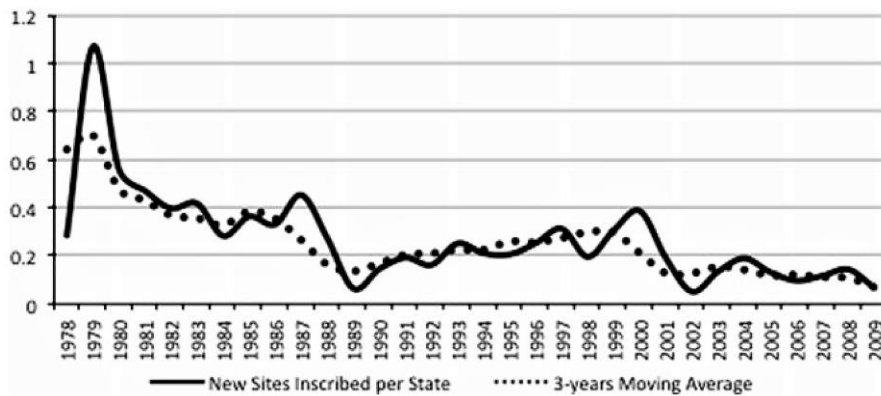


Figure 1. Probability that a State Party will serve on the World Heritage Committee.<sup>98</sup>

Like a Russian nesting doll, another problem emerges from the Committee’s power. The Committee has almost unlimited control when it comes to the inscription of a property on the List.<sup>99</sup> Under the Convention, the IUCN and ICOMOS act as independent bodies that assess the Tentative

95. Jon Henley, *Fighting for the Mighty Monuments*, THE GUARDIAN (Aug. 6, 2001, 11:22 AM), <http://www.theguardian.com/world/2001/aug/06/humanities.green>.

96. Henry Cleere, *Europe’s Cultural Heritage from a World Perspective*, INT’L COUNCIL ON MONUMENTS & SITES UK, Mar. 13, 1998, at 27.

97. Bertacchini & Saccone, *supra* note 87, at 334.

98. *Id.* The ten Italian sites made up a majority of the 46 total properties inscribed during that year. *World Heritage List*, *supra* note 65.

99. Operational Guidelines, *supra* note 35, § 24.

Lists the Parties submit and offer a suggested action for each property.<sup>100</sup> However, even the IUCN agrees that the Committee's maintenance of its programs requires "radical change if [it] is to remain an effective conservation tool."<sup>101</sup>

These independent advisory bodies are incredibly helpful and take on much of the work that the Committee does not have the time or resources to devote to the review process.<sup>102</sup> In order to achieve a place on the List, each property must meet one of ten selection criteria.<sup>103</sup> Yet, there are instances where these advisory bodies counsel against inscription to the List, which the Committee disregards.<sup>104</sup> For example, ICOMOS made a strong statement against inscription for Japan's Iwami Ginzan silver mine. ICOMOS declared that the mine satisfied none of the ten possible criteria.<sup>105</sup> But, the Committee listed it anyway.<sup>106</sup> This situation also happened with the Rila Monastery in Bulgaria,<sup>107</sup> the Battir terraces in Palestine,<sup>108</sup> and the Burgundy Climats in France, among others.<sup>109</sup> These incidents are not isolated. Contrary to the procedure outlined in the Convention, the Committee ignores its advisors. This is a recurring problem that requires attention.<sup>110</sup>

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100. BAAKMAN, *supra* note 36, at 169.

101. *World Heritage in Danger – IUCN*, INT'L UNION FOR CONSERVATION OF NATURE (June 29, 2009), [http://www.iucn.org/news\\_homepage/?3451/World-Heritage-in-Danger—IUCN](http://www.iucn.org/news_homepage/?3451/World-Heritage-in-Danger—IUCN).

102. JADE TABET, INT'L COUNCIL ON MONUMENTS AND SITES, REVIEW OF ICOMOS' WORKING METHODS AND PROCEDURES FOR THE EVALUATION OF CULTURAL AND MIXED PROPERTIES 43 (2010), [http://www.icomos.org/world\\_heritage/WH\\_Committee\\_34th\\_session\\_Brasilia/JT\\_Final\\_report\\_en.pdf](http://www.icomos.org/world_heritage/WH_Committee_34th_session_Brasilia/JT_Final_report_en.pdf).

103. *The Criteria for Selection*, UNESCO, <http://whc.unesco.org/en/criteria/> (last visited May 17, 2017).

104. *Is UNESCO Damaging the World's Treasures?*, INDEP. (Apr. 28, 2009, 23:00 BST), <http://www.independent.co.uk/travel/news-and-advice/is-unesco-damaging-the-worlds-treasures-1675637.html>.

105. *Id.*

106. *Id.*

107. Christina Cameron, *From Warsaw to Mostar: The World Heritage Committee and Authenticity*, 39 APT BULLETIN: J. PRESERVATION TECH. 19, 21 (2008).

108. Shimon Samuels, *From Beitar to Jerusalem at the UNESCO World Heritage Committee in Qatar*, THE JERUSALEM POST (June 25, 2014), <http://www.jpost.com/Opinion/Op-Ed-Contributors/From-Beitar-to-Jerusalem-at-the-UNESCO-World-Heritage-Committee-in-Qatar-360571>.

109. *Medieval World Heritage 2015*, MEDIEVAL HISTORIES (June 5, 2015), <http://www.medievalhistories.com/medieval-world-heritage-2015/>.

