

Primitive tider special edition

Articles based on papers from the international conference "Between dream and reality: Debating the impact of World Heritage Listing", held at the University of Oslo, 14-15 November 2013.

Primitivetider



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Front cover: Liverpool Maritime Mercantile City, currently on the List of World Heritage in Danger.

Photo: Herdis Hølleland and Mark Oldham.

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Greetings from the conference organizers

This special issue of *Primitive tider* presents article versions of a selection of the papers given at the conference “Between dream and reality: Debating the impact of World Heritage Listing” held at the University of Oslo 14-15 November 2013. The conference was funded by the University of Oslo’s transdisciplinary research project KULTRANS – Cultural transformations in the age of globalization – which ran from 2009-2013. KULTRANS’ focus on transformation served as the pretext from which the conference was born by inspiring us to critically address “What impact does the World Heritage listing have?”

The question of impact is one of the easiest and most intuitive questions to ask, perhaps because there is a tendency to assume that World Heritage status will have an impact or, framed in KULTRANS terms, transform places. Indeed, since the 1990s World Heritage has been portrayed as a marker of transformation, providing economic growth, increased tourism, and regeneration as well as more intangible aspects such as local pride and global recognition. Yet anyone who has tried to answer the question of impact knows one faces numerous obstacles along the way to an often vague and very case-specific answer.

This collection of articles tackles the question of impact and transformation in a variety of ways and thereby highlights how complex the issue of impact can be: While using Visby (Gotland, Sweden) as a starting point Owe Ronström approaches how the World Heritage listing’s focus on one particular historic feature of a town contributes to transforming regular small towns into themed heritage towns. In Visby it is the Medieval history that is highlight, whereas in Liverpool (UK) it is the city’s 19th century maritime mercantile history and in case of Dresden Elbe Valley (Germany), its cultural landscape of 18th and 19th century. In the cases of Liverpool and Dresden Elbe Valley, Dennis Rodwell and Bénédicte Gaillard highlight another central feature of many World Heritage Sites faces: The clash between modern urban development and preserving the historical integrity of the cities. Thus both bring forth important discussions on the legal impact of World Heritage listing and emerging principles for preserving historic urban landscapes.

The remaining three articles discuss cases which examine procedures where indigenous peoples to a varying degree have been involved. Working from a more theoretical framework, Vanessa Tuensmeyer explores the extent to which the revision of the Operational Guidelines to the World Heritage Convention narrows the gap between the convention and the current standards of indigenous rights in international law and thereby becomes a platform for indigenous activism. Gro B. Ween and Lars Risan use the World Heritage Sites of Lapponia (Sweden) and Kluane/Wrangell-St Elias/Tatshenshini- Alsek (Canada and the US) to examine the friction that occurs when different notions of heritage are negotiated. In the final article, Herdis Hølleland explores mechanisms of regime compliance through the lens of risk management at Tongariro National Park (New Zealand).

Together we hope these articles provide the reader with a multifaceted and transdisciplinary introduction to the issue of World Heritage impact. We would like to take the opportunity to thank KULTRANS, and in particular Beate Trandem, for making the conference possible, *Primitive tider* for taking on this special issue, the many reviewers who have heavily contributed to transforming the conference papers to journal articles, the authors who have followed up and developed their arguments accordingly, Mark Oldham who has done the proof reading and and Egon Låstad who has done the page layout. We hope you enjoy this special issue on World Heritage – happy reading!

Consequences of World Heritage production: the heritage town

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This paper discusses the consequences of World Heritage production through the lens of one of its outcomes, the heritage town. The concrete example is Visby, a small town on the island of Gotland, in the middle of Baltic Sea, which in 1995 became Sweden's sixth and the world's 470th World Heritage site. Based on the research project 'Heritage Politics', at Gotland University 1999-2008, the paper addresses a number of consequences at a concrete, local level and at a more global and abstract level. The intention is to demonstrate how the impact of World Heritage production, both locally and at large, depends on how these levels interconnect within the framework of the UNESCO World Heritage programme.

Introduction

This paper discusses consequences of World Heritage production, through the lens of one of its outcomes, the heritage town. The concrete example is The Hanseatic town of Visby, which in 1995 became Sweden's sixth and the world's 470th World Heritage site. Once one of the most prosperous places in Northern Europe, the island of Gotland has now long been a marginalized part of Sweden. Today Gotland earns its living mostly from agriculture and tourists attracted by the roses and ruins of the well-preserved medieval town, Visby. Gotland is a place where time runs deep: the production of history on the island is certainly not new (Ronström 2004). Many different pasts have been staged over the centuries, turning

Gotland's history into meta-history, a history of histories. This continues today, visible through the intense heritage production of the past two decades, when new types of pasts have been staged, by new types of people, for new types of markets and consumers. This is in particular the case with Visby which in a remarkably short time became 'The *Hanseatic town* of Visby'. Visby was transformed into an icon of urbanity and European medievality, cast in a limestone-grey and rose-red poetry (cf. Ristilammi 1994). This article explores aspects of this process of transformation by drawing on the results of the research project 'Heritage Politics', at Gotland University 1999-2008, in which the making of

Visby as a heritage town was followed in depth through interviews, participatory observation and photography (Ronström 2004, 2005, 2008a, b, Johansson 2009).

Glocality

‘Much of what is described as post-modern or late modern, is based on the experience of living in a world where absence and presence are mingled with each other in a historically new way’, sociologist Anthony Giddens (1990:165) notes. World Heritage is precisely this, a new mode of producing and representing something absent in the present. World Heritage Sites are the results of ‘re-coding operations’ (Kirshenblatt-Gimblett 1998), ‘metaphorical transformations’ (Grundberg 2000), or simply ‘shifts’ (Ronström 2008a), between different historical, geographical, social, and cultural settings, and the individual and the collective, private and

public, informal and formal, and between the informative and the performative (Kirshenblatt-Gimblett 1998).

World Heritage Sites are the results of a new global gaze, a visual ordering of things and ideas about necessary interventions. The World Heritage Convention is a tool for intervention, built on a moral rhetoric and a practice with disciplining and civilising traits. Thus it has become an instrument for bringing old national antiquarian aspirations into a new global capitalistic market economy in order to convert expenses into revenues. Furthermore, the convention can be read as a sign that says something fundamental about our own time, about global politics and about changes in how we understand ourselves and our place in the surrounding world.

A common way to explain widely spread phenomena such as World Heritage is to point at global trends or structures. Within such an interpretive framework, the local is seen as dependent upon and explained by the global. And yes, World Heritage is a machinery which produces the local for global export. Together with multinational companies, food chains and the Internet, the World Heritage Sites represent a global reality in the local sphere, by locally implementing ‘Outstanding Universal Values’. But it is also a local phenomenon, a strategic resource for local development, and enters local struggles for power and influence. Hence, the making of World Heritage towns can be understood as a type of production in which the global, general and abstract is brought into contact and interaction with the local and concrete in specific ways. The result is something new, glocality if you wish, a new type of interface with a number of interesting consequences, some of which I will explore here.

Exchange office and brokers

An interesting aspect of World Heritage Sites is their function as exchange offices, where social, cultural and monetary capital can be transferred and exchanged. The phenomenal success of



Figure 1 World heritage logo, the Visby version.
Photo: Owe Ronström.

World Heritage at large has to do with a capacity to promise solutions to all kinds of problems, at all levels. In Visby these stretched from tidying up the old city centre, preserving old buildings, attracting more visitors, and promoting local businesses, to more general issues, such as recognition, national pride, and peace and understanding. What makes World Heritage status attractive and lasting is that there seems to be something in it for everybody, which in turn makes exchanges possible and necessary. World Heritage becomes a tool for international prestige and personal careers, as well as an arena for local conflicts and demands for rights of indigenous populations, to highlight but some of its features.

To work all this out at the local level you need skilled brokers to navigate between the different interests and requirements. The more complex the system, the higher demands on the brokers' skills. World Heritage is indeed a complex system where all kinds of historical, aesthetical, political and personal interests must skilfully be negotiated (Turtinen 2006). Indeed this becomes particularly clear when exploring the World Heritage List: While the world is full of unique and wonderful places, there are only around a thousand World Heritage Sites. Hence one can conclude that the nomination of a site is not so much dependant on its inherent qualities, as on the quality of the brokers.

Behind the nomination of Visby we find extremely competent brokers. The production process was initiated and controlled by a small number of persons in leading positions in the local museum sector. In record time they managed to transform Visby from a worn-out, marginalised small town to a renowned Middle Age icon. By successfully using and fusing their local, regional, national and global networks they were able to take charge of a large part of the inner town, and to reconstruct it according to their vision. The central positions of the main actors in local and regional, as well as national, heritage circles, gave them access to financial and symbolic capital flows, which they were able to direct to their projects. This gave them influence over all levels of the heritage production, from



Figure 2 A new postmodern Visby.
Photo: Owe Ronström.

dreams and visions to concrete questions about methods, techniques, colours, and materials (for a more detailed description, see Ronström 2008a). The result is one of Sweden's most post-modern cities.

Visuality, form and content

To paraphrase Barbara Kirshenblatt-Gimblett (1998:149), heritage is a new mode of production, using the obsolete, the mistaken, the outmoded, the dead and the defunct as its raw material. Even if the results are presented as old, and even if the heritage discourse is full of 're' words – reconstruction, reparation, renewal, representation and many more – heritage is an intervention in the present for purposes in the future. As such, it is a perfect illustration of Walter Benjamin's famous metaphor: the angel of history moves rearwards forward. His face is

turned toward the past. The storm of progress propels him into the future, to which his back is turned, while the pile of debris before him grows skyward (Benjamin 1939).

The result of heritage production is something completely new. In the case of Visby, not only were the images and narratives about the place re-framed and re-told, a large part of the inner town was rebuilt to fit the new image better. Paradoxically, to become an authentic World Heritage town, Visby had to become more Visby-ish than Visby itself. As a consequence, the old city centre was equipped with a new interface and tuned to a new key. A number of keying devices – signs, symbols, colours – were deployed to establish a frame of medievality. While selected traces of olden times were foreground, a number of signs of modernity were moved to the background¹.

Central to the production of ‘World Heritage Visby’ was taking control of the visual front stage:



Figure 3 The heritage interface: cobble stone street in Visby. Photo: Owe Ronström.

surfaces, facades, paving stones, street signs, posters and advertisements; cars and asphalt were replaced by pedestrians and cobble stones; big company logos and neon lights were abandoned in favour of oldish-looking signs made of painted metal, swaying from specially-made holders. Common size traffic signs were scrapped for new smaller ones, which soon enough became problematic as visitors do not always see or take notice of the signs. ‘Modern’ materials such as cement, concrete and plastic were removed to make room for ‘oldish’ materials – such as lime plaster, brick, wood, and black metal and colours like yellow ochre, limestone grey, roof tile red. Bright colours and technical devices, such as TV antennas, solar cells, and air heat pumps were no longer on display. The end result: a more homogenous, uniform town, older, more medieval and Visby-ish.

In a heritage town like Visby, what is to be consumed and what can be consumed is the visual appearance of streets and buildings. The fact that the ordinary people behind the facades live in old and sometimes ragged buildings with worn out sewers and malfunctioning electricity is to be disregarded, since the prime object of the World Heritage production is not the materiality of the buildings, but rather the narratives and visual image of the buildings. Thus, central to the production process is uncoupling surface from depth, form from content, and to market surfaces and forms without having to deal with depths and contents. In short, it is necessary to separate the facades from what is behind, the buildings from their inhabitants, the factory from its workers, the harbour from shipping etc. Whatever functions the objects once had, new ones must be introduced based on what is possible for visitors to appreciate and consume. This creates an important field of tension between the town’s inhabitants, the heritage and tourism sectors and the visitors. While the inhabitants are struggling to lead ordinary modern lives in a surrounding that offers increasing resistance, the heritage and tourism sectors are struggling to preserve the image of a certain past to present to visitors, who in turn are constantly changing

their interpretation and use of the site. This forces both the heritage and the tourism sectors to redesign the heritage product, to adapt images, narratives and functions to the ever changing consumer behaviour (Ashworth 2009:4), which in turn tends to increase and fortify the tension between residents and the heritage and tourism sectors.²

Accessibility and density

Accessibility for all is a keyword in Swedish political discourse these days, but in Visby's old town access is often overruled by heritage values. Narrow cobblestone streets and medieval buildings are not easily combined with wheelchairs, walkers and baby strollers (cf. Johansson 2013). Nor are medieval alleys and backyards easily combined with cars and parking lots. As a consequence, the central part of Visby has become less attractive to the disabled, the elderly, and families with children, while at the same time becoming more attractive to the well-to-do. It has become especially attractive to a small but influential group of people willing to invest in medieval houses and thereby to convert their monetary capital into symbolic and cultural capital. This in turn has driven kindergartens, health services, grocery and hardware stores out of the centre, to give room to cafés, restaurants and boutiques focusing on lifestyle products and design, often aimed at tourists. Today Visby is one of Sweden's most restaurant-dense cities. For many of the new merchants, the increase of cultural capital instigated by the World Heritage nomination is a precondition, and often also a survival condition. Also, during recent years the regional administration has decided to abandon the old city centre for a former regiment in the outskirts of town, where the heritage values do not collide as dramatically with the demands for accessibility and utility values put on any modern administrative body. This has created more space for exclusive apartments, and for more hotels, cafés, restaurants and boutiques.

Through distinct and effective branding, the Hanseatic town of Visby was launched on a

global heritage market, which, among a number of things, led to increased aesthetisation and homogenization of the town's inner areas and a fortification of the border between the controlled and expensive inner parts and the growing diversity in the cheaper outskirts of the town. A problem for many World Heritage Sites is that they are too scattered and diffuse, which makes them hard to embrace and experience (cf. Diaz et al. 2013). A solution is then to raise their density, to achieve more heritage per square meter, which is what happened in Visby, as in many other heritage towns. Raised density is a key to much cultural production of our time, and a prerequisite for experiencing the sense of entering another time, another place, another world (Ronström, in press). As the on-going festivalisation of the world has produced large interconnected festival geographies, heritagisation has produced dense, globally interconnected heritage geographies or heritagescapes. While the festival and heritage industries provide the destinations, the tourist industry provides the visitors.

Purity and danger, homogenisation and diversity

Raised homogeneity and density at the local level are consequences of a central feature of World Heritage production: to produce purity, often in the name of authenticity. In other words, purity in the context of World Heritage is ensured through increasing the sense of the World Heritage Site's visual authenticity which matches the expected narratives associated with the site. Purity is necessary to produce visibility, and to bring the heritage-ised objects closer in accordance with the abstract ideas, narratives and pictures of these objects. A central objective in World Heritage production is to reduce traces of the mixed and the hybrid in order to winkle out the pure and authentic hidden in, under or behind the objects. Paradoxically, while the world as a whole is going through intense creolisation and hybridization, World Heritage produces arenas with an unmistakable homogeneity and purity, sometimes using a rhetoric that in other contexts

would not only be politically incorrect, but even provoke strong discontent (cf. Bendix 2000, Nikolić 2012). A concrete example from Visby was when it was decided that trees must be cut to raise the visibility of the medieval city wall. Among the trees that were cut down, there was a large healthy poplar, while an oak next to it, severely wounded by bonfires, was saved. This created a heated debate in the town. Among the arguments to save the oak was that it is an original Swedish tree, thus a natural part of the medieval mindscape, while the poplar is a later immigrant that has been transplanted in the wrong place (Walter 2006).

