

INTERNATIONAL COMMITTEE ON LEGAL, ADMINISTRATIVE AND FINANCIAL ISSUES

Foreword

The reporting period is completely overshadowed by the violent death of Mr. Khaled Al-Asaad in Palmyra in the late spring of 2015. We find ourselves, as legal practitioners, in the unusual predicament on providing advice and support to colleagues on the front lines of cultural heritage protection. The following report includes a cross section of legal concerns and challenges in the protection of monuments and sites relevant during the reporting period, and the ways in which recent events show the need to update the laws protecting cultural heritage. Specifically, we report on the progress of the Second Protocol of the Hague Convention for the Protection of Cultural Property in the Event of Armed Conflict. Also, we propose expanding the definition of cultural heritage and systematizing efforts to evaluate risk to cultural heritage. We hope that these writings will inspire our colleagues to find novel methods for the protection of the irreplaceable, and to provide some small measure of support by so doing.

The Most Recent Advances in the Implementation of the Hague Convention of 1954 for the Protection of Cultural Property in the Event of Armed Conflict, and its Protocols

Analysis of the latest important decisions taken by the Committee for the Protection of Cultural Property in the Event of Armed Conflict

The intergovernmental Committee for the Protection of Cultural Property in the Event of Armed Conflict (hereafter “the Committee”), established by the Second Protocol of 1999 (hereafter “the Second Protocol”) to the Hague Convention of 1954 for the Protection of Cultural Property in the Event of Armed Conflict (hereafter “the Convention”) celebrated its tenth anniversary in December 2015, just a year after the celebration of the 60 years of the Convention and 15 years of the Second Protocol.

In creating this Committee, alongside other positive innovations, the authors of the Second Protocol wished to bring about a better implementation of the Hague Convention, a dormant convention¹ that until now has been deprived of any instrument of international control. In this summary of its action, can we claim that their hopes have been met?

First of all, the Second Protocol only came into force on 9 March 2004, which was the time needed to deposit the 20 instruments of ratification as required by this treaty.² The first task for the Committee was to provide the necessary documents so that

the Meeting of the Parties could carry out its mandate as provided by the Second Protocol,³ in particular:

- “(...) Approve the Guiding Principles elaborated by the Committee, conforming to subparagraph a) of paragraph 1 of article 27;
- Provide direction concerning the use of funds by the Committee and ensuring its supervision; (...).”

In November 2009, following unrelenting preparatory work under the guidance of successive Chairpersons Christoph Bazil (Austria), Karim Peltonen (Finland), and of Jan Hladik for the Secretariat, the Meeting of the Parties adopted the Guiding Principles for the Application of the Second Protocol, the Guidelines Concerning the Use of the Fund for the Protection of Cultural Property in the Event of Armed Conflict (hereafter “the Fund”), and the Financial Rules of the Fund.

The following analysis will focus on the progress made by the Committee between its 5th session in 2010 and its 10th session in 2015, under the chairs Nout van Woudenberg (Netherlands, 2010–2012), the author (Belgium, 2012–2014) and Artemis Papataniassou (Greece, 2014) in the following areas of concern:⁴

1. The development of enhanced protection for cultural property;
2. The creation of a distinctive emblem for enhanced protection;
3. The development of strategic synergies;
4. The growing role of a chairperson;
5. The use of the Fund for the Protection of Cultural Property in the Event of Armed Conflict and actions on the ground.

1. The development of enhanced protection for cultural property

A specific feature of the Second Protocol is the creation of a new international system for the protection of cultural property at risk, namely “enhanced protection”.⁵ This new type of protection supplants⁶ “special protection” (for cultural property of very great importance) set out by the Convention,⁷ which lacks efficacy.

In brief, the Committee can agree upon enhanced protection if the proposed property meets three criteria⁸ specified in article 10 of the Second Protocol:

- a. *It is a cultural heritage that assumes the greatest importance for humanity;*
- b. *It is protected by adequate internal, legal and administrative measures that recognise its exceptional cultural and historic value and that guarantee the highest level of protection;*
- c. *It is not used for military means or to protect military sites, and the Party under whose control it falls confirms by means of a declaration that it will not be used in these ways.*

The status of enhanced protection ensures the immunity of the cultural property.⁹ Violation of this¹⁰ is considered as a serious violation of international humanitarian law (i. e. a war crime) if it

happens, which needs to be incriminated and reprimanded by the Parties.¹¹

The development of the List of Cultural Property under Enhanced Protection is the following:

- the archaeological site of Choirokoitia – Cyprus (2010),
- Painted Churches in the Troodos Region – Cyprus (2010),
- the archaeological site of Paphos – Cyprus (2010),
- Castel del Monte – Italy (2010),
- the archaeological site of Kernavė – Lithuania (2011),
- Walled City of Baku with the Shirvanshah’s Palace and the Maiden Tower – Azerbaijan (2013),
- the archaeological site of Gobustan – Azerbaijan (2013),
- the house and workshop of Victor Horta – Belgium (2013),
- Neolithic Flint Mines at Spiennes – Belgium (2013),
- Plantin-Moretus House-Workshops-Museum Complex and the Archives of the Officina Plantiniana – Belgium (2013).

Since 2013, not a single request has landed on the table of the Committee, which meant that at the last Meeting of the Parties to the Second Protocol,¹² several States expressed their concern. Different factors explain this:

- A lack of Parties to the Convention (127) and to the Second Protocol (68);
- Many of those States have still not adopted relevant provisions of the Second Protocol in their domestic law, in particular Chapter 4 that sets out an active role of the States in the fight against impunity in the event of violation of the Protocol or of the Convention, which is considered as a failure to meet criterion 10, b), of the Second Protocol;
- The Secretariat should develop a more comprehensive posture, despite having developed a more proactive attitude with and support to the States;
- A lack of action from the States, proven by the fact that the emergency procedure¹³ to benefit from enhanced protection has never been activated, even though some situations have completely justified it (with suspension of the condition set out in the aforementioned article 10, b);
- The States’ lack of information. For example, Mexico inscribed eleven new properties in the International Register of Cultural Properties under Special Protection, even though this register is considered obsolete.

Nevertheless, the Committee, apart from constantly reaffirming its wish to see a number of cultural properties placed under enhanced protection, has tried its best to do the groundwork for the future:

- By adopting a Tentative List model,¹⁴ which is of a non-binding nature, in order to encourage the States to carry out the first selection stage for cultural properties suitable to be put forward for enhanced protection according to article 11, par. 1, of the Second Protocol;
- By commissioning ICOMOS to do a study on the implementation of criteria 10, a) and b).¹⁵ In effect, the criterion of article 10, a) of the Second Protocol (*cultural heritage of the greatest importance for humanity*) necessarily covers a series of cultural properties on the World Heritage List (of outstanding universal value)¹⁶ but also extends to some cultural properties not on the World Heritage List (immovable cultural properties not of outstanding universal value but of the greatest importance for humanity). Therefore it would be strategic to have a Committee with the power to respond to such a request, and equipped with a methodology and precise and measurable criteria. In December 2015, the Committee decided to put pressure on the

Secretariat, which will need to submit, with the support of the Bureau of the Committee, a first project of statutory modifications to the Guiding Principles in order to follow up on the results of the ICOMOS study.

- In the same decision,¹⁷ the Committee requested the Secretariat to present an information document on the notions of “control” and “jurisdiction” set out in articles 10, c) and 11, point 2,¹⁸ of the Second Protocol, in international law and case law. This is to clarify these precise legal notions of international humanitarian law, *in tempore non suspecto*, in order to anticipate requests for funding enhanced protection of cultural property for which the application of these notions could prove to be problematic.