110. Convention, *supra* note 17, at art. 13.

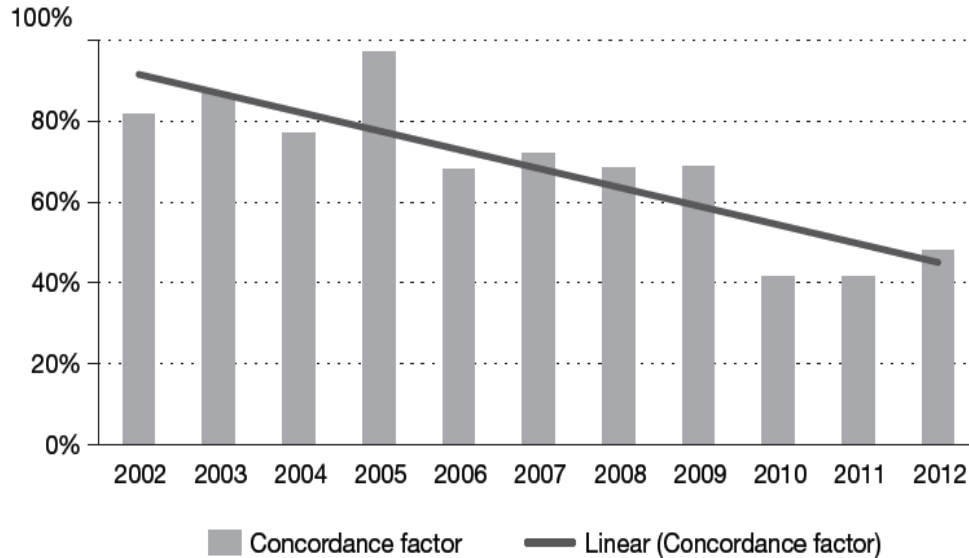


Figure 2. Relationship (“concordance factor”) between the recommendations of the Committee’s advisory bodies and the inscriptions on the list.<sup>111</sup>

Figure 2 displays how often the Committee adheres to the recommendations of its advisory bodies. According to this graph, it is not a regular occurrence.<sup>112</sup> However, this is not the only problem. Figure 3 below identifies how often the Committee lists sitting States Parties compared to other non-sitting States Parties.<sup>113</sup> On its face, the figure may not stand out, yet there are only 21 representatives on the Committee, making up just under 11% of the total members to the Convention. At its lowest point, the Committee members’ properties make up at least 20% of listed sites.<sup>114</sup> The trend is moving in the right direction, but from 1977 to 2005 of the 314 properties listed, 42% benefitted States Parties who sat on the Committee.<sup>115</sup>

111. Lynn Meskell, *States of Conservation: Protection, Politics and Pacting with UNESCO’s World Heritage Committee*, 87 ANTHROPOLOGICAL Q. 217, 226 (2014).

112. *Id.* at 226–27.

113. *Id.* at 227.

114. *Id.*; Operational Guidelines, *supra* note 35, § 19.

115. Meskell, *supra* note 111, at 227.

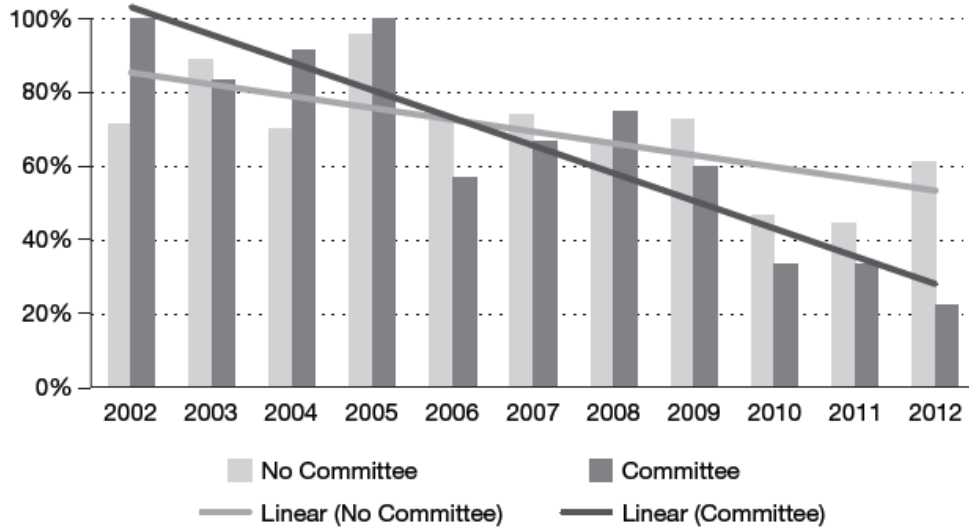


Figure 3. Relationship (“concordance factor”) between the recommendations of the Committee’s advisory bodies and the inscriptions on the List when comparing members of the Committee to regular Convention members.<sup>116</sup>

### III. SOLUTIONS FOR THE PROBLEMS FACING THE WORLD HERITAGE COMMITTEE

The solution to the system’s problem requires two steps. First, all States Parties have a fair chance at sitting on the Committee. Second, the States Parties on the Committee should have less influence on the inscription of properties within their own state. These two issues of procedural fairness are the primary drivers behind an unequal and unfair List. Solving these issues is the first step in addressing the problems plaguing UNESCO and the Committee as a whole.