As Mary Douglas (1991) has shown, purity is closely connected to safety, while impurity creates danger. In many places in Western Europe and the US, a growing middle class is striving to take control of urban public space in order to increase safety. A common method to increase a sense of safety is commercialisation. When public squares are remade into private shopping malls, citizens become customers. When the shops' opening hours set the limit for access, arenas become less public and street musicians, political activists, beggars, and people that are just hanging out can be effectively locked out whenever necessary. Another equally efficient method is historic aesthetisation. During the last decades of the 20th century, one city centre after another has been remade into old towns and heritage quarters to attract new inhabitants, tourists and capital. The message may not be as clear as in privately owned shopping malls, writes ethnologist Joakim Forsemalm (2003:43), but, even if it is not clear to all how an urban environment contributes to segregation, it is immediately clear to the pariahs of society: 'this is not for us'.

Not surprisingly, World Heritage production in towns like Visby proves to be a successful means to drive certain elements out of the inner town, by turning buildings and streets into signs that effectively signal which of us belong there and which of us should stay out. By taking control of the signs of style and taste and inscribing them in streets, buildings and certain commercial

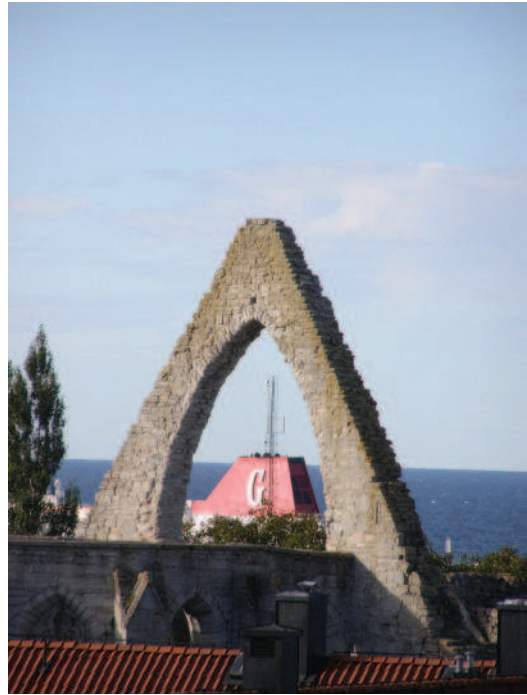


Figure 4 Tourism through a World heritage lens: Ruin church and ferry line logo in Visby.
Photo: Owe Ronström.

units, the low, undesirable and hybrid is driven out whilst the sense of the visual authenticity of the inner towns is increased. The result is an abundant presence of the 'right' sorts of cafés, restaurants and companies, and a corresponding absence of international chains, such as Lidl, McDonalds, Hennes & Mauritz – as well as alcoholics, drug dealers and hookers.

Increased density and homogeneity – important consequences of World Heritage production – are in turn prerequisites for the necessary image production. It is through image production that local heritage production connects most clearly to global branding. To produce the local and unique for global export is to condense local complexity. Only as clearly identifiable homogenized commodities, with easily distinguishable selling points, can objects be disembedded and uncoupled from the original

context; and only as uncoupled objects can they be marketed and sold.

This has a number of interesting consequences: An important part of the tourist industry lives from selling the local and unique, but, as Gregory Ashworth among others has noted, the more unique an object, the less likely that the visitor will return. 'Heritage tourists may spend more but they are harder to obtain, retain, and induce to return' (Ashworth 2007:9). The unique is best experienced once. When World Heritage Sites as examples of the eternal and universal aspects of mankind's history on earth are produced from the uniquely distinctive, they are likely to face declining possibilities to attract return visitors and to stay eternal and universal.

The idea behind the production of unique, authentic objects with marked distinctiveness is to make the world safe for diversity, by making local diversity globally visible. Distinctiveness is the entrance ticket to the World Heritage arena. In theory, there is hardly room for two World Heritages of the same kind. Paradoxically however, framing a town such as Visby as distinctively medieval and Hanseatic is also an effective means to produce quite the opposite, a homogenized glocal town, characterized by a fundamental time-and-placelessness. Homogenization at the local level is a necessary condition for competitive difference at the global level. A consequence of the heritage production in Visby, as in Nesebar, Bulgaria, Québec city, Canada (Evans 2002) and Angra do Heroísmo, the Azores, Portugal (Johansson 2013), is decreasing local diversity and complexity, in terms of forms, styles and colours, and in terms of class, age and ethnic diversity.

This is yet another juncture where World Heritage connects to general global trends in interesting ways: The World Heritage Convention is a child of a time when one began to see the first traces of a massive increase in ideologies advocating cultural diversity. In the subsequent decades, a radical dehegemonisation of the world started, that, at least temporarily, led to its dehomogenisation. In the words of anthropologist Jonathan Friedman, this meant

a "revitalizing liberation of cultural difference, a veritable symphony of human variation" (Friedman 1994:27). During this era, with all its emphasis on diversity, and with all kinds of groups claiming recognition of cultural differences, how are we to understand the global implementation of the revolutionary notion of a single humanity, a common universal heritage and a single set of Outstanding Universal Values? A drastic but possible answer is that we are facing the rise of a new globalised urban middle class staging its dreams of an aesthetically controlled environment, freed from enervating disputes over ethnicities, religion, gender, class, sexuality... In such a light World Heritage can be seen as a radical counter-force to the increasing cultural diversity, an instrument for the production of reserves of and for carefully selected pasts at the local level and thereby implementing not only a re-homogenisation, but also a re-hegemonisation of important parts of the world.

Frontstages and backstages

A central aspect of heritage production is its tendency to create vast areas of neglect and oblivion. Framing a town as 'medieval' is as much about creating fronts and centres as backsides and peripheries. It is as much about foregrounding some things as about hiding other things, and as much about focusing upon a homogenized, bounded period of time as not allowing for contemporary complexity and diversity. A globalised and aestheticized heritage gaze is a precondition for the success of the World Heritage phenomenon. It is a type of gaze that imposes a new visual and spatial ordering, with frontstages and backstages, things we should and must see and things we should overlook. Since what is displayed front stage represents only a small part of all that there actually is to see, an effectively developed neglect is necessary to establish the heritage gaze.

The Hanseatic town of Visby consists of the walled medieval inner city, 10% of the town's total area and 10% of its population. The rest lives in what the Norwegian sociologist Dag Østerberg

(1998) has called ‘the middle lands’, a kind of no-man’s-land, neither town nor countryside, dominated by ‘mazdaism’, and characterized by a way of life that circles around cars, not as a sign of high income, but as a sheer necessity (cf. Arnstberg 2004). Østerberg writes that what is most evidently present in such middle lands is absence, what sometimes is called placelessness. Around 90% of Visby’s inhabitants live in such middle lands. But in the narratives and images of Visby they are absent, as are the areas they inhabit.

What is the consequence of being written out of the representations of the place you inhabit? This question has been pursued by many with great energy during the last half a century, from indigenous populations to the large migrant groups of most European countries. But in the discussion about World Heritage in Visby it is totally absent. Why is that? One answer points to World Heritage’s taken-for-grantedness: World Heritage status comes across as self-evidently given, which in turn points to how the World Heritage idea is a part of and establishes a new form of global cultural hegemony. In Visby, the result of World Heritage’s tendency to overrule the politics of representation is absence and silence, a town that appears as non-inhabited, a terra nullis open to the visitor’s explorations.

Gentrification and reserves

With increased homogenization and density comes clearly visible distinctiveness, which brings about more visitors. And with more visitors come increased real estate values. With rising real estate values, comes increased social and cultural homogenization, and a strengthened emphasis on style and class. The result is what is commonly described as gentrification. That is the process whereby earlier inhabitants have to give room to richer upper middle-class segments, as the latter are striving to maximize precisely those values that World Heritage produces, such as aesthetisation, historisation, visibility and purity. In Visby, gentrification is at once a precondition and a result of the World Heritage status. Already



Figure 6 Grey - sign of Middle ages, refined taste and expensive real estate. Photo: Owe Ronström.

in the 1970s a gentrification process started that transformed the old city centre into the homes of a new aesthetic and intellectual elite, with strong connections to the regional and national political elites. The new inner city dwellers introduced a new type of gaze, charged the city centre with the double authenticities of the mythical Middle Ages and the mystical island, and made it their lieu de memoire and trademark (Ronström 2008b). The nomination of Visby as World Heritage in 1995 was the logical consequence of this process. Since then, new inhabitants, an increasing number of visitors, and a new interface – grey as in limestone, wool, old roads, beaches, the Middle Ages, elegance and refined taste – has driven real estate prices to ever-new fantasy levels. Such a consequence of the World Heritage production cannot have been difficult to foresee. Why was it then so easy to disregard? Observing from the US, Sharon Zukin argues that strategies to renew inner city

quarters in gentrification directions are not met with the same amount of opposition as strategies to integrate cities ethnically. This observation seems to be valid also in Sweden. The cultural renewal strategies have fewer opponents than multiculturalism (Zukin 1995:2, Forsemalm 2003:45). In the new Visby this observation seems to be especially relevant. Gentrification as a result of the World Heritage production – was it perhaps the point?

World Heritage creates new borders between frontstage and backstage, which in turn fortify a social geography with a distinct functional separation between peripheral work and living zones and a central visitor zone. Where do such fortifications lead? To reserves is one answer; for the old, authentic and beautiful, in a world where all that is solid seems to melt into air at increasing speed. And where do reserves lead? To segregated landscapes, the American geographer William Adams answers (2004). While nature reserves have become more numerous, nature at large is increasingly worse off. While reserves may protect a small selected area, they at the same time contribute to legitimising an increased exploitation of the rest. Adams (2004) argues that ‘instead of environmental policies integrated in the production, what we get is a strictly segregated environment, a vast everyday monocultural landscape, with small pockets of preserved natural pearls here and there’. The argument is easily stretched also to the cultural domain: if the World Heritage Sites are the preserved cultural pearls, what is the rest? What exactly is it that all the designated cultural or natural reserves produce? That there is a close connection between an accelerating environmental deterioration and the production of nature reserves is beyond doubt. Is there perhaps a similar connection between the accelerating looting of the world’s cultural resources and the increasing production of cultural reserves?

Global expert systems

Already in 1968 the radical environmentalist David Brower declared that “man needs an

Earth National Park, to protect on this planet what he has not destroyed and what need not be destroyed” (Gillis 2004:167). What if planet Earth as a whole is declared World Heritage? The question brings us to selection, to what is selected as World Heritage. But as selection requires selectors, we need also to ask who selects the selectors. World Heritage production has a lot to do with the power that follows from selection precedence, formulation precedence and interpretative prerogative. Who decides upon those who decide?

An aspect of World Heritage is the rise of a new type of global expertise on World Heritage issues. In modern societies, an increasing part of our life-worlds are organized by abstract expertise systems (Giddens 1990). To perform adequately, the systems must appear as self-evident, taken for granted, and for this you need legitimate and trustworthy experts. UNESCO’s World Heritage Program has become one such abstract system. The necessary taken-for-grantedness is produced by the experts, and corresponds on the receivers’ side to a fundamental trust in the system. In the case of World Heritage, trust is not as much dependent on the concrete sites as on how they are presented and represented, since the ‘Outstanding Universal Values’ are, despite being aimed to come across as such, not inherent in the sites from start, but added during the nomination and production process. Visby is a good example of a general trend: the production of a heritage town tends to move decisive influence over the town’s pasts and present, its narratives and images, from public political arenas to closed arenas controlled by officials and experts. What makes this shift possible is, firstly, World Heritage’s taken-for-grantedness, and secondly, the depoliticisation of heritage that follows from the strong emphasis on history, preservation and aesthetics. Thereby important issues, such as use, function, form, symbolic representation, as well as local and regional identities, can be left to architects, antiquarians and other official experts to define and decide upon.

Finale

A prominent feature of the World Heritage narratives of Visby is the strength of the underlying agreements. The official objectives of the World Heritage Convention were taken for granted, as were the objectives of the local heritage producers and brokers. No discussion was considered necessary. Official political bodies could be ignored, to be consulted only afterwards. The result is a noticeable absence of debate and political battle. Urban renewal is a heated issue almost everywhere these days, but not in Visby. All decisions from start to finish were initiated and implemented by a small group of prominent persons in the local heritage sector, in a spirit of consensus and accord.

Also today a notable feature of World Heritage in Visby is the status' taken-for-grantedness, in combination with a certain collective pride, expressed in media, tourist brochures and in everyday interaction with the many visitors. That Visby is a World Heritage Site is self-evident and unquestionable. No counter position is available, which makes the World Heritage status a powerful discursive tool used in debates over urban development, for or against building permits, new housing projects, certain restoration techniques, colours, shapes etc. (cf. Eriksen 2009). In 2009 the owner of Visby's leading business, with its headquarters in the central part of the old town, initiated an investigation of the attitudes towards World Heritage among property owners. As one among very few that from start spoke openly against the nomination of Visby, he argued that since all democratic procedures were sidestepped during the nomination process, it should be possible to vote the town out of the heritage list, if he could only raise enough support from Visby's property owners. Two ethnology students at Gotland University took on the assignment. After interviewing the property owners they found that all owners had experienced various kinds of problems in their contacts with the local heritage administration, a majority of which from an outsider's point of view easily be could

connected to the World Heritage status. That not a single one of the owners made that connection speaks to the strength of World Heritage's taken-for-grantedness (Oscarsson and Bergwall 2009).

In practice, it seems that Visby's World Heritage status is of little practical importance for local everyday life. World Heritage is something abstract, a new narrative and trade mark, also a new source of local pride. It is a prize, a gold medal, to be displayed on some wall perhaps, but most people do not actively connect the status to the changes during the last decades. To conclude then, World Heritage production in Visby has had a number of far-reaching consequences in the eye of the researching ethnologist, among them an increased emphasis on visibility, aesthetisation, historicisation, densification, homogenization and purification; a fortification of the borders between front and back stage; raised real estate values and gentrification; and a depoliticisation of issues concerning city development. But at the same time, in the eyes of the town dwellers themselves, few or none of these consequences are related to the World Heritage production. This situation points towards the hegemonic character of the World Heritage phenomenon and the resulting taken-for-grantedness at the local level.

World Heritage towns are complex phenomena, difficult to administer, promote, preserve, develop – and to understand. It may be difficult to achieve the status as a World Heritage town, but that is just a breeze compared to what follows. What is to be done? Who shall do it? How? When? Why? Who is to decide? And where do we get the money? Groping in the dark is what characterizes a large part of the local actions, at least in Visby. The World Heritage status as such may be obvious and self-evident, but the rest are questions yet to be answered.

Notes

- 1 I use 'keying' here after Goffman: 'a set of conventions by which a given activity, one already meaningful in terms of some primary framework, is transformed into something patterned on this activity but seen by the participants to be something quite else. The process of transcription can be called keying' (Goffman 1974:43-44).
- 2 The prevailing policy, condensed as 'use and preserve', can be seen as an adaptation of an old antiquarian practice to ever new demands from the globalised experience industry.

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Negative impacts of World Heritage branding: Liverpool – an unfolding tragedy?

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In June 2012, Liverpool Maritime Mercantile City was placed on the UNESCO List of World Heritage in Danger. This decision followed Liverpool City Council's granting of outline planning consent for 'Liverpool Waters' – a speculative development proposal for land within and contiguous to the World Heritage Site – and the conclusion reached by the joint UNESCO-ICOMOS reactive monitoring mission in November 2011 that were this development to proceed it would irreversibly damage the Outstanding Universal Value of the site. The 2011 monitoring mission does, however, belie the previous 2006 UNESCO-ICOMOS mission, which had controversially concluded that developments already completed since World Heritage inscription in 2004, together with others agreed at the planning stage, would not have an adverse affect on the site's Outstanding Universal Value. This article discusses whether the UNESCO branding coupled with the contradictory findings of the two joint missions has illuminated or confused debates over the future of this former 'Second City of Empire'; or whether the consequences have contributed to an unfolding tragedy for the socio-economic as well as cultural fortunes of the city.