2. The creation of a distinctive emblem for enhanced protection

Surprisingly, the authors of the Second Protocol did not include a method for visually identifying cultural properties that would benefit from enhanced protection. The importance of conspicuously marking protected properties is of tremendous concern if implementation of the Second Protocol is to meet basic legal requirements. A reflection on this, initiated by the Belgian presidency, started at the beginning of 2013. The Committee took a position in two stages. In December of that year, it adopted the principle of creating a specific distinctive emblem and a legal pathway to achieve this. The following year it selected a pictorial proposal¹⁹ and its corporate identity was submitted to the Meeting of the Parties. This latter body, after a lively debate, finally approved the specific distinctive emblem proposed by the Committee, as it was convinced that this emblem would play a role in improved protection and visibility of cultural properties of significant interest, and would guarantee improved legal security for warring factions that will be able to identify cultural properties under enhanced protection and thus avoid any attack against them (such attack constitutes a war crime subject to prosecution and repression).²⁰

International humanitarian law now has a new distinctive emblem that is suitable to disseminate as widely as possible:



The Guidelines for the Implementation of the Second Protocol will be amended in order to take into consideration this emblem and to provide the modalities of its use.

3. The development of strategic synergies

The question of the synergies between the Hague Convention and its Protocols and other UNESCO instruments and programmes has been posed since the session of the Committee in 2010.²¹ Momentum behind this grew until in 2013 two concrete plans emerged: synergies with the other UNESCO Cultural Conventions, and synergies with other relevant international actors.

3.1. Synergies with the other UNESCO Cultural Conventions

Among UNESCO's Cultural Conventions, the Convention of 1972 concerning the protection of world cultural and natural heritage (hereafter "the World Heritage Convention") occupies a very important place thanks to its visibility and importance within UNESCO.

Synergies with the World Heritage Convention

This point was put on the agenda for the first time at a session of the Committee in 2012 upon the request of Belgium, which proposed a working document to this effect,²² next to that from the Secretariat.²³ While the document from the Secretariat set the scene and put the emphasis on what had already been realised (interestingly a Cultural Conventions' Liaison Group, which re-groups their secretariats), the Belgian document had a very concrete objective: grant States that are Parties to both the Second Protocol and the World Heritage Convention the power, on a voluntary basis, to request enhanced protection as part of the form for requesting inscription on the World Heritage List.²⁴

In the first instance, this pragmatic proposal had to benefit cultural properties, but it was also transformed by a strategic consideration: the Convention could use this explicit reference in the World Heritage inscription form to have a certain visibility and attract the attention of the States. It is necessary to note here that while the World Heritage Convention has 191 Parties, the Convention only numbers 127 at present, and the Second Protocol 68.

The Committee adopted the project and sent it to the Director-General to add to the agenda of the World Heritage Committee in June 2013.²⁵ As a first step, the World Heritage Committee accepted the principle of this synergy, re-submitted the question for a decision to its Committee of 2015 and charged the respective bodies with pursuing this work.

It must be acknowledged that the World Heritage Centre did not buy into this reform, and at the session of the World Heritage Committee in Bonn in 2015 the project could not get through the Working Group on the Revision of Guidelines, in spite of a last-minute attempt by Belgium. The responsibility for this failure falls partly on the Committee itself: neither of the two States that had the privilege of being members of both Committees at the same time intervened in the Working Group or in the Committee to defend the project, nor did any Member State of the Committee for the Protection of Cultural Property in the Event of Armed Conflict. The irony is that the States supporting the project the most, Algeria and France, are two of the States yet to ratify the Second Protocol (though they are at the point of doing so). This cruelly underlines among other things the problem of internal communication between the States and the separation of expertise, which led to this problem of an incoherent position of these countries: the experts who voted enthusiastically for the synergies project in the Committee for the Protection of Cultural Property were not necessarily those that participated in the World Heritage Committee.

Having said that, this proposal could be looked at again in the World Heritage Committee in 2017. This type of reform needs to succeed sooner or later. The necessity of synergies between the Conventions and such things will prevail over the bureaucratic logic of defence of one's own territory.²⁶ Education and advocacy to the States will be equally indispensable in making this project successful.

In any case, since 2012, the question of synergies, particularly with the World Heritage Convention, has consistently appeared on the Committee's agenda.

Synergies with the other cultural conventions

The Convention of 1954 is a cross-functional convention, including both immovable and movable cultural property. Synergies with the Convention of 1970 concern measures to prohibit and prevent the import, export and the transfer of illegally owned cultural property or nature. It is also necessary to no longer forget the Convention of 2001 on the Protection of Underwater Cultural Heritage and the Convention of 2003 for the Safeguarding of Intangible Cultural Heritage. In effect, intangible heritage is not totally disembodied, as it lives on through certain objects and or places.²⁷

Given the lack of concrete advances, notably the resounding lack of room for dialogue between the Committees and UNESCO, with every institution working on its own thing, the Committee, inspired by the initiative of the Chairperson of the Subsidiary Committee of the Convention of 1970, Mauricio Escanero (Mexico), took the decision in December 2014 to invite *the Director-General to hold, at least once a year, consultation meetings with the Chairpersons of the statutory organs established by the Cultural Conventions, with the objective, among other things, of developing synergies between these Conventions, and where relevant to make a report to the statutory organs.*

So the Director-General Irina Bokova had the excellent idea²⁸ of bringing together the Chairpersons of the Committees of the UNESCO Cultural Conventions on the occasion of the 39th session of the World Heritage Committee (Bonn, 29 June 2015). Unfortunately this ambition was limited by some interventions from various aforementioned chairpersons (or their representatives) as a prelude to the presentation of a Joint Declaration²⁹ negotiated in advance.

The Chairperson of the Committee for the protection of Cultural Property in the Event of Armed Conflict herself continued to research synergies, in particular with the Convention of 1970. As a result, a joint meeting of the two Bureaus (Bureau of the Committee for the Protection of Cultural Property in the Event of Armed Conflict and the Bureau of the Subsidiary Committee to the Meeting of the States Parties to the Convention in 1970) was organised on 7 December 2015. Its aim was to exchange information concerning firstly the destruction of cultural heritage as part of armed conflicts, and secondly organising actions to raise awareness and train soldiers, police officers and customs' officers regarding protection of cultural heritage in the event of armed conflict and the fight against illegal trafficking of movable heritage.³⁰

We can salute this advance, even if it is a timid one, and hope that the next meetings of the Chairpersons of the Committee will take the form of a working group aiming to get some results that are more concrete than symbolic. Finally, the Committee also approved the principle of greater involvement in the question of intangible heritage, without it being subject to a formal decision.

3.2. Synergies with relevant international actors

One particularity of the Second Protocol is the very important position that it gives to its partner association,³¹ the International Committee of the Blue Shield (ICBS), founded by the four associations of competent experts in the field of application of the Convention: the International Council on Monuments and Sites

(ICOMOS), the International Council of Museums (ICOM), the International Council on Archives (ICA), and the International Federation of Library Associations and Institutions (IFLA).

Since 2013, the Chairperson has multiplied exploratory contacts with the ICBS and its Secretariat to establish a real partnership with the Committee.³² At the same time, the ICRC has been approached, seeing that the protection of cultural property in the case of armed conflict falls within its mandate which consists in working for the faithful application of international humanitarian law and for its understanding and dissemination in general. Indeed, according to the 1999 Second Protocol, the ICRC is one of the main organizations able to cooperate with the Committee and to assist it in the implementation of its functions.³³ Two concrete examples of cooperation between the Committee and the ICRC can be highlighted since then:

- The sending of a joint letter to the chairpersons of the National Committees of IHL in 2014 in order to encourage them to set up a standing working group that will support the implementation of the Hague Convention and its Protocols;
- The support of the fourth Chairperson of the Committee to the organization of a side event during the 32nd International Conference of the Red Cross and Red Crescent (8–10 December 2015) on “New challenges for the protection of cultural property: from incidental damage to deliberate destruction”. Two model pledges addressed to the States and the National Societies of the Red Cross and Red Crescent were proposed at the end of the side event in order to promote the ratification of the relevant conventions relating to the protection of cultural property, their implementation at the national level, their dissemination and the establishment of a standing working group on the protection of cultural property within the National Committees of IHL.