While noting the interconnectivity between the issues at hand, the complexity of these problems requires approaching them individually—as much as possible—rather than attempting a simultaneous conversation. The

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116. *Id.*

first issue is election to the Committee. The question here is why there is an issue in the first place. Naturally, developed nations have greater resources and capacity when interacting with international regimes and institutions.<sup>117</sup> This inequality leads to a distinctly unequal paradigm of influence and leverage on the international stage. In addition, the inequality generates a positive feedback loop increasing the already wide disparity among States Parties.<sup>118</sup> Currently, of the Committee's 21 members, only 7 are low or middle-low income countries, while the other 14 come from developed nations.<sup>119</sup>

A quota system would create a more equal representation of States Parties—a fairer substantive outcome—in relation to their development status and geographic distribution.<sup>120</sup> The current system comprises six electoral groupings, each with a predetermined number of Committee seats.<sup>121</sup> This proposal ensures that no geographic region is overrepresented on the Committee, while simultaneously increasing the odds of election for non-developed nations. This system separates the 21 representatives into six geographic regions.<sup>122</sup> Currently, Groups I, II, and III are each allocated two seats.<sup>123</sup> Group IV has three seats.<sup>124</sup> Group V(a) has four seats, while group V(b) has two seats.<sup>125</sup> The rest of the seats are unallocated and distributed to those States Parties who received at least half of the necessary votes from

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117. Kyle W. Danish, *An Overview of the International Regime Addressing Climate Change*, 7 SUSTAINABLE DEV. L. & POL'Y 10, 10 (2007).

118. ROBERT ZAHN, ENGINEERING PERSPECTIVES OF HUMAN SOCIETY: APPLICATION OF CONTROL THEORY, GAME THEORY, AND INFORMATION THEORY TO SOCIAL PHENOMENA 35 (Tatiana Shohov et al. eds., 2004).

119. *World Bank Country and Lending Groups*, WORLD BANK, <http://data.worldbank.org/about/country-and-lending-groups> (last visited May 17, 2017) (comparing nations with high-income economies to nations with middle- to low-income economies, based on gross national income per capita); *Least Developed Countries: UN Classification*, WORLD BANK, <http://data.worldbank.org/region/least-developed-countries-un-classification> (last visited May 17, 2017). (noting that currently, three least-developed nations sit on the Committee: Angola, Burkina Faso, and the United Republic of Tanzania).

120. U.N. World Heritage Convention, *Rules of Procedure of the General Assembly of the States Parties to the Convention for the Safeguarding of the Intangible Cultural Heritage* (June, 2006) (amended June 2008, June 2014). See also FRANCK, *supra* note 25, at 5–8 (discussing fairness through procedural and substantive frameworks).

121. *Id.*; U.N. World Heritage Convention., *Rules of Procedure*, at Rule 14.1, WHC-14/GA/1 Rev. 4, (Nov. 14, 2014) [hereinafter *Rules of Procedure – Convention*]. There are five electoral “groups,” but Electoral Group V is divided into Group V(a) and Group V(b), thus creating six distinct groupings. *Id.*

122. *Id.* at Rule 14.1.

123. *Id.*

124. *Id.*

125. *Id.*



the Committee's voting on allocated seats.<sup>126</sup> Those States Parties who received at least half of the allocated votes receive the unallocated seats based on the number of votes previously gained until there are no open seats remaining.<sup>127</sup>

The first step is superficial and divides Groups V(a) and V(b), yielding two separate electoral groups.<sup>128</sup> No reason exists to combine the African Parties with the Arab Parties into a single electoral group when entirely separate divisions are possible.<sup>129</sup> Additionally, the electoral groups need restructuring to create more closely shared experiences. These newly proposed regions roughly track the UN Security Council divisions.<sup>130</sup> The proposed groups would be as follows: North America and the Caribbean; South-Latin America; Europe; Africa; East Asia; West Asia; and the Pacific and Outlying Nations.<sup>131</sup> Each of these seven regions would receive three slots for membership on the Committee, thus filling all 21 seats.<sup>132</sup>

Further, this Note suggests that a non-developed nation State Party should occupy one of each of the three guaranteed regional positions. The geographic regions ensure global inclusion and equal representation, as outlined in the Convention. This requirement ensures that there are no fewer than seven—one-third of the total Committee—non-developed nations on the Committee.<sup>133</sup> The World Bank shall determine each nation's

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126. *Id.* at Rule 14.8.

127. *Id.*

128. *Id.* at Rule 14.1. *See also* Rules of Procedure – Convention, *supra* note 121 (explaining how Group V is subdivided).

129. U.N. World Heritage Convention, *Rules of Procedure of the General Assembly of the States Parties to the Convention for the Safeguarding of the Intangible Cultural Heritage*, *supra* note 120, at app. 2.

130. *United Nations Regional Groups of Member States*, UNITED NATIONS, DEP'T FOR GEN. ASSEMBLY & CONFERENCE MGMT., <http://www.un.org/depts/DGACM/RegionalGroups.shtml> (last updated May 9, 2014).

131. These geographic regions can be drawn to create a more even number of States Parties in each group. Further, East Asia shall encompass the Parties west of Africa and Europe but roughly east of India and China. West Asia shall encompass the Parties to the East of West Asia to the Pacific Ocean, including Japan. The Pacific and Outlying nations shall encompass all Parties not encapsulated by another electoral group.

132. One of the positions granted to the Africa or Asia groups should be occupied by a State Party from the Middle East. David Malone, *Reforming the Security Council: Where are the Arabs?*, *WORLD PRESS REV.* (Oct. 25, 2003), <http://www.worldpress.org/mideast/1694.cfm>.

133. Convention, *supra* note 17, at art. 8. However, this may temporarily allow for less than six non-developed nations due to the election cycle in which one-third of members are elected every two years. Further, if all non-developed Parties within a group do not seek a Committee seat, then a newly created subcommittee must investigate to ensure that no underhanded dealing occurs in attempt to buy off a non-developed Party.

status as developed or non-developed.<sup>134</sup> This Note also proposes that in the event that a region has no States Parties identified as non-developed, this requirement shall be mute until a time when a State Party returns to the non-developed list. If there is only one State Party recognized as non-developed, then that State Party may occupy the position for a full six-year term without repercussion.<sup>135</sup> Additionally, this new system would allow for single non-developed States Parties to hold two consecutive terms without repercussion.<sup>136</sup> Even within this system, non-developed States Parties that have never previously served as a Committee member deserve preference.