Introduction

Liverpool Maritime Mercantile City was inscribed on the UNESCO World Heritage List in June 2004. Reflecting on the post-inscription history of Liverpool, this article discusses the effect World Heritage status has had on the prospects for a sustainable future for Liverpool by addressing the following questions:

- Has the World Heritage brand benefited Liverpool?
- What relevance is the UNESCO *historic urban landscape* initiative to the city?
- What needs to be done to strengthen the UNESCO concept?

As a prelude to understanding the recent developments in Liverpool it is essential to contextualise the socio-economic history of the city. This article therefore opens with a historical outline of Liverpool and the serious challenges the city faced in the twentieth century. It sets out the twin strands of cultural promotion and economic development that informed the ambition to recover 'world city' status for Liverpool for the twenty-first century as backdrop to the conflicts that have subsequently manifested; 'Liverpool Waters' epitomises the priority that is currently attached to notional economic development. In the context of the United Kingdom planning system and international heritage guidance, the article further relates the UNESCO processes and sequences that explain the discordance between the 2006 and 2011 mission conclusions.

Data, methods, theories and previous research

The author has long-standing family connections with Liverpool and has researched and read widely about the city from historical and contemporary sources. The argumentation in this article is based on multiple study visits to the city together with interviews and discussions with key personnel in UNESCO, ICOMOS International and UK, English Heritage, Liverpool City Council and the University of Liverpool, together with citizens of the city and professional colleagues. Additionally, the argumentation is based on first-hand knowledge of the UNESCO Cities Programme through a series of assignments for the World Heritage Centre, including as rapporteur to UNESCO and ICOMOS conferences, workshops and publications preparatory to the drafting and subsequent adoption of the standard-setting *Recommendation on the Historic Urban Landscape* at the 2011 UNESCO General Conference.

Furthermore, the author has researched and written previously about Liverpool in the World Heritage context: following the 2006 UNESCO-ICOMOS reactive monitoring mission in Rodwell (2008); and subsequent to inscription on

the List of World Heritage in Danger in Rodwell (2012). The architectural conservation and urban planning background, together with international instruments including the UNESCO World Heritage Convention, are set out in theoretical and practical application in Rodwell (2007), and the drivers for the historic urban landscape initiative in Rodwell (2010). These publications contain extensive references and bibliographies as well as serving as sources for this article.

The views expressed in this article are those of the author.

Liverpool: historical outline

Liverpool emergent

Liverpool was founded as a borough under Royal Charter in 1207 and served initially as a harbour of communication between neighbouring coastlines of England, Ireland and Wales (Sharpley 2004). In the decades following the English Civil War (1642–1651), the early-thirteenth century castle was totally dismantled and its foundations erased. Apart from traces of the medieval street pattern, nothing in today's city centre survives above ground from before the eighteenth century.

Liverpool's later development as one of the great port cities of the world began in the second half of the seventeenth century, with the arrival of cargoes of tobacco and sugar from the colonies in America and the West Indies and the reciprocal export of manufactured wares from the nascent industries of the Midlands and North of England. Through the eighteenth century Liverpool developed as a major port of exchange in the slave trade between West Africa and the Americas; this trade was abolished in 1807.

Thereafter, from the nineteenth through to the early twentieth centuries, Liverpool developed and prospered as Britain and northern Europe's foremost transatlantic port for the import of produce and raw materials, export of manufactured goods, and the migration of people to the New World. Between 1830 and 1930 about forty million people left Europe, of whom nine million sailed from Liverpool,

then the largest port of emigration in the world (Liverpool Maritime Museum 2012). At the end of the nineteenth century Liverpool handled 30 per cent of Britain's export and 25 per cent of its import trade, owned 30 per cent of the United Kingdom's merchant shipping fleet, and 15 per cent of the world's listed shipping was registered in the city¹. Liverpool deferred only to London as the 'Second City of Empire'².

This prosperity is reflected in the population statistics for the city. In the course of the nineteenth century the city's population expanded from 82,430 in 1801, to 320,513 in 1851, and 711,030 in 1901³.

Liverpool descendant and stabilising

In the twentieth century, Liverpool's population peaked in 1931 when the census counted 846,101 inhabitants⁴. By 1961 this had fallen to 683,133, by 1981 to 503,726, and by 2001 to 439,476, a low point of little over half the 1931 figure.

The critical distinguishing characteristic of Liverpool is its geographical location at a landward terminus that leads only to the sea coupled with the city's reliance during its period of ascendancy almost entirely on shipping, maritime trade, and associated banking, commerce, and industries. These limitations inspired the city's rise to fortune in the eighteenth century just as they determined its decline in the twentieth.

Liverpool's descent from one of the world's great commercial seaport cities was hastened by the depression that succeeded the First World War, aggravated by severe aerial bombardment in the early 1940s, and completed by the post-Second World War changeover in international shipping practices from manually intensive dockside to predominantly automated containerization employing far larger ships with a deeper draught (Sharples 2004).

By the 1970s Liverpool had ceased to be a maritime mercantile city, with parallel impact on associated manufacturing industries and commerce, and severe effects on the socio-economic life of the city's communities.

High levels of unemployment and consequent social problems and civil unrest have characterised the city continuously since the 1930s. Liverpool's decline in the twentieth century has been so dramatic and catastrophic that by the 1980s it came to be regarded as an intractable problem by the British government (Stamp 2007). At the time, certain London-based politicians advocated that Liverpool should be abandoned to 'managed decline' (BBC News 2011; Vanstiphout 2012).

The census for 2011 recorded a population of 466,415, an increase since 2001 that has been attributed to expanding student numbers and the inflow of migrants over the past decade, especially from Central and East European accession countries to the European Union (Bartlett 2011). Official projections forecast a gradual levelling down in the population to around 460,000 by 2021 (Liverpool City Council 2014). This stabilisation in the city's population is critical for any assessment of the need for and prospective viability of major new developments in the city. Rather, it points to the alternative need for stabilisation in the existing historic environment.

Dilemma for the twenty-first century

The key to understanding the conflicts that have arisen between safeguarding the city's heritage and the major proposals for new developments is the search since the dawn of the new millennium for a new world identity for Liverpool in substitution for that which the city has lost. This is at the heart of the debate that led to the World Heritage Site's inscription on the UNESCO List of World Heritage in Danger in 2012. This ambition has followed parallel partnerships and paths for cultural promotion and economic development (Table 1). Initially it was thought by some that these could operate in harmony, but the ambition to recover the status of a 'world city' in economic rather than cultural terms – from a seriously negative starting point – has come to dominate the political agenda and underscored the primordial potential for conflict.

The heritage-versus-development risks inherent in this scenario are self-evident. They are epitomised by the mayor of Liverpool’s description of the UNESCO status as a ‘plaque on the wall’ (Bartlett 2012), one that is dispensable if it interferes with economic development objectives for the city. The mayor was elected in May 2012. He is also on the board of directors of Liverpool Vision, a predatory economic development company within the city. His roles are thus ambivalent and anticipate the potential for conflict when economic parameters overrule cultural ones in the political agenda.

The situation has called for extreme care on the part of all concerned, especially the international and national heritage organisations – notably UNESCO, ICOMOS and English Heritage.

Liverpool: City of culture or of economic development? The search for a new world identity for the twenty-first century	
1994	Merseyside granted Objective 1 status under European Union regional funding policy.
1999	Britain’s first Urban Regeneration Company, Liverpool Vision, established. Liverpool twinned with Shanghai, historically China’s foremost mercantile trading port. Liverpool placed on the United Kingdom’s Tentative List to UNESCO.
2000	‘Stop the Rot’ campaign by Liverpool Echo drew attention to decay in the historic environment.
2002	Historic Environment of Liverpool Project (HELP) launched by English Heritage and partners.
2004	‘Liverpool Maritime Mercantile City’ inscribed on the UNESCO World Heritage List.
2007	Celebration of the city’s 800th anniversary, designated ‘Year of Heritage’ (Belchem 2006b). Completion of the £22 million restoration of St George’s Hall.
2008	European Capital of Culture, under the theme of ‘The World in One City’, celebrating Liverpool’s collective culture, from the arts to popular entertainment, and three centuries of religious and ethnic diversity. Opening of first phase of ‘Liverpool One’, vaunted as the largest retail-led city centre regeneration project in Europe (Early, 2006).
2011	Opening of the first phase of the Museum of Liverpool on the Pier Head.

Table 1

Cultural promotion

Conservation initiatives preparatory to the nomination to UNESCO

Disuse and decay in the historic docklands, untreated bomb damage, and planning blight resulting from misguided and destructive redevelopment schemes combined by the 1990s to leave a legacy of serious scars and lack of coherence in the city’s urban geography. This legacy also presented a heritage challenge without parallel elsewhere in the United Kingdom. A condition survey of listed buildings in the city conducted by English Heritage in 1991 identified over 351 at risk (out of a total of 2,651) and 100 at extreme risk, both of which were significantly above the national average (English Heritage 2002).

In 2000, and in parallel, the local newspaper the *Liverpool Echo* launched its ‘Stop the Rot’ campaign to rescue and conserve the city’s rich architectural heritage, a campaign that was triggered by the collapse of a landmark building in the city centre. In 2002, inspired by ‘Stop the Rot’, the ground-breaking Historic Environment of Liverpool Project (acronym, HELP) was launched by English Heritage in partnership with Liverpool City Council, the North West Development Agency, National Museums Liverpool, Liverpool Vision and Liverpool Culture Company. Its activities included detailed studies of the city’s built heritage and archaeology, the design and implementation of a buildings at risk strategy, and a range of educational and community projects, exhibitions and publications (Stonard 2003).

One of the major individual success stories in the 2000s was the £22 million restoration of St George’s Hall, a neo-Grecian masterpiece described as ‘one of the finest in the world’ (Sharples 2004), which had been mothballed and considered for demolition in the 1980s. The comprehensive restoration programme was completed in time for the city’s 800th anniversary celebrations in 2007 (Chambers 2007; Jackson 2007; Spring 2007).



Figure 1 The 2003 nomination document and management plan to UNESCO championed inscription as a World Heritage Site on the premiss that the surviving urban landscape testified to the historical role of Liverpool as a great port city and defined its 'tangible authenticity'. The trio of buildings at the Pier Head is described as the focal point: 'They form a dramatic manifestation of Liverpool's historical significance ... [whose] vast scale ... allows them to dominate the waterfront when approaching by ship'. Photographed 2007. Photo: © Dennis Rodwell.

Liverpool Maritime Mercantile City World Heritage Site, 2004

The development of the nomination to UNESCO in 2003, to which the Historic Environment of Liverpool Project contributed substantively, formed a core part of the re-articulation of Liverpool as a world city for the twenty-first century. In World Heritage terms, the theme that defined the nomination to UNESCO was simple: the supreme example of a commercial port developed at the time of Britain's greatest global influence from the eighteenth through to the early twentieth centuries (Liverpool City Council 2003a and 2003b). This was underscored by reference to the seminal position that Liverpool held in the development of dock and warehouse design and construction, and the surviving urban landscape that bore witness to the city's historical role and significance – symbolised by the Pier Head group of buildings,

that form one of the most recognisable waterfront ensembles in the world (Figure 1). Inscribed in 2004 (Table 2), the 136-hectare World Heritage Site comprises six disparate components that are either contiguous or linked on plan by lengths of fortress-like former dock enclosing walls (Liverpool City Council 2003a). Of crucial importance to development projects that have followed inscription, the site and its 750-hectare buffer zone were *delineated two – rather than three-dimensionally on plan* – as UNESCO guidance anticipated⁵.

At the time of inscription, the chairman of English Heritage stated that 'Liverpool deserves world heritage status because it has been a world city for 200 years'; Liverpool City Council's planning manager pledged that 'the site will continue to allow developments that are "in harmony" with the existing urban fabric'; and the English Heritage regional manager anticipated that 'the designation will

act as a catalyst for “new and imaginative uses” for the city’s historic buildings’ (Wainscoat 2004:4). Betokening debates to follow, however, Liverpool’s successful bid was contested from the outset: ‘It’s a sorry day for those of us that aspire for something more dynamic for Liverpool. Liverpool is a commercially-based city and many people in power have forgotten that. The World Heritage status is not about commercial urban growth – it’s a completely different emphasis on the city’s growth potential’ (Carpenter 2004:5).

Liverpool Maritime Mercantile World Heritage Site timeline

1999	Placed on United Kingdom Tentative List to UNESCO.
2003	Nomination and Management Plan submitted to UNESCO.
2004	Inscription as a UNESCO World Heritage Site.
2005	UNESCO Vienna Memorandum on World Heritage and Contemporary Architecture – Managing the Historic Urban Landscape (UNESCO 2005).
2006	First UNESCO-ICOMOS Mission: focus on Museum of Liverpool + Mann Island.
2011	UNESCO Recommendation on the Historic Urban Landscape (UNESCO 2011a). Second UNESCO-ICOMOS Mission: focus on ‘Liverpool Waters’.
2012	‘Liverpool Waters’ approved by Liverpool City Council. Inscription on the UNESCO List of World Heritage in Danger.
2013	‘Liverpool Waters’ approval endorsed by United Kingdom Government.

Table 2

Liverpool, European Capital of Culture, 2008

The rich cultural diversity of the city, both in tangible and intangible heritage terms, and from the elitist to the populist, underscored the slogan for Liverpool’s parallel bid to become European Capital of Culture 2008: ‘The World in One City’.

This focused international attention and national celebration on Liverpool’s exceptional cultural traditions and associations, including: its standing in literature (novelists and playwrights), comedy, the performing and visual arts (world class theatres, orchestras and galleries); its role at the forefront of the popular music scene in

the 1960s; and the sporting prowess of its rival football clubs, Everton and Liverpool (Belchem 2006a). Additionally, Liverpool claims the oldest Chinese community in Europe and has long-established East African and Jewish communities.

Heritage protection

Inadequacies in the United Kingdom protective system

The United Kingdom planning system is understood by some to rank with the best in the world, with its complex web of policy guidance and development plans allied to checks and balances through the democratic process.

Protective legislation for the historic environment is, however, strategically weak and focused on fragmented parts – known collectively as ‘heritage assets’. Whereas national registers of these ‘assets’ include scheduled ancient monuments and listed buildings, there is no over-arching designation for historic cities, none for World Heritage Sites, and the concept of *buffer zone* is neither encompassed nor understood within the planning system. Thus, urban sites such as Liverpool are propelled to the status of World Heritage Sites in the absence of a nationally-formulated protective framework that embraces them. Given that the United Kingdom planning system is both primordially negotiable and permissive in the interests of development, conflict with the international conservation community is all but inevitable. That this debate is also a national one was highlighted at the 2008 English Heritage conference *On the Waterfront*. The workshop question, ‘Planning systems, do they fit the current needs of historic port cities?’, elicited the unambiguous response that the UK system does not fit the needs of any historic cities, let alone port cities (Rodwell 2011). This discourse has been further confused: first, by a limited definition of *contemporary* as applied to design interventions in the historic environment, which has inhibited contestation of developments that are inherently inharmonious (Table 3); and

second, by over-enthusiasm by both UNESCO and English Heritage for methodologies of visual analysis that rely on highly selected views (Moggridge 2010; English Heritage 2011).

The first constitutes a hijacking of the word *contemporary* to a single meaning and, as we shall see, inhibited the 2006 UNESCO-ICOMOS Liverpool mission from challenging inappropriate design projects. The second reinforces a picture-postcard methodology for safeguarding the ‘viewing corridors’ of specified monuments only from predetermined vantage points, and inhibited the same mission from commenting on the siting of conflictual developments at the Pier Head.

World Heritage inscription and Liverpool’s statement of Outstanding Universal Value

Article 1 of the 1972 Convention sets out the requirements of Outstanding Universal Value, and the Operational Guidelines additionally state that a property must meet the conditions of integrity and/or authenticity and have an adequate protection and management system to ensure its safeguarding (UNESCO 1972; ICOMOS 2008).