On the basis of decision 8COM.3,³⁴ the Chairperson of the Committee brought together representatives of UNESCO, the International Committees of the Red Cross and of the Blue Shield in March and June 2014 to create a discussion platform for all the questions related to the protection of cultural property in the event of armed conflict, including communication in the event of an emergency. The main objective of this international platform is to ensure the dissemination of information on cultural heritage among all the actors involved and to strengthen efforts in the event of a crisis. The following objectives were defined:

- disseminating information to all the stakeholders involved in the protection of cultural heritage, whether they participate in the platform or not;
- reinforcing cooperation for common actions, including in the event of armed conflict;
- promoting the work of the National Committees of the Blue Shield, the National Commissions for UNESCO and the National Consultative Committees established as part of Resolution II adopted by the Conference of The Hague in 1954.

Around these two meetings, there was discussion of questions such as the incidence of an armed conflict on cultural property or the possibility of proposing technical assistance.³⁵ We note that the Director-General Irina Bokova was inspired by this dynamic to conclude a partnership agreement with the ICRC in February 2016.³⁶ This agreement aims at: encouraging States to ratify the Hague Convention and its Protocols and to implement these treaties at the national level; raising awareness of humanitarian actors working in armed conflicts on the protection of cultural property and rescuing cultural property at imminent risk under

specific conditions. These synergies that have been forged with institutional and associative counterparts will be followed up and strengthened,³⁷ in particular those with ICCROM.³⁸

4. The growing role of a Chairperson

A Chairperson’s room for manoeuvre sometimes lacks clarity. The function was traditionally perceived in UNESCO as an important function for the management of debates and forming consensus, but remained rather honorific. However, a new generation of more determined and reactive Chairpersons seems to have emerged in the different Committees in recent years.

Confronted by the dramatic ravages on cultural property in Mali, and then in the Middle East (Syria, Iraq, Yemen), the Committee was asked to provide the Chairperson of the Committee with greater room for manoeuvre than that authorised by a restrictive reading of the Second Protocol. It should be underlined that since 2013 numerous steps have been taken by the Chairperson, thanks to the implicit support of members of the Committee, notably with the States in conflict or the States that are not Parties to the Second Protocol. One move forward, which remains at an informal stage, was begun by relying on article 36, subparagraph 2, of the Second Protocol which sets out that in the absence of Protecting Powers³⁹ and *on the invitation of one the Parties or the Director-General, the Chairperson of the Committee can propose to the parties in conflict to have a meeting of their representatives, and in particular those authorities responsible for the protection of cultural property, potentially on the territory of a State not party to the conflict.* The objective here was to have the power to dispatch a mission of experts on the ground in order to evaluate damage and establish an action and restoration plan, without interfering in the political process for resolution of the conflict or defining responsibility for the damage. Experience has shown that the process of reconciliation could be accelerated, or conversely slowed down, depending on the reappropriation of cultural heritage by its inhabitants. In effect, a monument that has been gutted and left abandoned simply rubs salt into the wound.

Furthermore, the Committee, on the initiative of the departing Chairperson, encourages, by means of its Decision 9COM.3⁴⁰:

- *the Chairperson, in consultation with members of the Committee, to make public statements on behalf of the Committee as well as together with UNESCO and/or other statutory organs established by the Cultural Conventions and/or the International Committee of the Blue Shield on the protection of cultural property in the event of armed conflict, including occupation;*
- *the Chairperson to assume her responsibilities under the relevant provisions of the Second Protocol with the view to exerting conciliation efforts among concerned Parties to an armed conflict including occupation in order to strengthen monitoring of cultural property on the ground.*

Since then, the Chairperson has used the mandate on three occasions to make a Declaration (in May⁴¹ and September⁴² 2015 and as part of the joint Bonn Declaration cited above⁴³).

In turn, the Committee has also got used to terminating its session with a Declaration since this session in 2014⁴⁴, and in so doing has collectively brought its voice into the international sphere. It was indeed paradoxical that the intergovernmental Committee in charge of the protection of cultural property in the event of armed conflict remained completely silent when attacks against cultural property were multiplying.

5. The use of the Fund for the Protection of Cultural Property in the Event of Armed Conflict and actions on the ground

The decision 9COM.3 of the Committee as mentioned above, requested that *the International Committee of the Blue Shield provide a report on the situations where cultural property is at risk in the context of an armed conflict including occupation, to be examined during the Tenth Meeting of the Committee, in order to develop proposals for action.* Unfortunately, the ICBS, which was undergoing a wholesale internal reorganisation and was without finances to draw up this report, could not provide this for the tenth meeting of the Committee.

Therefore, in its following session in December 2015, the Committee took an extremely important strategic decision, Decision 10COM.9⁴⁵, in which:

The Committee,

1. *Invites the Chairperson, with the assistance of the Secretariat, to continue the dialogue with the International Committee of the Blue Shield with a view to writing a report on the situations where cultural property is at risk in the context of an armed conflict including occupation;*
2. *Encourages all the Parties to the Second Protocol to mutualize, where necessary, financial resources with a view to the preparation of this report;*
3. *Decides, if the call for contributions addressed to the Parties does not gather the necessary resources to finance this report, to use the Fund for the Protection of Cultural Property in the Event of Armed Conflict, and requests the Secretariat to inform the members of the Committee by electronic means, as part of the procedure already used for funding the financial assistance to Mali, about the amount that needs to be taken from the Fund;*
4. *Requests that this report could be submitted to the meeting of the Bureau in September 2016, to analyse and establish a coherent action plan with the strategy of “Reinforcement of the action of UNESCO regarding the protection of cultural heritage and the promotion of cultural pluralism in the event of armed conflict” (Document 38 C/49) adopted by the General Conference in its 38th session;*
5. *Furthermore, requests that this report and action plan are presented at its eleventh meeting.*⁴⁶

So the Committee wants, with support of ICBS, to have a surveillance tool at its disposal for the areas where cultural properties are at risk (according to the ICBS report), and a control tool aiming to promote advances on the ground (via the action plan). Therefore, the objective of the Committee is to leave its diplomatic comfort zone to attempt to concretely respond to the problems it needs to deal with. This is an exceptional move.

Furthermore, according to a restrictive reading of the relevant texts, the Fund that the Committee has at its disposal can only be activated by the Parties to the Second Protocol. Belgium has underlined the strange paradox that the Committee finds itself in needing to manage a Fund that⁴⁷ it is unable to use for its own actions. Thanks to the neutral position of the Netherlands, the principal contributor to the Fund, the Committee decided to side-

step this limiting conception and rely on the general mandate set out in article 27, f, of the Second Protocol⁴⁸ which stipulates that the Committee is designated to *decide on the use of the Fund.* While the Decision currently only aims to cover the financing of the ICBS study, one can imagine that in future the measures taken by the Committee to apply its action plan could also be financed by these means.

Conclusions

Despite numerous hurdles, the Committee has taken its place in the international circle. However, there are certainly a number of challenges remaining, including:

1. The number of ratifications of the Second Protocol, although the progression is constant, remains very low. For example, to this day no Member of the Security Council is Party to the Second Protocol.⁴⁹
2. Is there still a serious lack of dialogue between the Committee and UNESCO? Despite UNESCO’s official discourse where the words “synergies” and “collaborations” are systematically employed, the dialogue with the Committee could still be improved.⁵⁰ In addition, the Secretariat of the Committee has only been provided two people, one of whom is 0.3FTE, which is indicative of its level of priority in the institution.
3. The involvement of the States also varies greatly from one country to the other, without counting the internal compartmentalisation referred to above. The implementation of the Second Protocol and the Convention by the States also often poses problems, mainly because these are not only envisaged as useful tools in the event of an armed conflict; the point is to realize the measures of prevention, training and dissemination in times of peace.

Nevertheless, the Committee has been able to grow and develop. It has chalked up a number of steps forward, including:

- The development of the List of Cultural Property under Enhanced Protection;
- The creation of a distinctive emblem for marking cultural property under enhanced protection;
- The successful actions in El Salvador and in Mali, the first as part of an operation of prevention and awareness-raising, and the second as part of a vast safeguarding operation, in a context of emergency and crisis, in collaboration with MINUSMA;
- The different administrative and legal clarifications and improvements aiming to make life easier for the States and the function of the Committee;
- The establishment of contacts with a series of institutional and associative partners, with which the dialogue is open and active.