Additionally, while the Committee representatives have traditionally and voluntarily reduced their terms of office from six years to four, a procedural deterrent would keep this practice in place.<sup>137</sup> With this new proposal, if a State Party does not voluntarily reduce its election term, then it may not serve as Committee representative for the following 12 years. This equates to three reduced terms or two unreduced terms after the term's conclusion. This deterrent would provide for a greater number of States Parties to sit on the Committee and, therefore, a greater distribution of global representation.<sup>138</sup> Further, the Operational Guidelines discourage States Parties from seeking consecutive terms.<sup>139</sup> The Rules of Procedure instruct that a State Party should stand for election again only after a six-year absence.<sup>140</sup> Amending the Rules of Procedure to require an eight-year absence after the conclusion of a term would further the goal of equal distribution. This change acts as a robust barrier to unequal representation on the Committee.

These suggested measures would not infringe upon the rights of States Parties to hold the position for six years, but would safeguard other States Parties' abilities to hold the position.<sup>141</sup> Additionally, extending the required absence does not intrude upon any rights, but only works toward greater

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134. United Nations Dev. Policy & Analysis Div., *LDC Identification Criteria and Indicators*, UNITED NATIONS, <https://www.un.org/development/desa/dpad/least-developed-country-category/ldc-criteria.html> (last visited May 17, 2017).

135. See *supra* 130–33 and accompanying text (describing the potential punishment for failing to reduce the six-year term).

136. After two consecutive terms by the only non-developed Party, the guaranteed seat lapses for two terms (not less than eight total years).

137. *World Bank Country and Lending Groups*, *supra* note 119; FRANCK, *supra* note 25, at 7.

138. U.N. World Heritage Convention, *Summary Record*, at para. 12, CC-89/CONF.013/6 (Nov. 13, 1989), <http://whc.unesco.org/archive/1989/cc-89-conf013-6e.pdf>.

139. Operational Guidelines, *supra* note 35, § 21.

140. Rules of Procedure – Convention, *supra* note 121, at Rule 13.2.

141. Operational Guidelines, *supra* note 35, § 21.

balance. These suggested guidelines legitimize the Committee's position when interacting and negotiating with the governments of States Parties.<sup>142</sup>

Further, this Note proposes that once the Committee is established and the nomination process begins, each State Party must abstain from voting on inclusion of properties within their own nation. This requirement seeks to address situations as described above in which the Committee, chaired by an Italian, inscribed ten Italian properties on the List.<sup>143</sup> This change—with some current support from the UNESCO community—is not drastic.<sup>144</sup> This small procedural change would not only give the appearance that the system is fairer, but also create a system that is genuinely fairer. This abstention would not cause difficulties for the Committee as a whole considering that there are 20 other members and only 13 other votes needed for approval.<sup>145</sup>

In contrast to the current system where all Parties can vote on all sites, an alternate system would further ameliorate any problems involved with States Parties' abstentions.<sup>146</sup> If a vote occurs regarding the inscription of a Committee member's property, the alternate shall vote in place of the Party in question. To avoid improper influence, the alternate position should be elected each year from a revolving electoral group.<sup>147</sup> Each Party shall cast their vote for alternate within the selected group via secret ballot. Upon a tie, each Party shall vote again via secret ballot for one of the tied Parties. This process shall repeat until a winner emerges and should occur each year to reduce the likelihood of undue influence. This new alternate system will

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142. Edward J. Goodwin, *The World Heritage Convention, the Environment, and Compliance*, 20 COLO. J. INT'L ENVTL. L. & POL'Y 157, 158–96 (2009).

143. See *supra* text accompanying note 96 (showing how one country sitting on the Committee can influence the inscription of properties within that country).

144. See Enrico Bertacchini et al., *Shifting the Balance of Power in the UNESCO World Heritage Committee: An Empirical Assessment*, INT'L J. CULTURAL POL'Y 1–21 (2015) (noting that some more neutral and impartial members advocate this exact position).

145. Convention, *supra* note 17, at art. 13. An affirmative decision requires only a two-third majority of the members present and voting, thus requiring only 13 total “aye” votes. *UNESCO Votes to Add Bethlehem Holy Sites to World Heritage List*, THE HOLY LAND CHRISTIAN ECUMENICAL FOUND. (June 29, 2012), <http://hcef.org/790793127-unesco-votes-to-add-bethlehem-holy-sites-to-world-heritage-list/> (showing the effect that one less vote would have on the inscription of a property). If the proposed property lies on a border, or is a joint submission and both Parties are on the Committee, then both shall abstain and the alternate shall vote resulting in 20 voting members. *Id.*

146. See Cleere, *supra* note 96, at 22–33 (discussing the role of the World Heritage Committee and the challenges that they face).

147. The alternate shall come from one of the electoral groups chosen at random no less than three months before the election. Rules of Procedure – Convention, *supra* note 17, at Rule 14.1. Once the electoral group is selected, it is removed from selection for the next election. *Id.* Thus, only once all groups have been represented are they eligible for election again. *Id.* This process continues perpetually. *Id.*

create a fairer process when voting to include a potential site on the List and, hopefully, create a more balanced List in the long run.