‘Contemporary’: Confused messages in International Documents

1964	Venice Charter (for the conservation and restoration of monuments): where components are replaced they should be integrated harmoniously but ‘be distinct from the architectural composition and ... bear a contemporary stamp’. This encouraged inharmonious interventions. (ICOMOS 1965)
1975	European Charter (architectural heritage including urban areas): highlighted ‘integrated conservation’. (Council of Europe 1975)
1987	ICOMOS Washington Charter (historic towns and urban areas): promotes ‘harmonious adaptation to contemporary life’. (ICOMOS 1987)
2005	Vienna Memorandum (historic urban landscapes): Article 21 states that ‘urban planning, contemporary architecture and preservation of the historic urban landscape should avoid all forms of pseudo-historical design, as they constitute a denial of both the historical and the contemporary alike’. This has proved a recipe for conflictual interventions. (UNESCO 2005)
2011	UNESCO Recommendation on the Historic Urban Landscape: continues to use ‘contemporary’, but does not clarify in what sense. (UNESCO 2011a)

NOTE: In this context, ‘contemporary’ has two discrete dictionary meanings:

- Occurring at the present time; or
- Conforming to modern ideas in style and fashion.

Table 3

A World Heritage Site’s statement of Outstanding Universal Value is the benchmark that conditions post-inscription monitoring. The sequences that determined the wording of the Liverpool site’s statement of Outstanding Universal Value must therefore be examined.

The ICOMOS advisory report that was referred to at the 2004 session of the World Heritage Committee described the nominated site as ‘a complete and integral urban landscape that provides coherent evidence of Liverpool’s historic character and bears testament to its exceptional historical significance’ (ICOMOS 2004). Notwithstanding references both in the state party’s nomination and the ICOMOS advisory report however, the Committee’s decision does not mention *urban landscape* (Table 4) (UNESCO 2004a). As such, urban

Inscription of the World Heritage Site

Decision 28 COM 14B.49 adopted at the Twenty-eighth session of the World Heritage Committee at Suzhou, China, 2004 (UNESCO 2004a)

The World Heritage Committee,

1. Inscribes Liverpool - Maritime Mercantile City, United Kingdom, on the World Heritage List on the basis of cultural criteria (ii), (iii) and (iv):

Criterion (ii): Liverpool was a major centre generating innovative technologies and methods in dock construction and port management in the 18th and 19th centuries. It thus contributed to the building up of the international mercantile systems throughout the British Commonwealth.

Criterion (iii): The city and the port of Liverpool are an exceptional testimony to the development of maritime mercantile culture in the 18th and 19th centuries, contributing to the building up of the British Empire. It was a centre for the slave trade, until its abolition in 1807, and to emigration from northern Europe to America.

Criterion (iv): Liverpool is an outstanding example of a world mercantile port city, which represents the early development of global trading and cultural connection throughout the British Empire.
2. Recommends that the authorities pay particular attention to monitoring the processes of change in the World Heritage areas and their surroundings in order not to adversely impact the property. This concerns especially changes in use and new construction.
3. Requests that the State Party, in applying its planning procedures rigorously, assure that:
 - a) the height of any new construction in the World Heritage property not exceed that of structures in the immediate surroundings.
 - b) the character of any new construction respect the qualities of the historic area,
 - c) new construction at the Pier Head should not dominate, but complement the historic Pier Head buildings.

NOTE: Under 3, the Decision only refers to new construction within the World Heritage Site, not the buffer zone.

Table 4



Figure 2 The Pier Head group today, with the 27-storey Unity Residential Building to the left; the ferry terminal building in the left foreground; the Museum of Liverpool in the centre foreground with the Mann Island development to its immediate right; Liverpool One with the 138-metre high Radio City Tower rear right; and Albert Dock to the far right. Photographed 2011. Photo: © Dennis Rodwell.

landscape forms no part of the statement of Outstanding Universal Value for the inscribed site. (Additionally, as Table 4 discloses, the Committee's Decision was ambiguous in relation to the buffer zone.)

It is instructive to compare the self-same 2004 World Heritage Committee's inscription of Dresden Elbe Valley World Heritage Site, which was de-listed in 2009. The statement of Outstanding Universal Value for the Dresden site explicitly refers to the 'outstanding cultural landscape' (UNESCO 2004b) under criterion (iv), the same as should have been applied in the case of Liverpool. It was this reference to cultural landscape that eventually provided the benchmark for the Dresden site's de-listing.

First UNESCO-ICOMOS mission: 2006

The first UNESCO-ICOMOS reactive monitoring mission took place only two years after Liverpool was inscribed on the World Heritage List. The remit for this 2006 mission was focused on waterfront projects at the Pier Head: for the Museum of Liverpool (Kim Nielsen, architect); and on Mann Island (Broadway Malyan, architects). The remit

was also broadened to encompass the overall situation 'with regard to the state of conservation of the site in its widest urban context, its integrity and authenticity' (UNESCO 2006:2) (Figure 2).

The resultant mission report raised a number of visual integrity and management issues, including inadequate guidance in the design briefs for the two waterfront projects, but concluded that the Outstanding Universal Value of the site was not threatened by them (UNESCO 2006). Inhibited by Article 21 of the 2005 UNESCO Vienna Memorandum (see Table 3), the report deferred to the endorsement by English Heritage of the 'high-quality architectural design and materialization' of these developments (UNESCO 2006:3). Both projects, not surprisingly in this author's view, have vied for infamy in successive *Building Design* competitions for the Carbuncle Cup, an annual award for the ugliest new building in Britain (Wikipedia 2014).

A singular omission in the mission report was any reference to the location of these developments. The museum project was strongly opposed by ICOMOS-UK, who wrote: 'To seek to erect on the Pierhead a fourth building of such architectural pretension shows a fundamental misreading of the precious nature of the existing

group' (Willis 2006:5). The building has been described as 'completely divorced from its context', 'dropped on its site like a brash gin palace run aground', and the museum's design architect, Kim Nielsen, is quoted as saying: 'Our first reaction was that you shouldn't build here' (Wainwright 2011:10). Additionally, the funding for the museum was partly linked to the development value of the Mann Island site development, thereby compounding the error (Rodwell 2012). Further, this development blocks the historic view of the Pier Head group across Canning Dock (Figures 3 and 4), a view that did not feature in the views analysis for the site on the fallacious premiss that the Pier Head

group was only intended to be seen two-dimensionally from the river.

The 2006 mission report also concluded that the overall state of conservation of the inscribed site was good, and that redevelopment initiatives in the wider urban context were 'carefully re-establishing the city's coherence through the enhancement of its numerous remaining historical features [and] the infill of vacant lots' (UNESCO 2006:10). The report omitted to comment critically on the post-inscription high-rise waterfront developments in the Prince's Dock area of the buffer zone (Figure 5): indeed, it described the urban morphology of the docks and harbours as remaining intact. This is remarkable



Figures 3 and 4 Views of the Pier Head Group across Canning Dock taken in 2007 and 2011, illustrating the impact of Broadway Malyan's Mann Island scheme in blocking this historic view, in accordance with a views methodology that was endorsed by English Heritage and UNESCO. The Museum of Liverpool and Mann Island developments have been described as symptomatic of 'the general malaise of architectural mediocrity we find so popular with the current architectural press' (cited in Bartlett, 2010). The Mann Island development has been dubbed in Liverpool as the Three Disgraces and the Three Coffins. Photographed 2007 and 2011. Photo: © Dennis Rodwell.



Figure 5 Panorama of the Liverpool waterfront from the seaward north-west, illustrating the damage inflicted on the urban landscape as a result of the fragmentary approach to designations and incoherent contemporary interventions. None of the taller modern buildings to the left of the Pier Head group featured in the documentation that was submitted to the 2004 meeting of the World Heritage Committee; they were built subsequently. Tom Dyckhoff, architecture critic of *The Times*, has described the new Liverpool waterfront as comprising 'frivolous, flash-in-the-pan architecture that could have been built by anyone anywhere'⁶. The Danish architect Jan Gehl has characterised this genre of development as 'bird shit architecture', dropped randomly from a three-kilometre height⁷. The site for Liverpool Waters is to the left of this photograph. Photographed 2011. Photo: © Dennis Rodwell.

for a number of reasons, including: the failure to address the historic urban landscape holistically; it ignored the explicit critique of one of the most conflictual of the already completed developments, the Unity Residential Building, by the Director of the UNESCO World Heritage Centre (Gates 2005); and it contradicts the subsequent condemnation of the Liverpool Waters project.

Overall, the conclusions and omissions in the 2006 mission report did not coincide with sentiments that were being expressed locally and in the wider media (see Figures 3-5) to the effect that what had already been built and was known to be in the pipeline had already seriously challenged the authenticity and integrity of the World Heritage Site. The 2006 mission report was noted at the subsequent, 2007, meeting of the World Heritage Committee.

Second UNESCO-ICOMOS mission: 2011

Five years on, Liverpool's political enthusiasm for major new development projects brought the World Heritage Site once again to the attention of the World Heritage Committee. In 2011, the second joint reactive monitoring mission's remit focused on Liverpool Waters, a speculative planning application for the development of a 60-hectare site that lies substantially within the World Heritage Site and its buffer zone north of Prince's Dock to the seaward side of the Pier Head group. It is being promoted as a £5.5 billion development that would provide a mixed use development of up to 1.7 million square metres, including 9,000 residential units, 315,000 square metres of offices, 53,000 square metres of hotel and conference facilities; also shops, restaurants and cafés, community and leisure uses, a cruise liner terminal, and more than 400,000 square metres of parking (Wilding 2012). It has been reported as the United Kingdom's largest current planning proposal; and is most probably

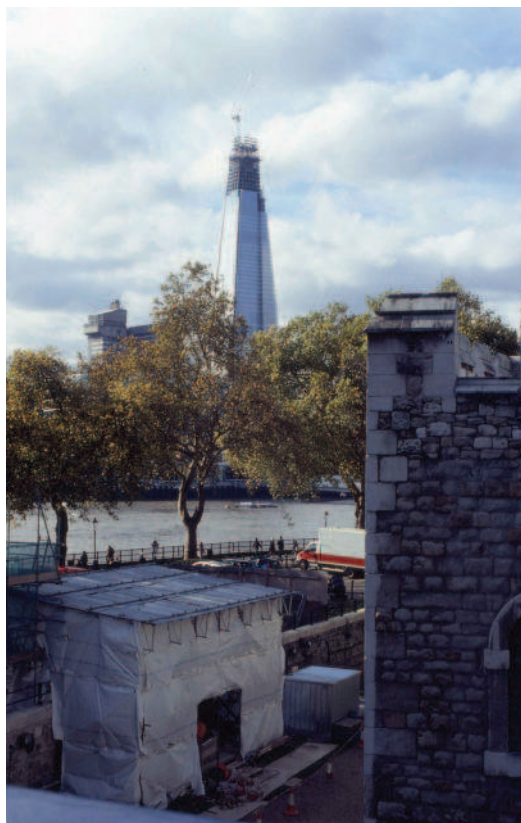


Figure 6 The 310-metre high London Shard (Renzo Piano, architect) is in close view of the Tower of London (right). The Tower was inscribed as a World Heritage Site in 1988; the Shard is also in clear view of the Palace of Westminster (Houses of Parliament) and Westminster Abbey World Heritage Site, inscribed in 1987. The development proceeded despite objections from UNESCO, English Heritage and numerous others; UNESCO did not, however, place either London site on the List of World Heritage in Danger. Photographed nearing completion in 2011. Photo: © Dennis Rodwell.

the largest scheme being considered anywhere in the world affecting a World Heritage Site (ICOMOS-UK 2011). Liverpool Waters would in effect create a new city in direct competition with historic Liverpool.

The project has been opposed within the United Kingdom by the Commission for Architecture and the Built Environment on design grounds, and by English Heritage for its

lack of correspondence with the configuration and morphology of the former historic docklands. Numerous non-governmental heritage organisations – including SAVE Britain's Heritage – and individuals also oppose the scheme. The governmental objectors have concentrated on project details rather than the principle of the development. Others have questioned the threat it would pose to the functionality of the historic city as well as ongoing investment in it (Moore 2012).

Notwithstanding these objections, Liverpool Waters – which is also known as 'Shanghai-Liverpool' in recognition of the twin city status since 1999 – has achieved strong support from local politicians captivated by the architects' visual imagery, the sheer physical scale and financial magnitude of the project, promises of massive job creation, and by association with the politically-charged mantra of economic growth. However, indicative of the negotiable and permissive nature of the United Kingdom planning system, Liverpool Waters both contradicts the population forecasts for the region and has not secured funding for its implementation. Notwithstanding, Liverpool City Council's granting of planning consent in 2012 was endorsed by the UK government a year later.

The 2011 mission report, founding on the 2011 UNESCO *Recommendation on the Historic Urban Landscape* (see below), focused on issues related to urban morphology and views, notably the heights of the proposed 192-metre 55-storey-high Shanghai Tower – the landmark feature in the Liverpool Waters imagery – together with a secondary cluster of tall buildings, and concluded that Liverpool Waters would irreversibly threaten the Outstanding Universal Value of the World Heritage Site (UNESCO 2011b). The 2012 World Heritage Committee decision to place the site on the List of World Heritage in Danger reiterated this view. Previously, despite indicative opposition and contrary to its condemnation of Liverpool's unbuilt Shanghai Tower, UNESCO had acquiesced in the construction of the much taller 310-metre London Shard (Gates 2005; de Castella 2007) (Figure 6).

Inconsistent outcomes

Clearly, the outcomes of the 2006 and 2011 UNESCO-ICOMOS missions are seriously inconsistent in their consideration of the key issue of safeguarding Liverpool's urban landscape; also, in the messages about acceptable typologies of development that have been communicated to the State Party. This may be explained by the failure to include reference to it in the 2004 World Heritage Committee's decision under criteria (iv). As noted above, no equivalent omission occurred in the statement of outstanding universal value for the Dresden site.

2011 UNESCO Recommendation on the Historic Urban Landscape

A key driver for the UNESCO *historic urban landscape* approach has been accelerating urbanisation in certain regions of the world. The subtitle of Bandarin and van Oers (2012) exemplifies this: *Managing Heritage in an Urban Century*. The United Kingdom, however, urbanised early; whereas the urban proportion of the global population is predicted to reach 75 per cent by around 2050, it had already reached this threshold in Britain by 1900, and its optimum level of 90 per cent by the 1950s.

Remarkably, whereas historic layering is a main component of the *historic urban landscape* approach, the decision to inscribe the Liverpool site on the List of World Heritage in Danger was not related to any consideration of the merits of Liverpool Waters as a projected major new layer for the city. Nor was it related to any consideration of the predictable impact of Liverpool Waters on the future socio-economic viability of the World Heritage Site. Basic questions of urbanism, therefore, have not informed the UNESCO process.

Relevance of the 2011 Recommendation

We live in an age of both expanding and shrinking world cities, varying by such factors as geography and stage of socio-economic

development (Pallagst 2009). Liverpool's geographical location at a landward terminus is central to any consideration of the city's growth potential. An alternative approach for Liverpool, acknowledging that resurrection of 'world city' status is unattainable and that the primordial need is to focus on consolidation of the city's environmental, social, cultural and economic assets to the benefit of the people of Liverpool as a whole – as the platform for a sustainable future – has not been suggested by UNESCO. It has, however, been mooted by commentators (Couch 2011).

In this author's view, for the 2011 UNESCO Recommendation to have meaning as the basis for an integrated approach to historic cities, based as it is on the urban geographer's inter-disciplinary approach to the evolution and development of cities in concert with their heritage values, any consideration of the impact of major developments such as Liverpool Waters must embrace more than reaction to a limited, and manifestly inconsistent, interpretation of its Outstanding Universal Value and contribute significantly to the discussion. The *historic urban landscape* approach has little relevance otherwise – especially in relation to a World Heritage Site comprising six disparate components, such as Liverpool's.