These decisive developments were taken progressively with the desire to act by steering and financing actions on the ground as part of a global and long-term vision. The next meeting of the Committee in December 2016 will therefore be decisive and emblematic of the collective capacity to continue to move forward.

Benjamin Goes

Recommendation to Expand the Definition of Cultural Heritage in Heritage at Risk

We would like to call upon the Philosophy Commission to determine correctly what the limits corresponding to the category of heritage at risk are considering cultural diversity as a measurement parameter, and then to normalize, model and propose an objective tool to evaluate cases at risk.

Taking into account Dr. José Ernesto Becerril’s doctoral thesis *Changing the Paradigm for the Protection of Cultural Heritage in Mexico: Its Identification as a Human and Social Right* some concepts were extracted, especially the definition of cultural heritage and heritage at risk, which is incorporated in the diagnosis and proposal for this work.

Introduction

Heritage at risk is a very controversial subject in almost any aspect; therefore all its macro variables to the minutest aspects should be studied. For the macro command, the presence of representatives of the Member States with heritage at risk should meet in a commission to analyze the problems involved. Its conclusions and agreements should be submitted to the bureau to try to find solutions together according to the different enigmas.

ICOMOS is an organism of peace. It accepts cultural diversity as an essential source of information and respect for peace. Therefore, there can be no single answer to the problem of heritage at risk, because countries are all different in their idiosyncrasies and that must be respected, as the identity of each people embodies cultural diversity.

It has been suggested to generate a single standard contract for all countries with heritage at risk. But this may not be feasible due to the cultural and therefore legal diversity. At the Scientific Symposium of the 18th General Assembly of ICOMOS a method called Heritage Economic Valuation was submitted and accepted. This method has the ability to expand on the topic “Heritage at Risk”. In order to study its implications in each country it is necessary to study the problem holistically to later confine to each particular case.

The fifth principle of the Heritage Economic Valuation method called “event” is how to analyze the item heritage at risk by the following formula.

$$Ve(t) = \sum V1 \left(e^{\sum \xi(t-t_i)} - 1 \right) \cdot \Delta(t-t_i)$$

V1 = represents any kind of event that occurs in the house, author, change of use, interventions. The calculation is based on catalog methodology. It is the value of the tangible fact modified by the event. This event can also be “Heritage at Risk”. It always has a start time and end time plus the sum of several causes or just a cause “ξ”. The study of the causes of how heritage at risk occurs is what is going to be studied based on the detailed analysis by Dr. Ernesto Becerril.

This methodology relies upon ideas of the theory of fuzzy subsets. This tool can generate a hierarchy based on the observations of a specialist on an object (heritage at risk). This tool can also identify legal and illegal facts quantitatively. According to this methodology legal facts are marked with the positive sign and

illegal facts with the negative sign. It is mathematically handled through numerical intervals.

For example: If the interval [-1, 1] is taken, it can be developed as follows:

-1	There is heritage at risk
-0.9	
-0.8	There are high indexes so that there is heritage at risk
-0.7	
-0.6	
-0.5	There are average indexes so that there is heritage at risk
-0.4	
-0.3	
-0.2	
-0.1	There are minimum indexes so that there is heritage at risk
00	Cultural heritage was not valued
0.1	Heritage assessment begins
0.2	
0.3	
0.4	
0.5	There is an average score of heritage in relation to others
0.6	
0.7	
0.8	There is a high score of heritage in relation to others
0.9	
1	There is cultural heritage due to its assessment

Other intervals can be taken; this will depend on the values each country assigns to it. This methodological study is used as a tool to see the objective degree of the professional who analyses heritage at risk. What are the indices and causes that alter and generate heritage at risk?

- Political actions and relationship with society?
- The environment?
- The economy?
- Legal actions?
- The actions of constructive intervention: from the perspective of architecture or from the perspective of engineering or town planning?
- The actions of archaeological / paleontological / intervention: extreme or minimal?
- The actions of tourism: the impact and the ability to support things not to be destroyed?
- The degree of reuse of heritage property?

It is obvious that each country with “heritage at risk” presents any of these variables to be deteriorated to get this category; these variables are not equal for all countries. A system should be modeled where everything is included, taking the different parameters and trying to include them all.

For example: If you compare Argentina and France, in Argentina the legal definition of the term “good” is not the same as in

France. For the latter it is equal to the legal definition of “thing” defined in Argentina. So the definition of legal concepts is very important in order to begin to understand heritage at risk globally.

Taking into account the previous linguistic divergence and comparing it methodologically there is a lack of understanding of 0.1 heritage points when talking, unless having the knowledge of the legal glossary of each country.

The definitions of legal terms that are common to all	00
The definitions of legal terms that are different	0.1
The legal rules that are common to all	0.2
The legal rules that are different	0.3
Illegal facts that are common to all	0.4
Illegal facts that are different	0.5

Another example: considering “intervention at a heritage site in the specific category of Facade”

Facade	Intervention	Valorization
Placing loose items	Heritage that continues surviving and reversibility or identifying intervened areas through restoration technique	(0; 1]
Fixing of carpentry		
Painting of carpentry		
Painting plastering		
Fixing of plaster		
Fixing of masonry (some masonry)		
Minimum structural fixing		
Fixing of 50% of plastering	There is a turning point to start considering heritage at risk because part of the system is lost and the good or thing begins to deteriorate.	(0; 1] (-1; 0]
Fixing of 50% of the masonry	Heritage at Risk	(-2; -1]
Fixing of 50% of the structure		
Fixing of 100% of plastering		
Fixing of 100% of the masonry		
Replacement of timber		
Fixing of 100% of the structure		
Demolition/ destruction	Non-existent tangible heritage becomes intangible heritage	(-2; -1] (-1; 0]

Diagnosis and Proposal

First principle: Cultural Heritage is an asset that cannot be replaced, but it is at constant risk of being lost or damaged. It is a non-renewable resource. The Human Cultural Heritage is one of the most significant or exclusive elements of Global Public Goods. The message we get is the importance of preservation due to the relevance of the cultural property.

The loss of value or physical integrity of these assets is an unfortunate fact that must be prevented. For this reason, we must understand that the best way to prevent damage to Cultural Heritage refers to the understanding of the risks that threaten it (J. E. Becerril 2016).

This last concept is the model intended to be used as an evaluation tool for specialists who interpret the legal and illegal facts of deterioration occurring in heritage. According to Ernesto Becerril’s doctoral thesis two major threats affecting Cultural Heritage can be found:

1. Immediate causes: pillage and illicit traffic of cultural property
2. Mediate causes: loss of Cultural Heritage for reasons ranging from uncontrolled urban development to the intentional destruction of heritage by armed conflicts (knowing that between both ends exists a diverse range of assumptions) (J. E. Becerril 2016).

Immediate risks in the protection of Cultural Heritage

Illicit traffic of cultural property and destruction of cultural heritage are among the main problems of public, academic and social institutions that have been detected. The two phenomena are serious problems for the conservation of cultural property and it is important to fight against them in a decisive manner. (J. E. Becerril 2016)

Illicit traffic of cultural property (J. E. Becerril 2016)

Pillage process		
a) location of places where these goods (which may vary from an archaeological site to a religious building) are deposited		(-1; 0] (illicit fact)
b) illegitimate extraction		
c) transportation to other places different from where they were discovered		
d) in some cases fraudulent reproduction of parts		
e) sale:	A) Nowadays by electronic means	
f) g) h)	B) Without having evidence of those behind these acts	
	C) Involving organized crime	
	D) On a smaller scale farmers who fortuitously find a piece of cultural value (archaeological, for example) and decide to sell it	

Illicit traffic, a phenomenon that could have many actors
(J. E. Becerril 2016)

Archaeological pillage is also applicable to the robbery of antiquities
(J. E. Becerril 2016)

Illicit traffic that may have many actors	Participation and ignorance of the value of cultural property	A network of complicities
Local authorities	(-1; 0] illicit fact	(-2; -1] illicit fact
Customs authorities		
Authorities law enforcement		
Art experts		
Local police		
Custodians of archaeological sites		
Churches		
Parsons		
Private museums		
Auction houses		
Farmers		
Tourists		
Collectors		
Art galleries		
Treasure hunters		
Carriers		
Antique sellers		
Construction companies		
Transnational companies		
Brokers		
Intermediaries		
Drug dealers		
others, etc.		