The next solution must address the discord between the nominations of IUCN and ICOMOS and the Committee's voting. As discussed above, Committee members regularly ignore the recommendations of their independent advisory bodies, and even more regularly ignore the recommendations when their properties are at stake.<sup>148</sup> To remedy this situation, there needs to be greater transparency in the recommendation and listing procedure. First, the recommendations of IUCN and ICOMOS need to be public and include the specific recommendation designation: listed for inscription, deferred, extended, or referred back along with the full explanation.<sup>149</sup>

The Committee would receive these reports, and then have the final say on each property.<sup>150</sup> However, the Committee should be required to create and publish a "Record of Decision" when a decision differs from the recommendation of the advisory bodies. This public "Record" should explain why the Committee chose the ruling that it did, along with why it did not defer to the given recommendation. Publishing these records can create some transparency for the Committee and allow the public to hold it accountable.

Further, ICOMOS itself should strive to increase the scientific communities' participation in compiling the recommendations.<sup>151</sup> Scientific analysis is the best way to convince the Committee of the recommendation's reliability and ensure the property's preservation from threats.<sup>152</sup> Additionally, ICOMOS should strive to reduce the number of its panel members evaluating properties from their own countries.<sup>153</sup>

UNESCO can take further steps to ease these issues by creating a review commission. This commission would review the properties for which the Committee voted opposite of the ICOMOS recommendation.

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148. See *supra* text accompanying notes 104–10 (proving that the Committee often strays from the recommendation of ICOMOS).

149. *ICOMOS Analysis of 2013 Nominations*, INT'L COUNCIL ON MONUMENTS & SITES, <http://www.icomos.org/en/what-we-do/image-what-we-do/644-icomos-analysis-of-2013-nominations?showall=1&limitstart> (last visited May 17, 2017).

150. See *supra* text at note 149 (describing the reports used to better inform the Committee).

151. TABET, *supra* note 102, at 43.

152. *ICOMOS Analysis of 2013 Nominations*, *supra* note 149.

153. TABET, *supra* note 102, at 32. The report suggests that, "ICOMOS should strive to limit wherever possible the number of members of the World Heritage Panel belonging to the same country as one of the properties to be examined in the year in which the Panel meets, and to avoid the presence in the Panel of members belonging to a country which is itself a member of the UNESCO World Heritage Committee." *Id.*

Even if the review body has no disciplinary or affirmative power, the process of publishing the review reports allows for oversight and further accountability. Often, the only way for the Committee to enforce its mandates to States Parties is by threatening to tarnish their reputation and world standing.<sup>154</sup> A review commission acts in the same manner. This commission could coax the Committee into fairer and more transparent decisions for fear of a tarnished reputation by scrutinizing and publishing any real or perceived mistakes.

Consolidating a small committee dominated by Western and developed nations, coupled with its overarching power, creates a third, more substantive problem: the unequal distribution of sites.<sup>155</sup> UNESCO hoped that the Global Strategy for a Balanced, Representative and Credible World Heritage List would fix this problem.<sup>156</sup> Unfortunately, it has failed.<sup>157</sup> The problem is a dual-pronged issue: the first prong is the unequal distribution of sites based on geographic location; the second prong is the predominance of cultural sites at the expense of natural sites.<sup>158</sup> Both of these prongs produce unequal outcomes and are difficult to solve.<sup>159</sup>

The primary means of solving this problem comes from the Operational Guidelines.<sup>160</sup> The Operational Guidelines' list of priorities (numbered i–x) makes sense, but the priorities are not enough, nor in an order, to have the greatest effect.<sup>161</sup> The first two priorities are appropriate. These are nominations by Parties with no properties, and nominations by States with three or fewer properties.<sup>162</sup> Next on the list should be a preference for low and low-middle income countries, similar to priority

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154. See *supra* text accompanying notes 62–63 (showing that reputation and standing in the global arena is of the utmost importance to States Parties).

155. FRANCK, *supra* note 25, at 7; see *supra* notes 66–73 and accompanying text (displaying the distribution of sites across the world and how the numbers are skewed towards richer, more developed nations).

156. U.N. World Heritage Convention, *Expert Meeting on the “Global Strategy” and Thematic Studies for a Representative World Heritage List*, *supra* note 77.

157. See *supra* note 87 and accompanying text (describing how the plan to rebalance the List failed and how the problem has worsened).

158. See *supra* notes 66–75 and accompanying text (proving how both non-Western nations and natural sites are neglected in favor of human sites in Western nations).

159. Some argue for a cap on the total number of properties that the List may cover. While there are logical arguments to be made for that position, that proposition is not under consideration here. Operational Guidelines, *supra* note 35, § 58; FRANCK, *supra* note 25, at 7.

160. Operational Guidelines, *supra* note 35, § 1.

161. *Id.* §§ 61(c)(i)–(x). See also Appendix I, *infra* (outlining a new proposed list).

162. Operational Guidelines *supra* note 35, §§ 61(i)–(ii).

vii.<sup>163</sup> Then, priority viii should follow, giving preference to those who ratified the Convention in the last decade.<sup>164</sup>

In addition to the priorities offered in the Operational Guidelines, the Committee needs to devote greater attention to the creation of Tentative Lists. Parties with low or middle-low incomes generally appear less frequently on the List.<sup>165</sup> The lack of resources hampers Parties' abilities to allocate sufficient resources toward the study, preparation, and preservation of national heritage.<sup>166</sup> Thus, the Committee must dedicate greater funds and expertise to the underrepresented nations for these purposes. The World Heritage Fund may provide capital for these types of activities.<sup>167</sup> If necessary, the Committee should provide expertise and technology to ensure that developing nations have the opportunity to preserve their heritage despite a lack of independent capacity.