Warnings of opportunism

In the World Heritage context, Liverpool has been cited as a European example of 'heritage classifications being used as a status symbol for purposes of economic regeneration' (Askew 2010:34). Similarly '[t]he award of the title of European City of Culture for 2008 is being used as an excuse by the Council to encourage rampant commercial development at the expense of the surviving historic fabric of the city' (Stamp 2007:113).

Reviewing the history of recent developments, Liverpool Waters is simply the latest of a series of mega-development projects that have been solicited by the City Council in response to the search for a new world identity for the

city. Liverpool One, for example (see Table 1), was promoted by Grosvenor, one of Britain's leading property companies, as 'the realisation of a strategic vision to revitalise the city centre and reposition Liverpool as a premier European city', offering 'world-class shopping, leisure and living at the heart of a world-class city'⁸. The 17-hectare city centre site, just outside the World Heritage Site, comprised land and buildings which had remained derelict or blighted since the Second World War. The project's 234,000 square metres in total was planned with 154,000 square metres of retail floorspace, 21,500 square metres for leisure activities, two major hotels and 634 residential units; it included the construction of 30 new buildings. The majority of the commercial parts of Liverpool One were opened in 2008, in time for the city's celebrations as European Capital of Culture. The residential units proved especially slow to fill, reflecting shortage of demand in a city whose population numbers are numerically static.

The high levels of unemployment and consequent social problems that have characterised Liverpool since the 1930s have not been addressed by successive waves of high value, high profile development projects in the city centre and waterfront. Indeed, these have intensified divisions between pockets of gentrification and a generality of deprivation. Liverpool has consistently headed the table of the highest proportion of the population claiming income support of any city in the UK (BBC News 2010), and the Toxteth district was the scene of riots in 1981 and again in 2011.

Furthermore, the historic core and inner city areas display the highest levels of vacancy and dereliction for a major city in the UK (Experian 2009; Hradsky 2009). Developments such as Liverpool One have conformed to a general pattern in which, in the absence of increased demand, existing retailers have simply relocated, thereby vacating their previous premises – generally in historic buildings – which have since stood vacant and become derelict. The same has applied to new high value residential developments, including at the waterfront. For

the Mann Island development, for example, both the initial developer and the supporting bank went bankrupt, and apartments that were destined for the luxury end of the market have been adapted for occupancy by students.

New developments in Liverpool are either not occupied or create vacancies elsewhere. Clearly, if there is no demand, they should not be built: the concept of *planning* is meaningless otherwise. That this scenario would be expanded exponentially in the event that Liverpool Waters were to be implemented beckons a future for the city that would prove devastating for the World Heritage Site. It anticipates the ruins of the future.

Illumination or confusion?

Returning to the World Heritage status's impact on Liverpool, one can question whether the Convention's original demand of providing '... an effective system of collective protection of the cultural and natural heritage of outstanding universal value, organized on a permanent basis and in accordance with modern scientific methods' has been realised (UNESCO 1972: preamble).

Since 2000, parallel initiatives for cultural promotion and economic development have characterised Liverpool's illusory ambition focused on recovering the status of 'world city' for post-industrial, post-imperial and post-modern Liverpool. The World Heritage branding has substantively contributed to this illusion. Furthermore, supported by European Union regional funding, Liverpool Vision and a City Council that has been seduced by mega-projects, this has created a situation that has proved highly volatile. A situation that has called for extreme care has been marked by an absence of it. The Liverpool saga not only highlights flaws in the United Kingdom heritage protection system, contributory confusions from the international community, but also serious errors of process as well as inconsistency in the UNESCO-ICOMOS monitoring of the city's World Heritage Site. In consequence, the World Heritage dream of protection has been countermanded.

Liverpool City Council and the United Kingdom government's support for Liverpool Waters presents a formidable political, socio-economic and cultural challenge for the city today. It is the 'elephant in the room' that has the potential to de-rail any considered approach to resolving the manifold issues that arise from Liverpool descent in the twentieth century. As such it presages the continuance of an unfolding tragedy for the fortunes of the city.

To date, UNESCO's monitoring role has been reactive: this is implicit in the Operational Guidelines. As a test case for the UNESCO *historic urban landscape* approach, the Liverpool site has singularly failed. Further, far from addressing deep-seated environmental, social, cultural and economic issues in the city, lack of clarity and inconsistency in the management of the World Heritage brand have excited expectations and realised none. UNESCO should now – in this author's view – adopt a proactive role to demonstrate how the 2011 Recommendation can illuminate a forward path for this erstwhile 'world city'.

Conclusion

I shall conclude by responding to the three questions posed in the introduction to his article:

- Has the World Heritage brand benefited Liverpool?

Undoubtedly World Heritage listing has provided a focus for beneficial initiatives such as the Liverpool Historic Environment Project (HELP). At the same time, it has fuelled unrealistic expectations of recreating 'world city' status for the city, and served as a magnet for major commercial and waterfront developments without regard to demand or their impact on the authenticity and integrity of the World Heritage Site. As such, the heritage values for which Liverpool was inscribed in the World Heritage List have been fundamentally compromised. Additionally, the brand has failed to contribute to a sustainable future for the city.

- What relevance is the UNESCO historic urban landscape initiative to the city?

The 2006 UNESCO-ICOMOS mission was compromised by its deference to Article 21 of the 2005 Vienna Memorandum and its selective interpretation of the word contemporary; also, by the selective views methodology. As such, it failed to challenge – and thereby condoned – aggressive architectural interventions at the Pier Head, the focal point of the World Heritage Site's historical significance. The 2011 mission reversed the 2006 mission's acquiescence in aggressive morphological interventions at Prince's Dock by opposing Liverpool Waters, to the result that site was placed on the List of World Heritage in Danger. Perversely, UNESCO had previously acquiesced in the construction of the London Shard. The 2011 Recommendation on the Historic Urban Landscape has the potential to make a major difference to how historic cities are managed. Lack of consistency, on the other hand, is a recipe for disaster in the field of urban cultural heritage, especially with the same State Party.

- What needs to be done to strengthen the UNESCO concept?

First, sites and their buffer zones should be defined three-dimensionally rather than just two. Second, statements of Outstanding Universal Value should be drafted with clarity not merely to set out an inscribed site's historical and other inherited attributes, but as a beacon to guide how those attributes should be safeguarded for future generations. Third, UNESCO should become more proactive in the field of urban heritage management, providing clear indicators of practice that it applauds rather than waiting to react to projects and proposals that it may wish to resist. Fourth, UNESCO must at all times be consistent in its consideration of the unique values and management needs of individual World Heritage Sites across properties within the territories of State Parties.

Notes

- 1 The statistics in this sentence are taken from the PowerPoint presentation 'Heritage-led regeneration in Liverpool: The HELP and Rope Walks Projects' given by John Hinchliffe, World Heritage Officer, Liverpool City Council, at the Institute of Historic Building Conservation Annual Summer School, Liverpool, June 2007.
- 2 At various periods the cities of Dublin, Glasgow and Birmingham have also laid claim to the title of Second City of the Empire, based on criteria such as population size, economic importance and cultural contribution. The British Empire effectively ceased to exist with the partition and independence of India in 1947, whereafter there was no first let alone second city of Empire.
- 3 Population statistics for Liverpool present the researcher with a minefield of conflicting data and sources; this is partly accounted for by boundary changes. The figures cited here have kindly been supplied by Dr Graeme Milne, School of History, University of Liverpool.
- 4 See note 3.
- 5 The plan of the Liverpool World Heritage Site and its buffer zone may be found at: URL: http://whc.unesco.org/en/list/1150/multiple=1&unique_number=1331 [Accessed 16.04.2014].
- 6 Speaking in the television programme 'A Year in the Life', broadcast on BBC Two on 19 January 2009, which reported on Liverpool, European Capital of Culture 2008.
- 7 Lecturing to the title 'Cities for People' in Edinburgh, 7 September 2012.
- 8 The quotations and data cited in this paragraph derive from leaflets and fact sheets sourced from The Paradise Project Information Centre, 76-78 Lord Street, Liverpool, in June 2007.

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The legal effects of World Heritage Listing under the 1972 Convention Concerning the Protection of the World Cultural and Natural Heritage: the example of the Dresden Elbe Valley in the Federal Republic of Germany

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*After being inscribed on the World Heritage List in 2004, the Dresden Elbe Valley cultural landscape has since been transferred to the List of World Heritage in Danger in 2006 and delisted from the World Heritage List in 2009 without the consent of Germany, the State Party to the World Heritage Convention. The World Heritage Committee took this decision, arguing that the construction of a four-lane bridge (**Waldschlößchenbrücke**) above the Elbe River, located in the core of the World Heritage Site, would destroy the integrity and Outstanding Universal Value of this cultural landscape. This article aims to present the results of research dedicated to the legal background of the conflict between UNESCO and the Federal Republic of Germany as State Party to the World Heritage Convention concerning the Dresden Elbe Valley. Based on this case study, the question of the legal effects of World Heritage Listing for the States Parties to the World Heritage Convention is raised. Equally, the legality of delisting of World Heritage Sites by the World Heritage Committee based on the World Heritage Convention is also analysed. Furthermore, the limits of such an international – and universal – legal instrument as the World Heritage Convention are discussed in the context of federal political systems, as is the case with the Federal Republic of Germany. Subsequently, it can be argued that the inclusion into the international heritage network through World Heritage Listing did not guarantee the sustainable protection of this World Heritage Site and divided the local communities among opponents and defenders of the project to build the bridge.*

Introduction

Based on the analysis of the case of the Dresden Elbe Valley and the reasons for the conflict between UNESCO and the Federal Republic of

Germany, the present article aims to discuss the legal effects of World Heritage Listing for the States Parties to the World Heritage Convention.

The following investigation can be considered exploratory research because little research on the case of the Dresden Elbe Valley has so far integrated both the German and UNESCO perspectives and applied a combined historical, legal and political approach. The argumentation put forward in this article is based on secondary sources, i.e. scientific literature, and primary sources, such as German and UNESCO legal documents as well as the summary records of the discussion of the World Heritage Committee concerning the Dresden Elbe Valley.

This article focuses on the legal effects of the World Heritage Convention in terms of listing and delisting of World Heritage Sites. Aiming to extract the sources of the conflict from the case study in order to discuss them legally and politically, several questions might be raised. First, what are the legal effects of listing a site on the World Heritage List? Second, is delisting possible and is the consent of the State Party needed? Third, to what extent might the implementation of the World Heritage Convention in federal political systems trigger conflictive decision-making by the different administrative levels? And fourth, how can the involvement of local communities ensure a sustainable protection of World Heritage Sites?

To answer these questions, the present article is structured in three parts which enable an inter-disciplinary analysis and discussion. In a first step, the historic development of the conflict is reconstructed in order to provide the background for the discussion. Then, a legal analysis of the World Heritage Convention with regards to the case of the Dresden Elbe Valley is provided. Finally, a political dimension is integrated in the discussion related to federal political systems and the involvement of local communities. In the conclusion, all three approaches are brought together to give answers to the questions raised in the introduction and to elaborate the discussion further.

Historical reconstruction of the conflict towards the Dresden Elbe Valley World Heritage Site (2004-2009)

In this section the questions raised in the introduction are discussed from a historical perspective in order to provide a basis for the discussion. Prior to the inscription of the Dresden Elbe Valley as a cultural landscape on the World Heritage List, the German Democratic Republic had prepared the nomination 'Baroque Ensemble of Dresden', consisting of the historic centre, in 1988 (Ringbeck and Rössler 2011). However, the nomination was rejected due to the lack of authenticity caused by the reconstruction of the city after the bombings of 13 February 1945 (ICOMOS 2003).

The second nomination for the Dresden Elbe Valley as a cultural landscape was prepared 'by the local monument protection authority' (Ringbeck and Rössler 2011:205). At its 28th session in Suzhou, China (2004), the World Heritage Committee decided to inscribe¹ the Dresden Elbe Valley on the World Heritage List as a continuing cultural landscape based on cultural criteria (ii); (iii); (iv) and (v) and justified as follows for the Outstanding Universal Value of the site:

Criterion (ii): The Dresden Elbe Valley has been the crossroads in Europe, in culture, science and technology. Its art collections, architecture, gardens, and landscape features have been an important reference for Central European developments in the eighteenth and nineteenth centuries.

Criterion (iii): The Dresden Elbe Valley contains exceptional testimonies of court architecture and festivities, as well as renowned examples of middle-class architecture and industrial heritage representing European urban development into the modern industrial era.

Criterion (iv): The Dresden Elbe Valley is an outstanding cultural landscape, an ensemble that integrates the celebrated baroque setting and

suburban garden city into an artistic whole within the river valley.

Criterion (v): The Dresden Elbe Valley is an outstanding example of land use, representing an exceptional development of a major Central-European city. The value of this cultural landscape has long been recognised, but it is now under new pressures for change. (UNESCO 2004:39)

The Dresden Elbe Valley World Heritage Site was comprised of an 18 km long cultural landscape along the Elbe River, including the historical centre of the City of Dresden and specifically the newly reconstructed *Frauenkirche* (Church of Our Lady), to which the City of Dresden owes the name of '*Elbflorenz*' ('Florence on the Elbe') (Goebel 2007). The specificity of this site lies in a combination of cultural and natural features, such as castles with gardens and vineyards, dominating the Elbe River in the middle of the urban area (Gaillard 2014:50). Although the Dresden Elbe Valley was inscribed as a cultural landscape, attention was focused on the well-known image of the City of Dresden painted by Canaletto, notably because of the first nomination prepared for the historic centre of Dresden. This focus on the historic centre rather than on the whole valley led to a misconception of the World Heritage Site (Gaillard 2014:51) in its entirety by the various actors. This reduction of perception of the Dresden Elbe Valley contributed to underestimate the impact of the bridge on the valley (Kloos 2012:145) which, being located 4 km south east from the historic centre of the City of Dresden, cannot be seen from the centre.

Afterwards, concerns regarding the proposed *Waldschlösschenbrücke* bridge project (see below for a description of the project) were raised by the local communities and communicated to the World Heritage Centre (Ringbeck and Rössler 2011). Thus a Visual Impact Study was implemented by the Department of Urban Design and Regional Planning of the University of Aachen, Germany. The results of the study concluded that first '[t]he Waldschlösschen Bridge does not fit in with



Figure 1 Obstructed view of the historical skyline of the City of Dresden by the *Waldschlösschenbrücke*.

Photo: B. Gaillard, 7 May 2011

the existing series of Dresden bridges' (RWTH 2006:109). The City of Dresden has eight Elbe River bridges, most of which follow a similar physical typology: they are sandstones bridges with arches and panoramic terraces. Second, the Visual Impact Study came to the conclusion that '[t]he Waldschlösschen Bridge obscures a number of views of the Dresden skyline and the Elbe Valley which are of historical importance as well as continuing relevance to daily life in the city' (RWTH 2006:109). The bridge obscures the view of the historical skyline of the city in one direction (Figure 1), and the view towards the castles and vineyards in the other direction (Figure 2). Third, the study argued that '[t]he Waldschlösschen Bridge cuts into the cohesive landscape of the Elbe river bend at its most sensitive point, splitting it irreversibly into two halves' (RWTH 2006:111). Since the Elbe River makes a curve at this location, where the meadows are particularly large, the impact of this bridge, the longest of the City of Dresden, is considerable.

Consequently, at its 30th session in Vilnius, Lithuania (UNESCO 2006), the World Heritage Committee decided to transfer² the Dresden Elbe Valley to the List of World Heritage in Danger, arguing that the construction of a planned four-lane bridge (the *Waldschlösschenbrücke*)



Figure 2 Obstructed view of the castles and vineyards by the Waldschlößchenbrücke. Photo: B. Gaillard, 7 May 2011

in the core of the World Heritage Site would irreversibly damage the Outstanding Universal Value and integrity of the cultural landscape.