1. The enormous amount of archaeological sites, a large part of which are in suburbs or private properties make the management and control of these spaces a difficult task;	(-2; -1] o (-1; 0] (illicit fact)
2. Lack of adequate financial resources for conservation, monitoring and control of archaeological sites;	
3. Lack of specialists and effective organization and optimization of the few human resources available in this area,	
4. Lack of social recognition and an adequate financial compensation to these human resources for the services they provide to the nation;	
5. Modernization of the country frequently sacrificing archaeological goods for the sake of roads, dams, housing units, etc;	
6. Disarticulation of governmental departments;	
7. The lack of defined and consistently structured official plans for the preservation of our heritage;	
8. The low valuation of our archaeological wealth;	
9. Careers and specialties taught at universities oriented to research in this field: History (architecture) and anthropology; the lack of efforts to convene the competition in this field.	

Illicit traffic of cultural property can be assumed
(J. E. Becerril 2016)

Art market	
1. When there is a market with plenty of money, art prices rise;	(0; 1] o (1; 2] (licit fact)
2. When there are recessions, political upheaval or fiscal crisis, art prices rise;	(-2; -1] o (-1; 0] (illicit fact)
3. When there is an economic boom art prices rise rapidly	

Activities related to illicit traffic of cultural property (especially in the case of archaeological heritage) (J. E. Becerril 2016)

1. Excavations, when properly done, represent a window into history. The archaeological sites are a non-renewable resource that can be excavated only once, so you have to seize the opportunity.	(0; 1] o (1; 2] (licit fact) (-2; -1] o (-1; 0] (illicit fact)
2. In case of pillage, essential details of the origin of the object (where it was found) and context (what it was found with), are irreparably lost	
3. Loss of historical information sources.	
4. Many vestiges that looters despise, such as bones and broken pottery, provide invaluable clues to entire cultures.	
5. When archaeologists access intact sites they can find answers to more general questions regarding our past.	
6. When the only material available for the study is of unknown origin, the idea that we have of ancient people is poor and distorted.	
Another way of illicit traffic in cultural property that has been very little explored is the seizure of traditional knowledge: a) manifestations, b) practices and c) assets of the Intangible Heritage of native communities. Its commercial exploration does not benefit them.	

Destruction and deterioration of cultural heritage for different reasons (J. E. Becerril 2016)

1. Who decides to demolish the old house to build a condominium building,	(-2; -1] o (-1; 0] (illicit fact)
2. Who alters a central square of a small town,	
3. The mayor who decides to sweeten a traditional party including foreign elements to "modernize it",	
4. The mayor who destroys an archaeological site and its surroundings to construct a road,	
5. There are infinite variables of destroying or damaging the evidential or significance values in areas of interest of very different nature, bad faith and even ignorance,	
6. A mayor who generates a norm that prioritizes "real estate development" to "heritage protection".	

Serious inconsistencies in the design of a cultural heritage contradicted by a misunderstood concept of development have brought a series of subtle but serious losses of this asset (J. E. Becerril 2016).

It is also true that the owner of a heritage property faces a prospect that may involve significant burdens in order to preserve the testimonial value of that property and lack of stimuli: conservation and building maintenance requires specialized advice; in some cases these tasks require increased investment, there are restrictions of use, there is an administrative burden greater than other real estate transactions, etc., and in general, few states and municipalities provide tax benefits to owners who restore their cultural goods (J. E. Becerril 2016).

A proposal for this situation is to generate a trust as a legal tool of protection between the different states parties that have World Heritage at risk. But this situation in a large-scale area can be much more complicated. Addressing the issue from a perspective of technical analysis destruction or deterioration of cultural heritage can occur through three main agents: physical, social and economic (J. E. Becerril 2016).

The patina of time and varying degrees of deterioration and destruction.	(-1; 0] (illicit fact)
Social partners that have influenced the destruction of heritage: 1) Obsolescence and disuse; 2) The deliberate destruction is contrary to the conservation of architectural and urban heritage; 3) Particular group interests, whether economic, social or ideological, have totally or partially destroyed heritage; 4) Misuse is another cause for deterioration; 5) They deal with objects that go beyond their ability and endurance; 6) Lack of civic education; 7) Theft of building materials of abandoned buildings, stone, carpentry, etc., to be reused in new constructions; 8) Introduction of urban infrastructure.	

Economic agents: the case of the city of La Plata, Buenos Aires, Argentina

Urban code laws	(0; 2] (licit fact)
Modifications of urban codes where the patrimonial aspects for cultural protection that promote conservation of monuments are introduced;	
New modification of urban codes where the housing value is considered more important than the heritage protection.	(-2; 0] (illicit fact)
The behavior of real estate capital promotes the destruction and deterioration of the monuments (total income)	
ground rent	
construction rent	(0; 2] (licit fact)
Actions of the Supreme Court request to return to the previous rule and to the heritage protection norm.	

When investments in urban infrastructure take place the price of land rent exceeds the income that the building produces. For the real estate capital it means that the time has come to demolish it and erect a new building that, for its comfort features and availability of the area, will produce an income corresponding to the ground ... (J. E. Becerril 2016).

Indeed, the problem of the destruction and deterioration of cultural heritage is a multidisciplinary subject whose solution requires many agents of various social sectors (J. E. Becerril 2016).

In the field of Intangible Cultural Heritage, the ways that may alter the evidential value and significance of the intangible manifestations can range from the most innocent ends to the total illegal end. The reality is that intangible heritage can be difficult to protect against these external negative influences (J. E. Becerril 2016).

Description	Testimonial Value or Significance Value
The intervention of national or transnational companies add foreign elements to a traditional feast,	(0; 1] (licit fact) (-1; 0] (illicit fact)
Alteration of construction techniques in architecture as a result of the reconstruction of traditional architecture to adapt them to other cultures,	
Tourism as a show.	

The alteration produces erosion in the testimonial value or significance of goods. E. Becerril starts the study of the causes, phenomena linked to the way in which man interacts with cultural heritage and reflecting the various negative attitudes.

Mediate risks in the protection of Cultural Heritage. Review of legal instruments, especially at the administrative level (J. E. Becerril 2016)

How the permits and licenses are granted	(0; 1] (licit fact) (-1; 0] (illicit fact)
how agreements between the various levels of government are achieved for a coordinated action	
how to improve verification processes	
how to increase the file work	
how can one increase inventory work	
how to define technical criteria	
others, etc.	

When referring to mediate risks to the conservation of cultural heritage, human and complex phenomena are faced deeply, where the values of cultural property can be threatened from the conditions in which the current world moves.

For valuation analysis of cultural heritage four values are presented: testimonial, significance, use and development (J. E. Becerril 2016).

Values	Analysis according to Methodology of Heritage Economic Valuation
Testimonial	
Significance	
Use	
Development	

Extrinsic values are relative to the way the Cultural Heritage is inserted in an appropriate way in social life. The different scenarios that may pose a risk to the conservation of cultural property should be studied. None of these causes can be understood as an isolated act, there is always the interaction of more than one of them in the same situation (J. E. Becerril 2016).