Another option to solve this problem is to open up the nomination process. Broadening the procedure through which entities may nominate a property would serve two purposes. First, the process would alleviate the pressure on the national government. Second, it would help include properties the national government is unwilling to recognize. As noted earlier, the Committee has no power regarding which sites each State Party nominates.<sup>168</sup> This presents a problem when the government is unwilling to recognize properties associated with minority groups or historic oppositional groups.<sup>169</sup> Opening the nomination process would circumvent this issue and help achieve a greater balance for developing and underrepresented States Parties on the List.

Currently, only the national government of a State Party can create a Tentative List and submit the proposed sites for inclusion on the list.<sup>170</sup> Opening up the nomination process to non-governmental organizations (NGOs) and non-profits lightens the burden of research, resources, and costs on national governments.<sup>171</sup> This process seems as though it would result in the flooding of the Committee with nomination requests. However,

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163. *Id.* § 61(vii). In priority (vii), "nominations from States Parties in Africa, the Pacific and the Caribbean," receive preference. *Id.*

164. *Id.* § 61(viii).

165. *World Heritage List Statistics*, *supra* note 66.

166. *Convention*, *supra* note 17, at pmbl.

167. *Id.* § 24.

168. Keough, *supra* note 5, at 601.

169. HANDBOOK ON THE ECONOMICS OF CULTURAL HERITAGE 182 (Ilde Rizzo & Anna Mignosa eds., 2013).

170. *Convention*, *supra* note 17, at art. 11; *Operational Guidelines*, *supra* note 35, § 15.

171. If NGOs decide to nominate particular properties, then the government will not have to spend money to nominate those same sites.

ICOMOS and IUCN should manage this increase without creating too much strain on the Committee itself. Another less-fair and less-viable option would see NGOs submit proposals to their governments for consideration. This method reduces the overall governmental cost but does not assuage the issue of the government's oppositional stance.<sup>172</sup>

One possible way to reduce the total number of NGO submissions is through a pseudo-membership program.<sup>173</sup> In this type of program, the NGO or non-profit would apply to the Committee to become a "Verified NGO Nominator."<sup>174</sup> If approved, a Verified NGO Nominator (Nominator) would have the power to create its own Tentative List and nominate properties independent of the State Party government.<sup>175</sup> The work to create and sustain this system would take advanced forethought and extensive legwork.

The overall creation of a Verified NGO Nominator system requires an in-depth analysis of its own, which is beyond the scope of this paper. Yet, there are a few pieces cursory enough for the purposes of this analysis. First, the Nominator must be independent of any government involvement. This requirement prevents governments from discretely influencing an organization labeled as a NGO. The mechanics behind the assessment of government involvement with a NGO is difficult, as it will vary by party. An NGO should be able to nominate properties without fear of censorship or retribution based on its opinions regarding heritage and outstanding universal value. Second, the Nominator must be devoted to that particular country alone. This constraint aims to promote independence from outside influences that seek to profit from potential designations.

However, this restraint should not be absolute. Noting that the NGO sector in many States Parties is weaker than in developed countries,<sup>176</sup> a route for large NGOs to nominate properties is necessary to avoid dominance again by developed nations. Again, the extent of that process is beyond the scope of this Note, but would require that larger multinational

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172. HANDBOOK ON THE ECONOMICS OF CULTURAL HERITAGE, *supra* note 169, at 182.

173. If every NGO was allowed to submit the properties it saw fit for protection, the Committee would be overwhelmed.

174. *See supra* note 171 and accompanying text (outlining a way to streamline a process through which NGOs can create Tentative Lists for proposed sites).

175. *See supra* notes 170–73 and accompanying text (discussing the submission of Tentative Lists for the proposal of new sites).

176. J. Wagona Makoba, *Nongovernmental Organizations (NGOS) and Third World Development: An Alternative Approach to Development*, J. THIRD WORLD STUD., Spring 2002, <https://www.globalpolicy.org/component/content/article/177-un/31620.html?tmpl=component&print=1&page=>.

NGOs submit to enhanced vetting. Finally, the nominations through this process must subscribe to the same standards and procedures existing in the normal nomination process.<sup>177</sup> A new process such as this will require a separate subcommittee dedicated to accepting or rejecting these applications.<sup>178</sup> While noting that potential issues exist, this system offers the opportunity to simultaneously solve two problems: the imbalance of the List, and the control of States Parties' governments.<sup>179</sup>

The second problem facing the List in terms of balancing is the glaring disparity between cultural and natural properties, an outcome that is inherently unfair.<sup>180</sup> The total number of cultural properties (814) is greater than four times the number of natural sites (203).<sup>181</sup> The Convention requires States Parties to ensure the preservation of natural heritage along with cultural heritage for future generations.<sup>182</sup> But, with a global increase in population and development, the natural heritage sites face threats greater than ever. The lack of revenue derived from such sites exacerbates the absence of concern over natural sites. Tourists heavily traffic and commercialize cultural sites, resulting in substantial returns for that Party.<sup>183</sup> On the other hand, governments cannot monetize natural sites as easily, and natural sites are therefore less likely to result in profits for that Party.<sup>184</sup> With lower profit potential, the research and preservation costs make natural sites less attractive to governments.<sup>185</sup>

As previously discussed, many States Parties do not have the resources or capacity available to fully research and develop a Tentative List.<sup>186</sup> Compared to natural sites, the study of cultural sites consumes fewer resources because of the scale of the operation. Cultural sites are often a

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177. *World Heritage List Nominations*, *supra* note 51.

178. No member sitting on the Committee may sit on the subcommittee accepting or rejecting Verified NGO Nominator applications.

179. The primary problems with this system include: the potential for bias and corruption between the Committee and the Verified NGO Nominator; the lack of resources available to many NGOs in developing or underrepresented Parties; and the potential for backlash from the national government, either in the form of targeting the NGO or withdrawal from the Convention.