Finally, the conflict ended at the 33rd session of the World Heritage Committee in Seville, Spain (UNESCO 2009) with the decision to delist³ the Dresden Elbe Valley from the World Heritage List, without the consent of the State Party Germany. The delisting took place because the construction of the *Waldschlößchenbrücke* was being conducted and no compromise, such as the construction of a tunnel rather than a bridge, could be found between UNESCO and the State Party Germany.

The project of an Elbe River crossing at the location of the *Waldschlößchenbrücke* is not, however, new. A new bridge project has been present in the general development plans of the City of Dresden since 1862. In addition, the construction has been discussed several times in the City Council, notably in 1934-1937, 1967, 1978-1979 and 1988, but has never been implemented, due to either financial issues or a context of war. However, the project appeared again after the German reunification on 3 October 1990, and an international competition was launched in 1997. While the construction of the bridge was approved by the City Council

in 2000, the construction of the bridge started in 2007 and the bridge was opened for traffic on 26 August 2013. This Elbe River crossing represents the longest in the City of Dresden, and spans 635 metres at a point where the river itself has a width of 130 metres and where meadows of approximately 200 metres width can be found on both sides of the river. Furthermore, the bridge, situated 4 km south east from the historical centre, is located in the middle of a recreational area protected as a landscape conservation area under the regulations of the City of Dresden⁴, as well as by Saxon and German Federal laws⁵. Following the historical reconstruction of the conflict from the UNESCO perspective, some elements of the conflict from the German perspective are presented.

The Federal Republic of Germany ratified the World Heritage Convention on 23 November 1976 and the German Democratic Republic ratified the World Heritage Convention on 12 December 1988 (UNESCO 2014a). Following the ratification of the World Heritage Convention by the Federal Republic of Germany, this Convention was promulgated in the Federal Law Gazette on 26 February 1977⁶. Nevertheless, the World Heritage Convention has not been transferred in German national law (Ringbeck 2008) through an inner state ratification (Von Schorlemer 2008), as should have occurred according to art. 59 para. 2 Basic Law⁷. Consequently, a legal battle took place within the Federal Republic of Germany at local, regional and national level concerning the bindingness of the World Heritage Convention in the Federal Republic of Germany (Gaillard 2014:64). Subsequent to the fall of the Berlin Wall on 9 November 1989 and the German reunification on 3 October 1990, the five new *Länder*⁸ that were part of the German Democratic Republic and thus the City of Dresden accessed the Federal Republic of Germany and consequently the Basic Law. Thus, the two former German states united and have subsequently formed one sovereign state. This implies that ‘the Contracting Parties to the Unification Treaty ‘have agreed that the treaties and agreements to which the Federal

Republic of Germany is a contracting party... remain in force and that their respective rights and obligations... be applied” to the whole territory of Germany’ (UNESCO 2014a).

Even though the local communities were not involved throughout the preparation of the nomination for the Dresden Elbe Valley (Albert and Gaillard 2012) local movements of protest such as ‘*Welterbe erhalten*’ (to conserve the World Heritage status) and ‘*Robin Woods*’ (to impede the cutting down of trees at the location of the construction of the bridge) were initiated. Notably, a petition collected the sufficient number of signatures needed to implement a second referendum where the question of the construction of a bridge vs. a tunnel would have been asked to the inhabitants of Dresden (Gaillard 2014:57). Nevertheless, this second referendum was not organised and the result of the first referendum, i.e. the construction of the *Waldschlößchenbrücke*, dating from 27 February 2005 had legally to be implemented.

To summarise, the reduction of the perception of the Dresden Elbe Valley World Heritage Site to the typical Canaletto view (‘Florence on the Elbe’) contributed to the underestimation of the project of the bridge planned for approximately 150 years. In addition, the Federal Constitutional Court concluded that the referendum of 27 February 2005 prevailed over an international treaty such as the World Heritage Convention, thus the order was given to the local authorities to build the *Waldschlößchenbrücke* (Gaillard 2014:74). Furthermore, the lack of involvement of the local communities during the preparation of the nomination for the Dresden Elbe Valley may have negatively influenced the results of the referendum. In the brochure including the arguments for and against the *Waldschlößchenbrücke* provided by the City of Dresden prior to the referendum, no information was given about the implications of World Heritage Listing for future infrastructure development projects.

Legal background of the conflict between UNESCO and the Federal Republic of Germany

This section is dedicated to a discussion of the legal effects of World Heritage Listing in terms of listing and delisting. The legal analysis is equally extended to federal political systems and the involvement of local communities in relation to the World Heritage Convention (UNESCO 1972). Based on art. 3 of the World Heritage Convention⁹, the States Parties identify the cultural and natural heritage located on their territory which could fall under art. 1 and 2 of the World Heritage Convention¹⁰. Thus, the initiative of identification belongs to the States Parties, rather than the World Heritage Centre or World Heritage Committee. More than being an initiative, the identification and delineation represents a ‘central obligation under the Convention of all States Parties’ (Boer 2008a:86). In this sense, the State Party Germany identified the Dresden Elbe Valley as a potential World Heritage Site under art. 1¹¹.

However, according to art. 6 para. 1 of the World Heritage Convention¹², the international community is expected to cooperate in order to protect the heritage defined in art. 1 and 2¹³ while respecting the sovereignty of the States Parties. It can be argued that while the cooperation of the international community failed to protect the Outstanding Universal Value and integrity of the Dresden Elbe Valley, the sovereignty of the State Party Germany has been respected. The cooperation of the international community represented by the World Heritage Committee found an alternative solution: the construction of a tunnel rather than the *Waldschlößchenbrücke* in order to protect the Outstanding Universal Value and integrity of the Dresden Elbe Valley. However, as noted, a referendum¹⁴ took place in the City of Dresden on 27 February 2005, and despite a rather low rate of participants in the referendum (50.8%), a majority of the voters were in favour of the bridge (67.92%) (City of Dresden 2005). Consequently, the result of this referendum had to be implemented – thus the construction of the bridge – and in this sense, the

sovereignty of the State Party Germany has been respected.

Nevertheless, following the World Heritage Convention's art. 6 para. 3¹⁵ the States Parties do not take measures that could damage the heritage defined in art. 1 and 2.¹⁶ In this context, the authorities of the State Party Germany took measures that damaged the Dresden Elbe Valley cultural landscape. Indeed, authorising the construction of the *Waldschlößchenbrücke* in the core of the World Heritage Site destroyed the integrity and Outstanding Universal Value of the Dresden Elbe Valley according to the World Heritage Committee.

Regarding the decisions to list a site on the World Heritage List, transfer a World Heritage Site to the List of World Heritage in Danger and delist a World Heritage Site from the World Heritage List, the question of the requirement of the consent of the States Parties might be raised. In this context, another question might follow: is delisting possible?

On the basis of the World Heritage Convention's art. 11 para. 1¹⁷, the States Parties submit a Tentative List of the potential World Heritage Sites located on their territories, and, according to art. 11 para. 3¹⁸, the consent of the States Parties is required for the inclusion of a site on the World Heritage List.

Nevertheless, according to art. 11 para. 2 and 4 of the World Heritage Convention¹⁹ the World Heritage Committee 'establish[es], keep[s] up to date and publish[es]' (UNESCO 1972:6) the World Heritage List and the List of World Heritage in Danger respectively. The consent of the States Parties is not mentioned concerning the List of World Heritage in Danger, and the delisting of a World Heritage Site from the World Heritage List is not explicitly addressed in the World Heritage Convention. However, given that the World Heritage Committee is entitled to 'establish, keep up to date and publish' (UNESCO 1972:6) the World Heritage List and List of World Heritage in Danger, a World Heritage Site that has lost its Outstanding Universal Value and authenticity and/or integrity

might no longer appear in the updated World Heritage List (Buzzini and Condorelli 2008).

The World Heritage Convention comprises a federal clause for the States Parties which have a federal political system. Art. 34²⁰ thus applies to the Federal Republic of Germany and both paragraphs are relevant for the case of the Dresden Elbe Valley. The inscription of the Dresden Elbe Valley as a cultural landscape on the World Heritage List implied that the responsibilities for the protection of the Dresden Elbe Valley were shared between both the Federal Republic of Germany (national level) and the Free State of Saxony (one of the 16 *Länder* composing the Federal Republic of Germany) on the territory of which the Dresden Elbe Valley is located. This argumentation is based on the repartition of the competences between the Federal Republic of Germany and its *Länder* found in the Basic Law (Constitution of the Federal Republic of Germany). While the protection of nature and landscape management is a shared competence of the Federation and the *Länder* (Art. 74 Basic Law²¹) cultural matters are an exclusive competence of the *Länder* (Art. 70 Basic Law²²) (Gaillard 2014:93). Nevertheless, despite the repartition of competences between the Federation and its federated entities concerning the protection of cultural and natural heritage, it can be argued that the Federation, being a State Party to an international treaty (i.e. the World Heritage Convention), was primarily responsible to ensure the sustainable protection of the Dresden Elbe Valley.

As for the legal effects of the World Heritage Convention with regards to the local communities, only one provision of the World Heritage Convention mentions them. Indeed, States Parties are encouraged 'to adopt a general policy which aims to give the cultural and natural heritage a function in the life of the community' (art. 5 para. 1). It is in the *Operational Guidelines for the Implementation of the World Heritage Convention* (the so-called Operational Guidelines) that guidance concerning the involvement of local communities can be found. However the Operational Guidelines do not

have binding effects on the States Parties since they represent 'flexible working documents' (Von Schorlemer 2008:328) which are regularly revised based on the jurisprudence of the yearly sessions of the World Heritage Committee (Gaillard 2014:156). The Operational Guidelines can be seen as 'an administrative regulation in the sense of the notion used in German law' (Zacharias 2010:321).

To summarise, since legal effects of World Heritage Listing come with the inscription of a site on the World Heritage List, these represent a burden for the States Parties on the territory of which the World Heritage Sites are located. The Federal Republic of Germany was thus bound by the World Heritage Convention to protect the Outstanding Universal Value and integrity of the Dresden Elbe Valley, but this burden disappeared with the delisting of the Dresden Elbe Valley from the World Heritage List. Despite the repartition of competences between the Federal Republic of Germany and the Free State of Saxony for the protection of the Dresden Elbe Valley, both entities were requested to protect the Dresden Elbe Valley according to the federal clause of the World Heritage Convention²³. But legally the States Parties are not tied by the World Heritage Convention to involve the local communities in the nomination process.

Political aspects related to the case of the Dresden Elbe Valley

In this section, a political dimension is added to the discussion elaborated in this article. Despite the internationality and universality of this legal instrument ratified by 191 nations and the presence of 1007 World Heritage Sites on the World Heritage List as of June 2014 (UNESCO 2014a & b), the 40 year-old World Heritage Convention faces limits in terms of its internal application in the States Parties. In the case of the Dresden Elbe Valley, the primary goal of the World Heritage Convention – sustainably protecting and ensuring the transmission of the world's cultural and natural heritage to future generations – has failed.

During the conflict between UNESCO and the Federal Republic of Germany, the World Heritage Committee applied a political and diplomatic dispute settlement based on fact-findings (the Visual Impact Study), mediation (workshops, meetings, written communication, monitoring missions and progress reports) and negotiation (yearly sessions of the World Heritage Committee between 2006 and 2009) (Gaillard 2014:171). Since the political and diplomatic dispute settlement between the opposed parties failed, the Dresden Elbe Valley was delisted from the World Heritage List without the consent of the Federal Republic of Germany.

Furthermore, the Federal Republic of Germany has both shared and exclusive competences between different decision-making levels concerning the protection of natural and cultural heritage. This repartition of competences contributed to a conflictive decision-making concerning the *Waldschlößchenbrücke* at the different administrative levels. At some point during the conflict, a majority in the Dresden City Council was willing to protect the Dresden Elbe Valley World Heritage Site and thus searched for alternatives, i.e. the construction of a tunnel instead of a bridge. However, the Free State of Saxony supported the project of the *Waldschlößchenbrücke* even in the event of the delisting of the Dresden Elbe Valley from the World Heritage List. At the national level, the Federal Ministry of Transport, Building and Urban Development offered to provide the financial difference between the construction of a bridge and a tunnel in order to enable the protection of the Dresden Elbe Valley. Beyond the repartition of competences between the levels of authorities intra States Parties, it is the responsibility of the federal authorities to persuade the other levels to implement the provisions of the World Heritage Convention (Boer 2008b).

Finally, the local communities who are in permanent contact with their heritage were not involved in the preparation of the nomination of the Dresden Elbe Valley and were not informed about the meaning of the World Heritage

Convention and the impacts of World Heritage listing. Consequently, when the conflict arose between UNESCO and the State Party Germany following the referendum organised in 2005, the inhabitants of the City of Dresden started to take position for or against the project of the bridge. While some were convinced of the necessity of this bridge, others were willing to protect the World Heritage status. In this context, it can be concluded that involving the local communities in the preparation of the nomination files represents a crucial point for the sustainable protection of World Heritage Sites and would give heritage a meaning in the life of the communities, as regulated in the provisions of art. 5 of the World Heritage Convention²⁴. Although the World Heritage Convention does not mention the involvement of local communities for the nomination process of World Heritage Sites, the Global Strategy for a Representative, Balanced and Credible World Heritage List adopted by the World Heritage Committee in 1994 recognises the role of local communities in this regard. In addition, the Budapest Declaration (UNESCO 2002) identified the '5 C's' (credibility, conservation, capacity-building, communication, communities). In this context, the role of local communities in the implementation of the World Heritage Convention is emphasised in the UNESCO documents and policies related to the World Heritage Convention.

After having added the political dimension in this section in order to answer the questions raised in the introduction, all three dimensions – historical, legal and political – elaborated in this article are brought together in the following conclusion.

Conclusion

This article intended to elaborate a discussion concerning the legal effects of World Heritage Listing in light of the case of the Dresden Elbe Valley. In order to answer the questions raised in the introduction, an inter-disciplinary approach combining historical, legal and political perspectives has been adopted. Inscribing a site

on the World Heritage List brings legal effects for the State Party on the territory of which the site is located, thus representing a burden. In case of conflicts, as seen with the Dresden Elbe Valley, the World Heritage Convention enables the delisting of a World Heritage Site according to art. 11 of the World Heritage Convention. Even though the consent of the State Party is needed for the inscription of a site on the World Heritage List, the transfer to the List of World Heritage in Danger and the delisting from the World Heritage List do not require the consent of the State Party. While the World Heritage Convention comprises a federal clause (art. 34) for the States Parties that have federal political systems, the various actors involved in decision-making at different levels of the State Party might enter into conflict when different political interests prevail. The local communities might enable the sustainable protection of World Heritage Sites through their involvement in the nomination processes for World Heritage Sites. Making the local communities aware of the impacts of World Heritage listing would contribute to disseminating the necessary information in order to avoid conflicts later on.

Even though the case of the Dresden Elbe Valley is specific and does not permit a generalisation of the findings to other cases, the lessons learnt with this conflict should serve to ensure that in the future the nomination dossiers of potential World Heritage Sites are assessed carefully and the involvement of local communities is actively sought.