Contempt for the Cultural Heritage

<i>Contempt for the cultural heritage is the most important risk in relation to its conservation</i>	<i>Wars, religious, political, social conflicts</i>	<i>Historical Times</i>	(-1; 0] (illicit fact)
	<i>By bad habits: excess, vendettas; debauchery; abuses</i>	<i>Modern Times</i>	
	<i>By ignorance</i>	<i>Globalized Times</i>	
<i>Intangible heritage (contempt for cultural heritage before public politics, generating regulations, opinions, etc. against it)</i>			

The reality is that humans have repeatedly destroyed the property of their perceived enemies throughout history. Since ancient times, the victors have singled out the most symbolic and meaningful goods for public denigration. Despite this, there were isolated examples of a different attitude, which made history by their respect for the culture of the vanquished. Contempt for the cultural heritage has now become even more perilous because it is not necessarily linked to an armed conflict, but stands on its own as a testimony to the predations of aggressors who seek the spotlight.

But contempt for cultural heritage can be born of ignorance: those who paint artistic monuments, who scratch the walls of the old colonial convents without understanding the need for their conservation. All these are ways of despising cultural heritage.

In the case of intangible heritage, contempt for these cultural assets and their high degree of significance results in intolerance, prohibition and even violence, as in the case of wars based on ethnic cleansing, religious conflicts, bans of local identities, etc (J. E. Becerril 2016).

Falsification of Cultural Heritage

FALSIFICATION		Quantitative assessment
<i>Cultural heritage has potential monetary value and a unique character</i>		(0; 1] (licit fact)
Reproduction/ Reconstruction from the documentation	Environmental – Natural Phenomena	
Replica/Replay	HUMAN EVENTS – ARMED CONFLICTS	(0; 2] (licit fact)
RECYCLING/FASHION		
<i>Submitting objects of recent manufacture, but copying the same witness of cultural heritage to present it as authentic.</i> FALSIFICATION/ adulterate/Downgrade heritage values		(-2; 0] (illicit fact)

It is true that many historical or traditional populations suffer damage or devastation due to natural or human phenomena and in some cases it is necessary to add new elements to the old structures.

There are ruined houses that are adapted to maintain their useful function in time. There are paintings or sculptures that require restoration in some of its parts. But in all these cases, there are principles in science and restoration techniques allowing us to know what the original parts are and what parts have been added.

In the case of forgery, the main element is deception: tricking the buyer, cheating tourists, deceiving the same population at the time, fooling those who believe in good faith in the authenticity of the object and the transcendent value that object in question has, for the sake of an illicit profit. In other words, it is fraud to culture.

There are many ways to falsify the heritage and in all these cases, the evidential or significance values are of little relevance for the forger. The result of falsification of cultural heritage is the degradation of the internal values in order to deceive strangers for the sake of private profit.

In this process many sectors are involved

Actors	Quantitative assessment
<i>art dealers</i>	(0; 2] (licit fact)
<i>collectors</i>	(-2; 0] (illicit fact)
<i>manipulated populations</i>	(0; 2] (licit fact) (-2; 0] (illicit fact)
<i>politicians who seek to promote a region or town economically</i>	
<i>tourism promoters</i>	
<i>hotels</i>	
<i>artisans</i>	
<i>criminals</i>	
<i>others</i>	

Translated into the language of the tourism promoter, this means that the program aims at new tourism products to make them

more attractive or merchantable. It is justifiable to conceive new intangible manifestations, artificially create new legends, and modify new meanings to places: everything is right if it helps tourism. The danger is that the real significance of cultural heritage will be lost: that is the risk of falsification (J. E. Becerril 2016).

The Commodification of Cultural Heritage

The current commodification of cultural heritage simply means reducing it to a mere object of trade, under the rules of trade and not of heritage. This is one of the main causes for the destruction of cultural heritage (J. E. Becerril 2016).

The commodification of cultural heritage	Valuation and devaluation
<i>used</i>	(0; 1] (licit fact)
<i>currency</i>	
<i>misused</i>	(-1; 0] (illicit fact)
<i>the cultural heritage can be altered</i>	
<i>modified</i>	
<i>wasted</i>	
<i>discarded</i>	
<i>forgotten</i>	
<i>demolished</i>	

In these cases, the evidentiary value, significance or development has no importance: its real value is understood in terms of economic benefits to be obtained. In this sense, the value of cultural heritage as a good of social significance goes to a second term and the logic is that cultural goods have an owner who has the power to decide on their destiny in an unlimited manner (J. E. Becerril 2016).

Globalized	
Testimonial values and cultural heritage significance	
<i>They can be reduced to tourist attractions</i>	(0; 1] (licit fact) (-1; 0] (illicit fact)
<i>Assets</i>	
<i>Supplies</i>	
<i>Resources (in the field of higher materiality of this meaning)</i>	
<i>Simple information for product development</i>	
<i>The provision of services that can be used</i>	(1; 2] (licit fact) (-2; -1] (illicit fact)
<i>The provision of services that can be discarded</i>	
<i>The provision of services that can be altered</i>	
<i>Others, etc.</i>	

The Manipulation of Cultural Heritage

This is a situation that has been repeated throughout history. In fact, many monuments from antiquity are the result of the decision

of rulers to preserve their political ideas, achievements or at least their own presence over time.

Apart from the economic aspects, and in its capacity as an element contributing to other interests such as political, social, economic or group interests, cultural heritage can be the foundation or support for speeches or ideologies handled by these groups.

Handling of Intangible and Tangible Heritage	Devaluation	
	Testimonials	Significance
Group	(-2; 0] (illicit fact)	(-2; 0] (illicit fact)
Individual	(-1; 0] (illicit fact)	(-1; 0] (illicit fact)

In this sense, testimonials and significance values can be magnified above any other; but their intention is not the protection of these values for themselves, but as tools to justify a political prestige, a project for a nation, a religious current, etc (J. E. Becerril 2016).

In this case, when cultural property is contrary or ceases to be useful for these projects or interests, it is left to its fate or destroyed. In the case of cultural property that is not useful for these interests, it is simply forgotten, neglected and even destroyed when it can be threatening (J. E. Becerril 2016).

The national heritage is the construction in which interests of different classes participate.

It is certain that in the construction of heritage there is a degree of manipulation when the interests of power or group are involved.

This also happens in terms of the intangible heritage. Handling this heritage involves transforming the intangible manifestations to distort its meaning: heroes, facts and legends perhaps nonexistent are created; other manifestations are discredited, etc.

However, the risks for cultural heritage, whether from political, religious or any other interest, increase when those who represent these interests decide to use messages of hate, intolerance or violence. In such cases, the results turn out to be devastating for any of the parties involved. (J. E. Becerril 2016)

The Sanctification of Cultural Heritage

The sanctification of cultural heritage has been a phenomenon that has also been registered through history in different times and with different results (J. E. Becerril 2016). "Sanctification" represents an exaltation of values and even testimonials and significance, negating the positive effects of use and development values.

Sanctification	
Exalting significance and testimonial values	
Denial of positive effects of use values	(-1; 0] (illicit fact)
Denial of development values	

In the process of sanctification of cultural heritage, "the monument" must become immutable. Immutability is a kind of immaculate space.

Specialists should take part in the decisions about cultural heritage, but it is not the privilege of a profession, because in these

times, our great responsibility is the protection of cultural property for the public at large and society as a whole.

The negative effects of sanctification of cultural heritage are the notion that this matter should be the sole responsibility of a group of notables and that the community has no commitment to the cultural property. Another consequence is that there is no authentic transmission of the values of cultural heritage; this in turn makes them vulnerable to falsification.

When cultural heritage is deified, it becomes something alien and strange, and in opposition to the original purpose of this attitude, the cultural property will be devalued and normally lost (J. E. Becerril 2016).

Lack of Concern for the Heritage

Social unconcern about the fate of cultural heritage is one of the main problems monuments, sites, landscapes, etc face (J. E. Becerril 2016).

The mainstay for the conservation of cultural heritage is the conviction of society that it is important to protect it. As soon as this conviction changes, deterioration or destruction processes are accelerated exponentially.

The reasons for this lack of concern can range from lack of education and social awareness, to the messages we receive through mass media broadcasting.