180. *World Heritage List*, *supra* note 65; *World Heritage List Statistics*, *supra* note 66.

181. *World Heritage List Statistics*, *supra* note 66. These numbers do not include 32 sites designated as both cultural and natural.

182. Convention, *supra* note 17, at art. 4.

183. Keough, *supra* note 5, at 608.

184. SECRETARIAT OF THE CONVENTION ON BIOLOGICAL DIVERSITY, CONVENTION ON BIOLOGICAL DIVERSITY TECH. SERIES NO. 71, VALUING THE BIODIVERSITY OF DRY AND SUB-HUMID LANDS 17–18 (2013). At the risk of over-consumption, Parties may individually consider creating or bolstering ecotourism programs to increase the profitability of natural heritage.

185. *Id.*

186. Operational Guidelines, *supra* note 35, §§ 74–76.



single building or an individual location, which not only makes them easier to study, but also easier to preserve against threats.<sup>187</sup> Natural sites are more diffuse and generally larger in area, so assessment of the whole landscape is more complex.<sup>188</sup> The size and type of threats inherent with natural sites makes them more difficult to properly nominate and subsequently monitor.<sup>189</sup> To further increase the number of natural sites, the Committee must provide additional resources for natural heritage research. Any increase would mean that the Committee would need to make additional resources available for States Parties who want to nominate natural sites. The World Heritage Fund should have specially earmarked funds available for those who wish to nominate and preserve natural sites. These resources will ensure that natural heritage properties remain considered for preservation.

Additionally, the simplest step toward rectifying this substantive problem is elevating the focus on natural sites within the list of nomination priorities.<sup>190</sup> A higher priority prevents natural sites from exclusion based on the total number of sites nominated with respect to the 45-nomination limit.<sup>191</sup> Each Party may submit two nominations per year if at least one of them is a natural site.<sup>192</sup> Altering the two nomination system should allow for greater inclusion of natural sites. For example, a Party may submit four nominations if at least three are natural sites. Increasing the total number of submissions allowed may require a higher total nomination limit than 45, but will provide for the List's greater balance in the long run. Natural sites may not generate as much economically as cultural sites, but natural sites do generate more revenue than no site.<sup>193</sup> With the choice between a natural site or no site at all, Parties provided with an opportunity to generate revenues will undoubtedly elect to generate revenues.

In addition to changes to the nomination priorities, changes to redefine and reshape the overly broad and ambiguous selection criteria may result in

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187. *Id.* § 45.

188. *Tikal National Park*, UNESCO, <http://whc.unesco.org/en/list/64> (last visited May 17, 2017).

189. *Id.*

190. FRANCK, *supra* note 25, at 7 (discussing procedural versus substantive fairness). On the original priority list, natural heritage ranked fourth. *Id.* Natural heritage is also fourth on the newly proposed list, but falls behind priorities that will be invoked less often than the first three in the original list of priorities. *Id.*

191. Appendix I, *infra*.

192. UNESCO, WORLD HERITAGE CHALLENGES FOR THE MILLENNIUM, *supra* note 82, at 41.

193. Joseph Joey Issa, *As Jamaica's Famous Blue Mountains Finally Inscribed on World Heritage List, Joe Issa Says Monetization and Protection Must Be a Priority for Authorities*, PRWEB (Dec. 16, 2015), <http://www.prweb.com/releases/2015/12/prweb13134078.htm>.

some of the most discernible differences to the List. Nearly every nominated property satisfies the existing selection criteria because the criteria are far too broad.<sup>194</sup> The Convention's goal is to protect the places of the world with outstanding universal value.<sup>195</sup> The purpose of the selection criteria is to determine if that outstanding value exists and exclude those places that do not possess such value.<sup>196</sup> The ten existing criteria enable properties—which do not provide outstanding universal value—to dilute the protection and preservation of resources of those outstanding properties in need of the Committee's aid.

Narrowing the selection criteria provides the best protection for the sites with the greatest heritage and which require the greatest protection. The first criteria states that the property, "represent[s] a masterpiece of human creative genius."<sup>197</sup> While the List should preserve outstanding human achievements in fields such as architecture and technology, this first criterion is far too broad. The Committee wields such power, yet lacks the time to the point that it is unlikely to delve into a detailed analysis of what is a masterpiece, or what appropriately defines creative genius.<sup>198</sup> This language is also repetitive because the architectural and technological aspects exist adequately in subsequent selection criteria.<sup>199</sup> The principal reason to strike the selection criteria is that the criteria merely serve as a catchall for any cultural property that the Committee wishes to List.<sup>200</sup> If a property falls outside of the other five cultural criteria, then the Committee may still declare it representative of human creative genius without any repercussions.

The next change is striking selection criterion vi because it is unnecessary. Many of the items listed in this criterion provide outstanding universal value but are intangible. Items such as these fall more appropriately within the purview of the UNESCO Convention for the Safeguarding of the Intangible Cultural Heritage.<sup>201</sup> These items are not the type of "sites" that the World Heritage Convention is designed to protect.<sup>202</sup>

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194. Keough, *supra* note 5, at 601.

195. Operational Guidelines, *supra* note 35, § 77; Convention, *supra* note 17, at pmbl.

196. Operational Guidelines, *supra* note 35, § 77.

197. *Id.* § 77(i).

198. Keough, *supra* note 5, at 601.

199. Operational Guidelines, *supra* note 35, § 77.

200. Keough, *supra* note 5, at 602.

201. *Convention for the Safeguarding of the Intangible Cultural Heritage*, MISC/2003/CLT/CH/14 (Oct. 17, 2003) (emphasis added). Intangible heritage includes oral stories, traditions, and rituals.