Notes

1. Decision 28 COM 14B.40 adopted at the 28th session of the World Heritage Committee, Suzhou, China.
2. Decision 30 COM 7B.77 adopted at the 30th session of the World Heritage Committee, Vilnius, Lithuania.
3. Decision 33 COM 7A.26 adopted at the 33rd session of the World Heritage Committee, Seville, Spain.
4. City of Dresden, 27 March 1997. *Satzung der Landeshauptstadt Dresden für das Denkmalschutzgebiet Elbhänge*. Dresden: Dresden Official Journal Nr. 13/97.
5. Sächsisches Naturschutzgesetz [SächsNatSchG] [Saxon Nature Conservation Act] 3 July 2007 (Saxon Law and Ordinance Gazette, p.110) and Bundesnaturschutzgesetz [BNatSchG] [Federal Nature Conservation Act] 29 July 2009, last amended on 6 February 2012 (Fed. Law Gazette I, p.148)
6. Fed. Law Gazette II, p.213.
7. Grundgesetz [GG] [Basic Law], art. 59 para. 2 ‘Treaties that regulate the political relations of the Federation or relate to subjects of federal legislation shall require the consent or participation, in the form of a federal law, of the bodies responsible in such a case for the enactment of federal law. In the case of executive agreements the provisions concerning the federal administration shall apply mutatis mutandis.’
8. The Federal Republic of Germany is composed of 16 States – *Länder* or *Bundesländer* – having their own constitution, government and parliament.
9. World Heritage Convention [WHC], art. 3, ‘It is for each State Party to this Convention to identify and delineate the different properties situated on its territory mentioned in Articles 1 and 2 above.’
10. World Heritage Convention [WHC], art. 1, ‘For the purpose of this Convention, the following shall be considered as “cultural heritage”: monuments: architectural works, works of monumental sculpture and painting, elements or structures of an archaeological nature, inscriptions, cave dwellings and combinations of features, which are of outstanding universal value from the point of view of history, art or science; groups of buildings: groups of separate or connected buildings which, because of their architecture, their homogeneity or their place in the landscape, are of outstanding universal value from the point of view of history, art or science; sites: works of man or the combined works of nature and man, and areas including archaeological sites which are of outstanding universal value from the historical, aesthetic, ethnological or anthropological point of view.’ and art. 2, “For the purposes of this Convention, the following shall be considered as “natural heritage”: natural features consisting of physical and biological formations or groups of such formations, which are of outstanding universal value from the aesthetic or scientific point of view; geological and physiographical formations and precisely delineated areas which constitute the habitat of threatened species of animals and plants of outstanding universal value from the point of view of science or conservation; natural sites or precisely delineated natural areas of outstanding universal value from the point of view of science, conservation or natural beauty.’
11. World Heritage Convention [WHC], art. 1 (note 10)
12. World Heritage Convention [WHC], art. 6 para. 1, ‘Whilst fully respecting the sovereignty of the States on whose territory the cultural and natural heritage mentioned in Articles 1 and 2 is situated, and without prejudice to property right provided by national legislation, the States Parties to this Convention recognize that such heritage constitutes a world heritage for whose protection it is the duty of the international community as a whole to co-operate.’
13. World Heritage Convention [WHC], art. 1 and 2 (note 10)
14. The participants in the referendum were asked to answer the following question: ‘Are you for the construction of the *Waldschlößchenbrücke*? – including the traffic course in the mapped representation -’
15. World Heritage Convention [WHC], art. 6 para. 3, “Each State Party to this Convention undertakes not to take any deliberate measures which might damage directly or indirectly the cultural and natural heritage referred to in Articles 1 and 2 situated on the territory of other States Parties to this Convention.’
16. World Heritage Convention [WHC], art. 1 and 2 (note 10)
17. World Heritage Convention [WHC], art. 11 para. 1, ‘Every State Party to this Convention shall, in so far as possible, submit to the World Heritage Committee an inventory of property forming part of the cultural and natural heritage, situated in its territory and suitable for inclusion in the list provided for in paragraph 2 of this Article. This inventory, which shall not be considered exhaustive, shall include documentation about the location of the property in question and its significance.’
18. World Heritage Convention [WHC], art. 11 para. 3, ‘The inclusion of a property in the World Heritage List requires the consent of the State concerned. The inclusion of a property situated in a territory, sovereignty or jurisdiction over which is claimed by more than one State shall in no way prejudice the rights of the parties to the dispute.’

19. World Heritage Convention [WHC], art. 11 para. 2, 'On the basis of the inventories submitted by States in accordance with paragraph 1, the Committee shall establish, keep up to date and publish, under the title of "World Heritage List," a list of properties forming part of the cultural heritage and natural heritage, as defined in Articles 1 and 2 of this Convention, which it considers as having outstanding universal value in terms of such criteria as it shall have established. An updated list shall be distributed at least every two years.' and art. 11 para. 4, 'The Committee shall establish, keep up to date and publish, whenever circumstances shall so require, under the title of "list of World Heritage in Danger", a list of the property appearing in the World Heritage List for the conservation of which major operations are necessary and for which assistance has been requested under this Convention. This list shall contain an estimate of the cost of such operations. The list may include only such property forming part of the cultural and natural heritage as is threatened by serious and specific dangers, such as the threat of disappearance caused by accelerated deterioration, large-scale public or private projects or rapid urban or tourist development projects; destruction caused by changes in the use or ownership of the land; major alterations due to unknown causes; abandonment for any reason whatsoever; the outbreak or the threat of an armed conflict; calamities and cataclysms; serious fires, earthquakes, landslides; volcanic eruptions; changes in water level, floods and tidal waves. The Committee may at any time, in case of urgent need, make a new entry in the List of World Heritage in Danger and publicize such entry immediately.'
20. World Heritage Convention [WHC], art. 34, 'The following provisions shall apply to those States Parties to this Convention which have a federal or non-unitary constitutional system: 1. with regard to the provisions of this Convention, the implementation of which comes under the legal jurisdiction of the federal or central legislative power, the obligations of the federal or central government shall be the same as for those States parties which are not federal States; 2. with regard to the provisions of this Convention, the implementation of which comes under the legal jurisdiction of individual constituent States, countries, provinces or cantons that are not obliged by the constitutional system of the federation to take legislative measures, the federal government shall inform the competent authorities of such States, countries, provinces or cantons of the said provisions, with its recommendation for their adoption.'
21. Grundgesetz [GG] [Basic Law], art. 74 '1) Concurrent legislative power shall extend to the following matters: [...] 29. protection of nature and landscape management [...] (2) Laws enacted pursuant to clauses 25 and 27 of paragraph (1) shall require the consent of the Bundesrat.'
22. Grundgesetz [GG] [Basic Law], art. 70, '(1) The *Länder* shall have the right to legislate insofar as this Basic Law does not confer legislative power on the Federation. (2) The division of authority between the Federation and the *Länder* shall be governed by the provisions of this Basic Law respecting exclusive and concurrent legislative powers.'
23. World Heritage Convention [WHC], art. 34 (note 20)
24. World Heritage Convention [WHC], art. 5, 'To ensure that effective and active measures are taken for the protection, conservation and presentation of the cultural and natural heritage situated on its territory, each State Party to this Convention shall endeavor, in so far as possible, and as appropriate for each country: (a) to adopt a general policy which aims to give the cultural and natural heritage a function in the life of the community and to integrate the protection of that heritage into comprehensive planning programmes; (b) to set up within its territories, where such services do not exist, one or more services for the protection, conservation and presentation of the cultural and natural heritage with an appropriate staff and possessing the means to discharge their functions; (c) to develop scientific and technical studies and research and to work out such operating methods as will make the State capable of counteracting the dangers that threaten its cultural or natural heritage; (d) to take the appropriate legal, scientific, technical, administrative and financial measures necessary for the identification, protection, conservation, presentation and rehabilitation of this heritage; and (e) to foster the establishment or development of national or regional centres for training in the protection, conservation and presentation of the cultural and natural heritage and to encourage scientific research in this field.'

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The UNESCO World Heritage system

– An additional impetus or obstacle for indigenous activism?

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*The 2013 Operational Guidelines to the World Heritage Convention neither recognize the rights of indigenous peoples to a satisfying degree nor do they ensure adequate involvement of indigenous peoples in the process leading to the nomination of a World Heritage site. Calls for reform have been issued from many corners and include **inter alia** a call for action issued by an Expert Workshop in 2012, proposing amendments to the Guidelines. While the amendments concerned the 2012 version of the guidelines, the suggested changes are still relevant for the current version of the guidelines as nothing has changed in the respective areas (yet). These amendments have the aim of narrowing the gap between the convention system and current standards of indigenous rights in international law. This article analyses whether the proposed amendments, if introduced, would also have an impact on indigenous cultural lobbying and contrasts this with the effect of the current guidelines on indigenous cultural lobbying in selected areas. As a framework of analysis, Ronald Niezen's theory on social activism, which views the public as a central element in the advancement of rights through activism, is used.*

Introduction

"If law in its myriad forms is exercised through systematic argument and judgment, **then cultural rights entail the presentation of arguments concerning the right to preserve a culture.** More significantly, it entails judgments in response to those arguments, involving **popular will.** Collective rights are commonly asserted through **strategically oriented and organized representation of culture,** with emphasis on the

distinctiveness of rights claimants, juxtaposed with the injustice that threatens this difference. **Cultural lobbying has thus overtaken ethnography ... as the essential vehicle for the transmission of ideas about human difference.**" (Niezen 2010:68; emphasis added)

The 2013 *Operational Guidelines to the World Heritage Convention* neither recognize the rights of indigenous peoples to a satisfying degree nor do they ensure adequate involvement of indigenous peoples in the process leading to the nomination of a World Heritage site. Neither the United Nations Declaration on the Rights of Indigenous Peoples nor cultural rights of indigenous peoples originating in the international bill of rights are sufficiently respected (UNPFII 2013). The status quo has already affected a number of indigenous communities negatively (Desmet 2011:15; IWGIA 2013:9, 12, 15). This negative influence will most likely continue in the future unless the weaknesses in the convention system are remedied.

Awareness of the need to involve local communities – including, in some cases, indigenous people – has certainly grown on the international level since the early years of the Convention, i.e. within IUCN in the case of protected areas (Desmet 2011:138-144; within UNESCO Hølleland 2013:197). This has created a space for reform and calls for reform have been plentiful, recognizing the need to protect indigenous cultural rights. Previous attempts at securing indigenous participation included several conferences on indigenous heritage and an attempt to create an indigenous advisory body (WHIPCOE), which is explored further in section IV. Most recently, these attempts resulted in a meeting of international experts in Copenhagen in 2012 (the International Expert Workshop on the World Heritage Convention and Indigenous Peoples). They proposed a number of amendments to the 2012 Operational Guidelines in order to ensure adequate involvement of indigenous peoples.

So far the World Heritage Committee has merely ‘encouraged’ State Parties to respect indigenous rights (UNESCO 2011). No corresponding changes have been made to its own operational guidelines at this point. This has resulted in a rather paradoxical state of affairs, where the Convention is not only not in accordance with international human rights standards, but where State Parties have

been called upon to act without the Committee having made the necessary alterations in its own procedure. The World Heritage Committee did, however, react to calls for reforms in the summer of 2013. The Consultative Body on Operational Guidelines has been asked ‘to consider any implications for future revisions of the Operational Guidelines’ (UNESCO 2013a). Moreover, it decided to ‘re-examine the expert recommendations’ in light of the discussions on a potential future UNESCO Policy on indigenous peoples (UNESCO 2013b), the drafting of which began at the end of 2011 (Anaya 2011). In light of these decisions, it has to be acknowledged that necessary changes may very well come into existence soon, but the degree to which indigenous cultural rights will be protected by the outcome of this process is still uncertain.

The lack of protection of indigenous cultural rights through the World Heritage system raises the question of which alternatives of either protecting or strengthening indigenous cultural rights exist within the heritage system. This article proceeds on the assumption that cultural lobbying, while having drawbacks, is one of the options which could result in strengthening indigenous cultural rights. It therefore seeks to explore to what extent the World Heritage system – and in particular the guidelines – allow for, strengthen or weaken indigenous cultural lobbying on the national or international level. Of course, the degree of indigenous and/or local participation on the national level depends *inter alia* on national laws on conservation, heritage and indigenous people; regional and state politics in particular as well as the position of indigenous people in the respective country in general.

Given that the relationship between the World Heritage System and cultural lobbying could be contemplated from manifold angles, the author has made a number of choices for the adopted methodology: As has been laid out above, the expert recommendations could very well still come into being. The article therefore contrasts the expert recommendations with the status quo. Due to the number of amendments and the limited space available, a selection of three

specific amendments was made which reflect the variety of changes proposed: from the creation of an additional body (indigenous advisory body) over the inclusion of free, prior and informed consent to specific changes on the textual level by including the reference to indigenous peoples as rights-holders. Moreover, the article takes Ronald Niezen's theory on cultural lobbying and social activism as a starting point in order to judge whether the amendments would favour indigenous activism and to highlight the consequence of the current wording of the operational guidelines. His theory on cultural lobbying will be set out in more detail in the following section, before the effect of the World Heritage Convention on indigenous cultural lobbying can be addressed in section III and the changes to the operational guidelines be contrasted with the status quo (and the past attempt at creating WHIPCOE) in section IV.

Niezen's theory on the role of the public in social activism and cultural lobbying

Before Niezen's theory can be described in more detail, four terms which are central to this article require further definition: World Heritage System, indigenous peoples, cultural lobbying and social activism. The *World Heritage System* has both a procedural and an institutional dimension. The procedural dimension includes the 1972 Convention itself, the Operational Guidelines, as well as relevant decisions made by the World Heritage Committee (UNESCO 1972, 2013c). The institutional dimension includes the World Heritage Committee itself, its Working Committee - the Bureau as well as non-governmental organizations in so far as they are fulfilling advisory functions as ICOMOS and IUCN do. These advisory functions in turn are to a large degree determined by the procedural dimension of the system.

On the international law level, a definition of the term *indigenous peoples* is lacking – and consciously so (UNPFII 2004). However, one of the most influential definitions and the one 'most commonly accepted' in the terms of UNPFII

(also for practical purposes) is the one provided by Martinez Cobo. It describes indigenous peoples as peoples who have a

Historical continuity with pre-invasion/colonial societies that developed on their territories, [who] consider themselves **distinct from other sectors of society** now prevailing on those territories, or parts of them. They form at present non-dominant sectors of society and are **determined to preserve, develop and transmit** to future generations **ancestral territories and ethnic identity** in accordance with their **own cultural patterns, social institutions and legal systems** ... On an individual basis, an indigenous person is one who belongs to these indigenous populations through **self-identification** as indigenous and ... acceptance by the group. (J.R. Martinez Cobo 1986/1987: §§ 379-382 emphasis added)

Cultural lobbying - as understood in this paper - seeks to realize the right to preserve a culture. It is therefore a specific form of *social activism*, which in turn seeks to ensure that those sectors of society which are discriminated against on grounds such as race, religion, gender, sexual orientation or disability receive the benefits of rights and prosperity equal to the rest of society, usually through vigorous campaigning (Niezen 2009:6; Oxford Online Dictionary).

Niezen's theory on social activism seems to proceed based on four central assumptions: First, activism is geared towards political or social change. Since its focus lies on the change to be achieved, activism will use a method which is perceived to increase the likelihood of said change coming into being. Second, the State remains the actor which can adjust the legal position of a group (which then in turn can bring a number of benefits). As a consequence, the form of social activism which is directed towards rights rather than humanitarian assistance (the goal of which is more immediate relief) will try to reach and convince the State (as well as international organizations) to create or further develop rights. Third, States do not necessarily desire a change in the position of marginalized peoples; the status quo could (for a number of reasons)

be beneficial to them. Fourth, the ‘public’ – if sufficiently engaged – can help to pressure the State into changing its position on a given issue. Consequently, activists employ their methods with the long-term goal of change but the more immediate goal of engaging the ‘public’. In order to reach the public, activism employs the media. This threshold of ‘sufficiently engaged’ can be most easily reached when sufficient indignation is stimulated (Niezen 2009:6-7).