It is not necessary to write much about this issue, because its main feature is impassivity or lack of action. Cultural heritage is destroyed and nobody cares nor generates an action of society to save a monument. This is an unfavourable scenery for the preservation of a cultural good. In these circumstances, the significance value of cultural heritage is lost and becomes meaningless for society (J. E. Becerril 2016).

Lack of concern for heritage	(-1; 0] (illicit fact)
impassivity or lack of action	
social unconcern about the fate of cultural heritage is one of the main problems monuments, sites, landscapes etc face	
lack of education	
social awareness	
broadcasting of mass media messages	
Value of significance	(0; 1] (licit fact)
the mainstay for the conservation of cultural heritage is the conviction that it is important to protect it	

Conclusion

Using the enclosed tables to elucidate the value of heritage at the 'zero hour' for policy makers may facilitate assessing the devaluation of cultural heritage affected by violent conflict. From the legal point of view, it can be applied under the legal concept of financial trust. Each actor who creates or participates in the valuation, legal declaration, intervention or heritage devaluation, should pay a tax, similar to what is now a "construction right". This tax would be calculated using a coefficient according to the square metres of the heritage good to be evaluated.

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Maria Marta Rae

Closing Remarks

In the weeks following the call for contributions for this report, a group of armed militia men entered the headquarters of Malheur Wildlife Refuge in Burns, Oregon to violently protest against the United States Government’s adaptive management of public grazing activities on land belonging to the U.S. Government.⁵¹ Many artifacts, sacred sites, charter documents and lands belonging to the Burns Paiute Tribe located at the Refuge⁵² were commandeered by the protesters, and repeatedly referred to in their demands to the federal government – purporting to act in the interests of the tribe.⁵³ Charlotte Roderique, chairperson of the Burns Paiute Tribe, refused the militants’ request to meet and asked the U.S. government to prosecute any damage to their cultural heritage under the terms of the Archeological Resources Protection Act of 1979. When the standoff came to an end in February 2016, videos of blatant desecration of Burns Paiute heritage had been circulated widely through public media. The militants had modified refuge land and grounds as they saw fit using government earth moving equipment – creating a new road, a parking lot, trenches, destroying part of a U.S. Fish and Wildlife Service-owned fence, and removing security cameras.⁵⁴ In superseding indictment filed February 11, 2016, federal prosecutors included charges for desecration of lands sacred to the Burns Paiute

Tribe.⁵⁵ Ultimately, the occupiers’ abhorrent acts were indicted not under the Archeological Resources Protection Act, but as “degradation of government property” over \$ 1,000.00, an offense that carries a potential ten-year jail sentence.⁵⁶

Taken as a whole, the foregoing recommendations by Maria Marta Rae and Benjamin Goes could have provided much needed support for calls to protect Paiute culture at Malheur during the occupation. In the words of Charlotte Roderique, “We are the Wadatika people. The plants we are named after grow on the banks of the Harney and the Malheur Lake.”⁵⁷ Expanding protection to forms of heritage such as practices and traditions can only strengthen the protections of monuments and sites. Traditions, crafts, or stories all need source materials, background, and substance. Sites and monuments can support the integrity of intangibles; intangible heritage is the living link to continuing significance for sites and monuments. As Ms. Rae notes, erosion of intangible traditions likewise undermines testimonial value or significance of goods that embody cultural heritage.

The Malheur standoff shows the terrible paradox of our work – places, ideas, and items critical to the centuries-old identity of a nation are open to be co-opted and abused for the purposes of violent extremism, in full view of a somnolent public. Though the experience of the Burns Paiute is a distant parallel to war crimes taking place during the reporting period, we note with no small irony that charges for destruction of the fence and misuse of government earth moving equipment appear to be easier to bring than those for desecration of the Paiute’s sacred burial grounds.⁵⁸

The destruction of cultural heritage is not new, but has become even more powerful today as a means to obtain attention across a multitude of social platforms. Accordingly, our continued cooperation to advocate and engage state parties in efforts such as those toward the implementation of the Second Protocol is strongly encouraged. Systemization of cultural heritage protection – even for the purposes of quick communication to the general public in emergency circumstances, or for ease of reference in a business context – might serve cultural heritage advocacy and advance our capabilities to communicate interagency efforts among like-minded organizations. Earthquake magnitude is described by way of reference to the Richter Scale; our suggestions herein might also lay the ground work for a similar systematization of cultural heritage communications worldwide. We ask our colleagues to consider these comments and suggestions as stepping stones to cooperation when cultural heritage is under threat.

Eve Errickson

Footnotes

- ¹ We note that the High Contracting Parties to the Convention should meet every two years. Yet nothing took place between the first Meeting in 1962 and the second Meeting in 1995, more than 30 years later.
- ² Article 43, subparagraph 1, PII.
- ³ Article 23, subparagraph 3, b) and c), PII.
- ⁴ The elements mentioned are a necessarily subjective selection, and this article does not claim to be exhaustive, notably in its references.
- ⁵ Articles 10 to 14, PII.
- ⁶ Article 4, b), PII.

⁷ Articles 8 to 11, CLH.

⁸ See also articles 11, § 7 and 27, § 1, b, PII.

⁹ The enhanced protection goes deeper than the general protection foreseen in additional Protocols I and II to the Geneva Conventions and the Convention of 1954: the possibilities to lose the protection are very restricted (see article 13, PII).

¹⁰ Violations such as “intentionally making cultural property under enhanced protection the object of attack or using such cultural property or its immediate surroundings in support of military action”, art. 15, PII.

¹¹ Articles 15 to 21, PII.