202. Convention, *supra* note 17, at art. 1.

Additionally, there is some concern regarding the tenth and final criterion.<sup>203</sup> The Convention focuses on the cultural and natural heritage of humans and is therefore a human-heritage-centric approach.<sup>204</sup> The concern here in the tenth criterion focuses on threatened species from the view of science or conservation.<sup>205</sup> The species may have heritage value, but the Convention's purpose is not to protect biological diversity or threatened species, nor does the Committee have the resources.<sup>206</sup> Further, other international and perhaps national regimes exist for these exact circumstances.<sup>207</sup>

However, if the goal is to protect natural habitats' landscapes, then the approach needs reworking.<sup>208</sup> A better method of animal and biological diversity protection through this Convention will require preservation via a connection to human heritage. The landscapes themselves may fall under one of the three previous criteria (vii–ix), but a desire to create a habitat for the animals to endure requires a different approach.<sup>209</sup> Similar to the fifth original criterion, the approach must detail human interaction with the environment.<sup>210</sup> The language must follow along these lines: “contain the most important and significant natural habitats for in-situ conservation of biological diversity, including those containing threatened species of Outstanding Universal Value,” which are representative of unique human interaction or tradition, currently or historically.<sup>211</sup>

Finally, there are some smaller changes and points of emphasis, which would improve the listing process. First, within the second criterion, the term “town-planning” is repetitive and unnecessary.<sup>212</sup> This term concerns aspects of heritage covered more fully in other criteria, and the buildings themselves should be of outstanding value, not the planning thereof.<sup>213</sup> Next, there are some terms which require greater emphasis, including:

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203. Operational Guidelines, *supra* note 35, § 77(x).

204. Convention, *supra* note 17, at art. 4; Operational Guidelines, *supra* note 35, § 77.

205. Operational Guidelines, *supra* note 35, § 77(x).

206. Convention, *supra* note 17, at pmb1.

207. PERVAZE A. SHEIKH & M. LYNNE CORN, CONG. RESEARCH SERV., RL32751, THE CONVENTION ON INTERNATIONAL TRADE IN ENDANGERED SPECIES OF WILD FAUNA AND FLORA (CITES): BACKGROUND AND ISSUES (2008).

208. Operational Guidelines, *supra* note 35, §§ 77(vii)–(ix).

209. *Id.*

210. *Id.* § 77(v). See Appendix I, *infra*, for the full proposed list of selection criteria.

211. Operational Guidelines, *supra* note 35, § 77(x). The original “natural criteria” (vii–x) should be left intact, or with a few changes to increase inclusiveness, to promote the addition of natural properties to the List.

212. *Id.* § 77(ii).

213. *Id.*

“unique” (original criterion iii), “significant” (original criterion iv), and “outstanding” (original criterion v, viii, and ix).<sup>214</sup> These words are vague and subjective, which allows the Committee to determine its own interpretation.<sup>215</sup> This interpretation can vary depending on several other possibilities, including whether the property is within their own country or the vote has been influenced unduly.<sup>216</sup> Instead, ICOMOS and IUCN should provide greater guidance as to the definition of these terms to further the Committee’s primary objective—preservation of the world’s true treasures.<sup>217</sup> Redefining and narrowing these selection criteria will reduce the number of eligible properties and ensure that only the truly outstanding properties earn the distinction and protection that the List provides.

#### CONCLUSION

In the end, the World Heritage Committee faces a myriad of problems in pursuit of its mission to save the world’s most important heritage. The Committee’s current system is inadequate to ensure the preservation of the world’s cultural and natural sites for future generations. The World Heritage process is neither procedurally fair—in elections or selection criteria—nor substantively fair—in producing a List strongly favoring developed nations. The Committee can fulfill its mission and prevent the loss of unique and important pieces of human history by adopting the suggested changes to the Convention, the Committee elections, and the process by which the Committee lists properties. The proposed solutions will not only create a fairer, more balanced and equal List, but a List that better encompasses the totality of cultural and natural heritage the world has to offer.

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214. *Id.* §§ 77(iii)–(v), (viii)–(ix).

215. Keough, *supra* note 5, at 601–02.

216. *Id.*

217. *Id.*

## APPENDIX I. PROPOSED ORDERING OF NOMINATION PRIORITIES

- i) nominations of properties submitted by States Parties with no properties inscribed on the List;
- ii) nominations of properties submitted by States Parties having up to 3 properties inscribed on the List;
- iii) nomination of properties submitted by States Parties designated as low or middle-low income (developing);
- iv) nominations of properties for natural heritage;
- v) nominations of properties for mixed heritage;
- vi) nominations from States Parties in Africa, the Pacific, South America, and the Caribbean;
- vii) nominations of properties that have been previously excluded due to the annual limit of 45 nominations and the application of these priorities;
- viii) nominations of properties submitted by States Parties having ratified the *World Heritage Convention* during the last ten years;
- ix) nominations of transboundary/transnational properties;
- x) nominations of properties submitted by States Parties that have not submitted nominations for ten years or more;
- xi) when applying this priority system, the date of receipt of full and complete nominations by the World Heritage Centre shall be used as a secondary factor to determine the priority between those nominations that would not be designated by the previous points.

## APPENDIX II. PROPOSED SELECTION CRITERIA

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

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

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

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

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

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

(vii) to be outstanding examples representing significant ongoing ecological and biological processes in the evolution and development of terrestrial, fresh water, coastal, and marine ecosystems, and communities of plants and animals;

(viii) to contain the most important and significant natural habitats for in-situ conservation of biological diversity, including those containing threatened species of outstanding universal value, which are representative of unique human interaction or tradition, currently or historically.

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