- ¹² December 2015.
- ¹³ Article 11, 9, PII.
- ¹⁴ In 2012, as vice chair of the Committee, Belgium became the first state to make such a list. This list selects all the relevant cultural properties on the World Heritage List. It is on this basis that the Committee adopted in December 2013 a model of a Tentative List going to the States. Since then, only one other country has proposed such a list, namely Mali in March 2015. For more information: <http://www.unesco.org/new/en/culture/themes/armed-conflict-and-heritage/protection-of-cultural-property/tentative-list/>
- ¹⁵ This study was financed by Belgium for 10,560 euros.
- ¹⁶ In effect, the Convention of 1954 does not cover natural sites while the Convention of 1972 does.
- ¹⁷ This decision is based on the alternative project of the decision made in a session of the Committee by Belgium, and which proved to be more resolute than that of the Secretariat, which in short was limited to proposing continued reflection.
- ¹⁸ *The Party that has the jurisdiction or control over a cultural property can request the inscription of this property on the List that will be established by virtue of article 27, paragraph 1, subparagraph (b). (...)*
- ¹⁹ The different propositions for the emblem and the following up of instructions by the Bureau and the Committee were done by Stijn Desplenter, graphic designer at the Chancellery of the Belgian Prime Minister.
- ²⁰ For more information on the debate and the decisions taken: <http://unesdoc.unesco.org/images/0023/002301/230109E.pdf>
http://www.unesco.org/new/fileadmin/MULTIMEDIA/HQ/CLT/pdf/9COM-4-Distinctive-emblem-rev2_en.pdf
http://www.unesco.org/new/fileadmin/MULTIMEDIA/HQ/CLT/pdf/DistinctEmblem-Austrian-comments_en.pdf
<http://unesdoc.unesco.org/images/0023/002353/235317E.pdf>.
 A FAQ on the necessity and the manner of creating a distinctive emblem was also disseminated as part of a briefing session that was held on 30 November 2015 at UNESCO, a week before the Meeting of the Parties, organised by the Permanent Delegations alongside the UNESCO of Belgium and of Greece, with the support of the Chairperson of the Committee.
- ²¹ <http://unesdoc.unesco.org/images/0018/001897/189747E.pdf>
- ²² http://www.unesco.org/new/fileadmin/MULTIMEDIA/HQ/CLT/pdf/6-7COM-synergies-Belgium-en_20121107.pdf
- ²³ http://www.unesco.org/new/fileadmin/MULTIMEDIA/HQ/CLT/pdf/3-7COM-synergies-en_20121107.pdf
- ²⁴ It is necessary to know that this initiative stemmed from real experience in Mali, a conflict that broke out in 2012 and during which the cultural treasures of the country, including some World Heritage Sites, were destroyed or threatened with being destroyed. If World Heritage Sites are considered exceptional, do they not merit exceptional protection? This seems obvious.
- ²⁵ It is interesting to note here that it was not a State but a Committee that referred to one of its alter egos, which is an unprecedented step.
- ²⁶ I am not going to expand on all the processes and all their characteristic techniques, as this could be the subject of a separate article.
- ²⁷ In Decision 10.COM 4, § 6, the Committee *invites its Bureau to (...) develop (...) synergies with the 2003 Convention for the Safeguarding of the Intangible Cultural Heritage*.
- ²⁸ Unfortunately, without ever referring to this decision of the Committee.
- ²⁹ http://www.unesco.org/new/fileadmin/MULTIMEDIA/HQ/CLT/pdf/Statement_EN_FINAL_300615.pdf
- ³⁰ The report and the documents of this meeting have yet to be made public.
- ³¹ Articles 11 and 27 of the Second Protocol, Paragraphs 13 and 24 of the Guiding Principles; articles 6, 12 and 37 of the Internal Rules of the Committee.
- ³² Note that a close relationship was also developed with ANCBS, the Association of the National Committees of the Blue Shield.
- ³³ Article 27, paragraph 3 of the Second Protocol.
- ³⁴ Decision 8COM.3, in its paragraph 6, *encourages the Bureau and the Secretariat to reinforce partnerships with all the stakeholders involved in the protection of cultural property in the event of armed conflict*.
- ³⁵ Unfortunately, this platform has not met since. This fact was questioned by several states at the Meeting of the Parties in December 2015.
- ³⁶ http://www.unesco.org/new/en/unesco/about-us/who-we-are/director-general/singleview-dg/news/unesco_and_icrc_partner_on_the_protection_of_culture_heritage_in_the_event_of_armed_conflict#.VxXpgXC3ZJi
- ³⁷ It is the sense of certain paragraphs of the Final Declaration of the 10th session of the Committee: <http://unesdoc.unesco.org/images/0024/002435/243584E.pdf>
- ³⁸ ICCROM (International Centre for the Study of the Preservation and Restoration of Cultural Property) is an inter-governmental organisation founded by UNESCO whose mandate is the promotion and preservation of cultural heritage in all its forms and across the entire planet (www.iccrom.org).
- ³⁹ The concept of Protecting Powers is set out by article 8/8/8/9 common to the four Geneva Conventions of 12 August 1949 and article 5 of the First Additional Protocol of 1977. The role of the Protecting Powers is also reaffirmed in article 21 of the Hague Convention of 1954 and in article 34 of its Second Protocol. In a conflict, the warring parties could benefit from the support of protecting powers. A neutral State or another State which is not party to the conflict that is designated by one warring party and accepted by the adversary is able to carry out certain tasks during the conflict. Protecting Powers have the duty to safeguard the interests of the parties to the conflict and to cooperate for the faithful application of the IHL conventions.
- ⁴⁰ Extracts from Decision 9COM.3, December 2014: http://www.unesco.org/new/fileadmin/MULTIMEDIA/HQ/CLT/images/9_COM_Decisions_EN.pdf
- ⁴¹ http://www.unesco.org/new/fileadmin/MULTIMEDIA/HQ/CLT/pdf/Statement_FINAL_ENG.pdf
- ⁴² http://www.unesco.org/new/fileadmin/MULTIMEDIA/HQ/CLT/pdf/Statement-Chairperson-Palmyra_03.pdf
- ⁴³ http://www.unesco.org/new/fileadmin/MULTIMEDIA/HQ/CLT/pdf/Statement_EN_FINAL_300615.pdf
- ⁴⁴ Declaration 2014: http://www.unesco.org/new/fileadmin/MULTIMEDIA/HQ/CLT/images/9_COM_Statement_EN.pdf; Declaration 2015: <http://unesdoc.unesco.org/images/0024/002435/243584E.pdf>
- ⁴⁵ This project introduced by Belgium in session was the object of a lively debate around its wording, but very little about its basis. <http://unesdoc.unesco.org/images/0024/002435/243563E.pdf>
- ⁴⁶ Underlined by the author.
- ⁴⁷ 371,271 USD as of 25 September 2015.
- ⁴⁸ This was the case in 2011 at the request of El Salvador and in 2012 at the request of Mali.

- ⁴⁹ We note, however, announcement of the United Kingdom to ratify the Hague Convention, while France and China have publically indicated that they will ratify the Second Protocol soon.
- ⁵⁰ We note by way of examples the creation of an *Emergency Preparedness and Response Unit* that works without link to the Committee; the establishment of a partnership agreement between ICRC and UNESCO without the Committee being informed at any point; or in November 2015 the holding of an international meeting of experts at UNESCO on the responsibility of protection applied to the protection of cultural heritage, where it is rather irritating to note that *Mechtild Rössler, Director of the Heritage Division, closed the meeting, by highlighting the need for broad cooperation and complementarities among organizations*, while the Chairperson of the Committee was not even invited to participate (<http://whc.unesco.org/en/news/1398/>).
- ⁵¹ Bernton, Hal (January 27, 2016). “The story behind the Malheur National Wildlife Refuge, ranchers and armed anti-government protesters”. The Seattle Times (Seattle, WA: The Seattle Times Company). Retrieved May 6, 2016.
- ⁵² The Burns Paiute Reservation is located north of Burns, Oregon in Harney County. The current tribal members are primarily the descendants of the “Wadatika” band of Paiute Indians that roamed in central and southern Oregon. The Burns Paiute Tribe, <http://www.burnspaiute-nsn.gov/>. Retrieved May 13, 2016.
- ⁵³ The tribe received federal recognition in 1968. Robert H. Ruby, John A. Brown & Cary C. Collins, *A Guide to the Indian Tribes of the Pacific Northwest* (3d ed.: University of Oklahoma Press: 2010)
- ⁵⁴ Levin, Sam (January 16, 2016). “Oregon militia’s behavior increasingly brazen as public property destroyed”. The Guardian (London: Guardian News and Media Limited). ISSN 0261-3077. Retrieved May 6, 2016.
- ⁵⁵ “New charges added for Bundys, other militia”. KOIN News. March 9, 2016. Retrieved May 6, 2016.
- ⁵⁶ Keeler, Jacqueline (March 9, 2016). Burns Paiute Tribe Make First Visit After Armed Takeover of Malheur Refuge. Indian Country Media Network. <http://indiancountrytodaymedianetwork.com/2016/03/09/burns-paiute-make-first-visit-after-armed-takeover-malheur-refuge-163679> Retrieved May 13, 2016.
- ⁵⁷ Keeler, Jacqueline (January 19, 2016). “Oregon Militia Nuts hold Paiute History, Artifacts Hostage.” Indian Country Media Network. <http://indiancountrytodaymedianetwork.com/2016/01/19/oregon-militia-nuts-hold-paiute-history-artifacts-hostage-163116>. Retrieved May 13, 2016.
- ⁵⁸ Under the terms of the Archeological Resources Protection Act of 1979, first time offenders can be fined up to \$20,000.00 and imprisoned for up to one year. Second time offenders can be fined up to \$100,000.00 and imprisoned for up to five years. King, Thomas F., *Cultural Resource Laws and Practice: An Introductory Guide*. Walnut Creek, CA: AltaMira, 1998.

Publications of Interest

- Shut Down the Artifacts for Arms Market Doors, Greg & Marion Werkheiser and Ryan Rowberry
http://www.huffingtonpost.com/greg-werkheiser/shut-the-artifactsforarms_b_8463386.html
- The Knoedler Gallery Settlement is the Biggest Missed Opportunity for Greater Art Market Transparency in 100 Years, Leila Amineddoleh
<https://www.artsy.net/article/artsy-editorial-we-just-missed-the-biggest-opportunity-for-increasing-art-market-transparency-in-100-years>