As a consequence of these assumptions, as well as due to the nature of and the constraints inherent in the media, it follows that there are essentially two forms of social (justice) activism. The first one emphasizes the (social) suffering of a group. The second form is characterized by claims of cultural distinctiveness seeking the cultural survival of the group; it is in its essence a form of cultural lobbying. Here, Niezen distinguishes several factors which will contribute to the successfulness of one’s claim to cultural survival: First, the ‘distinctiveness’ of the claimant i.e. the group. The eye of the ‘public’ needs to be caught as it is confronted daily with manifold claims for support from various sources. Traditional clothing and rituals thus become vehicles to distinguish a group from other cultures which may or may not seek similar protection. Second, the group needs to demonstrate its ‘worthiness’ in the eye of the general public (Niezen 2009:92-93). In Niezen’s view, the indigenous peoples movement in general has benefited from a perceived ethos of spirituality, as well as a way of life which favours sustainability (Niezen 2009:41; Niezen 2010:113-114, 125-129). Third, if a specific claim is perceived to be able to benefit either the wider public or other groups of society, the chances of success for the group in question increase (Niezen 2009:92-93). Having laid out the theory which sets the framework of analysis it is now time to apply it to the basis of the World Heritage system, the convention of 1972.

The World Heritage Convention 1972

In the World Heritage Convention, the State Party is the locus of power for the determination of cultural heritage of value to all humankind. In light of the fact that the Convention was adopted in 1972, this statement is a predictable one. It may even appear banal. According to art.3 World Heritage Convention, the State Party is responsible for identifying and delineating the different properties situated on its territory. Art. 4 states ‘[e]ach State Party to this Convention recognizes that the duty of ensuring the identification, protection, conservation, presentation and transmission to future generations of the cultural and natural heritage ... situated on its territory, belongs primarily to that State’. Nonetheless, this allocation of responsibility does become problematic where it is used to deny a group (or individual) its access to cultural heritage and thus negatively affects related human rights such as art.15 of the International Covenant on Economic, Social and Cultural Rights or art.27 of the International Covenant on Civil and Political Rights (UNHRC 2011:§10; on relationship between human rights and heritage Logan 2012:233-235).

This governmental power remains largely unaffected in the nomination process - indigenous peoples are simply not mentioned. The World Heritage Committee, which adopts the final decisions, consists of a selection of State Party representatives elected by the assembly of State Parties at large. However, non-state input by experts into the nomination process should be highlighted. It is primarily provided by the non-governmental organizations ICOMOS and IUCN, which have been given an advisory function. Irrespective of this state-focus of the convention itself, art. 5 World Heritage Convention is relevant to indigenous cultural lobbying for two reasons: Its paragraph (a) requires a State Party ‘to adopt a general policy which aims to give the cultural and natural heritage a function in the life of the community and to integrate the protection of that heritage into comprehensive planning programmes’.

In relation to heritage of an indigenous or mixed-indigenous nature, the consultation of indigenous peoples and involvement in the management would ensure that the heritage in question does indeed fulfil a 'function in the life of the community'. Their involvement and advice could facilitate a translation of the meaning of the specific heritage into a non-indigenous context. Indigenous involvement would then constitute a benefit to the public. This in turn might strengthen cultural lobbying on the national level. Of course, the language of the paragraph is a soft one, merely requiring the 'adoption' of a policy which should 'aim' at involving the community.

Art. 5 (b) in contrast seeks to ensure that 'appropriate' personal and administrative expertise is in place to protect, conserve and present the heritage in question. The term 'appropriate' may - in a very generous interpretation of the text - be used to argue that preference should be given to the employment of indigenous staff for sites of a mixed or purely indigenous character. However, in both cases indigenous claims would rely on such a broad, generous interpretation of the wording of the convention in light of the contemporary state of international law. Precise rights could not be deduced from the article. Even more disconcerting is the fact that Art.5 itself is phrased in soft terms. State Parties merely commit themselves to the measures listed to the extent that is possible in and appropriate to their country. In sum, there is nothing in the convention itself on which indigenous cultural lobbyists could base *specific* claims to cultural survival.

This being said, the main operationalization of the convention occurs by means of the regularly updated operational guidelines. Indeed, in recent years the problematic lack of local consultation (both of indigenous peoples and local communities) has abated a little. A nomination which is purely driven by State Party interests will have difficulties in succeeding if local support is missing completely. This international recognition of the need to involve local communities has been described by Hølleland as

a legacy of New Zealand to the World Heritage Committee after experiences in the Pacific, especially with the World Heritage Area of Tongariro National Park (Hølleland 2013:197). One example of the advantageous impression indigenous participation on the national level can have on the international level is in the case of the Laponian World Heritage Area, after the relatively late addition of Saami cultural values to the application (Dahlström 2003:241-258, 261). A case in Queensland, Australia, in turn is illustrative for how international processes can be viewed as a tool by indigenous people on the national level. There, government representatives of both the regional and the federal level have emphasized that 'a nomination will not proceed without consent of the Traditional Owners' (Hales et al. 2013:277). This promise does not necessarily imply the consent of the indigenous representative body in the region, which was using its free, prior and informed consent in the lobbying against another national law (Hales et al. 2013:277-78).

The involvement of *local* communities has also found its way into the written body supporting the World Heritage System through the Operational Guidelines. They are (in their most recent form at the time of writing this article) the focus of the following section and are contrasted with the selected amendments as proposed by the expert recommendations.

Expert recommendations and the Operational Guidelines 2013

While, as previously observed, local communities have become more involved, the matter of who is included in the respective community varies. It is a very flexible concept, and –depending on State practice – need not necessarily include indigenous peoples. By contrast, the expert recommendations seek to ensure the participation of indigenous peoples in all stages of the nomination, listing and monitoring process. As was mentioned in the introduction, this article focusses on three amendments: the creation of an indigenous advisory body, the inclusion of free,

prior and informed consent and the inclusion of the term 'rights-holder'.

The creation of an indigenous advisory body

The recommendations stress the need to create an indigenous advisory body several times. In the general principles section, the experts call for 'effective, direct, and meaningful representation and participation of indigenous peoples at all stages and levels of decision-making related to the World Heritage Convention'. This is later specified and they ask the World Heritage Committee to establish 'an advisory mechanism consisting of Indigenous experts ... to ensure that all actions related to the World Heritage Convention uphold the rights of Indigenous peoples' (Expert Workshop 2012: actions and measures §4).

In discussing this proposal, a similar (if failed) attempt to create an indigenous advisory body has to be explored. It involved the creation of WHIPCOE, The World Heritage Indigenous Peoples Council of Experts. The idea of WHIPCOE arose during the World Heritage Indigenous Peoples Forum which took place alongside the 24th session of the World Heritage Committee, in November 2000 (UNESCO 2001a:1). It was to have a purely indigenous mandate focussing on those World Heritage Sites which held indigenous values. Its members would have been indigenous people 'associated with each qualifying World Heritage area and the State Party involved' and originally were to be nominated by indigenous people associated with the relevant World Heritage area (UNESCO 2001a:8). This would have placed considerable power in the hands of indigenous people. It is not surprising that after questions raised by France on this point after the distribution of the proposal by circular letter (UNESCO2001b: France, point 2) this changed. The amended proposal submitted in December proposes WHIPCOE membership to be 'inclusive and representative ... WHIPCOE include Indigenous people, **nominated by States Parties**' (UNESCO 2001c: II.4 emphasis added). However, even with the changes made, a

year later during the 25th Session the Committee decided not to approve the establishment of WHIPCOE (UNESCO 2002: XV.5). The reasoning given in the report itself was vague:

The Committee raised a number of **legal concerns** and **issues relating to the funding, legal status, role and relationships** (with the States Parties, Advisory Bodies, World Heritage Committee and World Heritage Centre). Some members of the Committee questioned the definition of indigenous peoples and the relevance of such a distinction in different regions of the world. (WHC 2002: XV.5 emphasis added)

It is this author's contention that this rejection can best be understood against the background of the responses sent by State Parties in the previous year. Finland, while supporting the proposal as such, had raised concerns as to its funding and relationship with UNPFII which was in the process of being created at the time. It was a member of the World Heritage Committee at the time (UNESCO 2002:71). Israel, mostly refrained from comment but raised doubts as to the definition of 'indigenous'. While the proposal was supported by some States i.e. Australia, Mexico – which was also part of the Committee – and New Zealand (UNESCO 2001a; UNESCO 2002:73), this seems not to have been sufficient to override other concerns. Interestingly, the U.S. refrained from commenting in substance in response to the circular letter. The most detailed list of objections was sent by France and its concerns were apparently shared by other State Parties. This interpretation of the World Heritage Committee's decision is based on the fact that the wording of the decision cited above echoes the problems initially raised by France (UNESCO 2001b: France, point 3). It had raised a number of concerns, including a potential overlap with the UNPFII and the advisory bodies already in existence, more general questions of institutional coherence and the potential funding of the Council. Perhaps the most telling objection for present purposes was raised on the grounds of State sovereignty. France argued that '[t]he questions raised should be resolved in the

framework of the Rules and Procedures of the States Parties concerned. It is for the **authorities of these States** to establish discussion groups aiming at an improvement, if necessary, of the participation of indigenous peoples' (UNESCO 2001b: France point 2 emphasis added).

The establishment of an indigenous advisory body as proposed by the Expert Workshop would possibly have the biggest impact on indigenous cultural lobbying. In combination with the call to 'ensure that historical and ongoing infringements of human rights ... are identified and addressed through periodic reporting, management and reactive monitoring' it would give the World Heritage Listing process the additional function of a forum for indigenous (human rights) complaints, so long as the complaints have their origins in actions of State Parties involving a (potential) World Heritage site. This partial transformation of the World Heritage Committee into a platform for indigenous peoples to voice their claims for cultural survival would create an additional layer of international control. It would also increase chances of media scrutiny of governmental action on the national level.

Nevertheless, it has to be highlighted that such a body has not come into being as of today, despite the described attempt in 2001 and calls for the establishment of mechanisms to ensure active participations of indigenous peoples having been made by the UN General Assembly in 2005 (IWGIA 2013:16). Moreover, the failure of WHIPCOE seems not only to be the result of the specific form proposed at the time, but also the attempt to create an additional advisory body per se, especially one which would increase the power and influence of a population group vis-à-vis the government at the national level. Therefore, it does at least not appear very likely that this reluctance by the World Heritage Committee – and ultimately the State Parties themselves – will change in the immediate future. Rössler, by contrast, citing *inter alia* the focus on local communities in the 40th anniversary proceedings of the convention, seems to view the chances for a future involvement of indigenous people at the international level

slightly more optimistically (Rössler as cited by IWGIA 2013:13). In any event, for so long as an appropriate forum on the international level is lacking, the pressure on cultural lobbying on the national level to succeed in convincing first the public and ultimately the state increases.

Free, prior and informed consent

Apart from the proclamation of more general principles, desired actions and measures, the Expert Workshop also provided a number of specific textual amendments aimed at ensuring indigenous free, prior and informed consent. This is a key principle; its inclusion would contribute significantly to bringing the Convention practice in line with the United Nations Declaration on the Rights of Indigenous Peoples (Art.19 UNDRIP). It would also respond to demands made by indigenous representatives during the 10th session of the United Nations Permanent Forum on Indigenous Issues and in the literature (Hales et al 2013:271-273). Its introduction would also be in line with demands from human rights treaty bodies which have requested State Parties to respect the principle vis-à-vis indigenous people, albeit mostly in the context of resource and land rights (i.e. in the case of New Zealand UNCESCR 2012: §11; more generally Desmet 2011:317-324). This persisting gap between indigenous (and other human) rights on the one hand and heritage conservation, protection and management on the other hand is a problem in and of itself. It is all the more problematic for the fact that Special Rapporteur Shaheed has viewed the 'access to and enjoyment of cultural heritage as a human right as a *necessary and complementary approach to the preservation/safeguarding of cultural heritage*' (UNHRC 2011:§2).

The amendments also foresee the inclusion of the United Nations Declaration on the Rights of Indigenous Peoples in the list of conventions which relate to the protection of cultural and natural heritage. Even more importantly, an obligation to obtain the free, prior and informed consent of indigenous peoples would

be established where the properties affect their lands, territories or resources prior to the official nomination of the property for inscription on the World Heritage List (Expert Workshop 2012: new § I.J. 44, new §§ III.A 123, 126, new § III.B.130,132). This would be combined with a control mechanism, by granting the Advisory Bodies of IUCN/ ICOMOS the power to evaluate the nomination for completeness, to check whether indigenous peoples' free, prior and informed consent had been given (Expert Workshop 2012: new § III.E 143, new listing/nomination forms). As an additional safety valve, the World Heritage Committee would be obliged to ensure that no further sites were listed without the necessary free, prior and informed consent (Expert Workshop 2012: actions and measures §2).

The addition of the United Nations Declaration on the Rights of Indigenous Peoples to the list of instruments relating to the protection of cultural and natural heritage would provide indigenous peoples with a basis for emphasizing the need that the state adhere to international human rights standards, also in relation to cultural heritage. The failure to include the declaration so far (which would not have, in any form, changed the actual legal obligations of a state) highlights how very reluctant State Parties are to include indigenous peoples in the nomination/listing process. Instead, a significant number of them seem satisfied with the status quo which includes (the potential for further) human rights violations surrounding the listing process.

As far as the obligation to obtain free, prior and informed consent regarding the nomination of a property is concerned, this could provide indigenous peoples with a bargaining tool to negotiate for the shared management of a site. This is at least the case for those States which wish to appear to act in accordance with the World Heritage Convention. On the national level it could be used to strengthen claims as to the distinctiveness of the group since it would emphasize the importance of the *indigenous* character of a site considered not only of national but global importance. This in turn would further

claims as to the distinctiveness of the culture, thereby strengthening cultural lobbying efforts. On top of this, indigenous peoples would have a real benefit to trade in exchange for claims surrounding the right to preserve their culture. Without their consent, specific property could not be listed, decreasing chances of both tourism as well as financial support for the conservation of the property in times of crises. Here, the power of the Advisory Bodies to screen a nomination becomes essential. Experts from these bodies will in all likelihood be more interested in a thorough examination of the nomination process than some of the State Parties sitting on the World Heritage Committee, which have to keep the political climate in mind when taking a decision. Setting such political concerns aside, it has to be observed that the World Heritage Committee itself would not have the resources to check if the declaration by a state that indigenous peoples had given their free, prior and informed consent was indeed correct. They would merely be able to see whether it appeared as if such a consultation process had taken place (IWGIA 2013). The practical impact of the amendments would thus very much depend on state practice and the work of the advisory bodies.

The Operational Guidelines 2013 do not feature an approach comparable to the expert recommendations. Three obstacles stand in the way of such changes. First, the inherent resistance on the side of the state to accept an additional level of international control – a reluctance which already became apparent in section IV.2. Second, the fact that such changes would certainly affect the power relationship between indigenous peoples and the state on the national level in favour of indigenous communities. Third, the lack of such changes is in line with more general policies of those State Parties that deny the existence of any indigenous peoples on their territory in relationship to human rights treaties (UNDESA 2009:180).

Indigenous peoples as 'rights-holders'

A further change advocated by the Expert Workshop would have been the reference to indigenous peoples as rights-holders and the inclusion of said term in a number of provisions in the Operational Guidelines (Expert Workshop 2012: i.e. new § I.A.3(e), new § I.C.12, new §II.C.64). This proposal clearly evidences the difference in attitudes between the Operational Guidelines 2012/2013 and the expert recommendations. The insertion of rights-holders in the group of key users of Operation Guidelines was motivated by the wish to emphasize that indigenous peoples possess the right to self-determination (Expert Workshop 2012: general principles). It would have increased the distinctiveness of indigenous peoples in contrast to other stakeholders.

By contrast, the way the operation guidelines are phrased at the moment is beneficial to the state but detrimental to indigenous peoples. The state remains the locus of power in the selection and protection process, which mirrors the more general 'power differentials' between State and (indigenous) communities (UNHRC 2011:§10). To anyone who is only slightly familiar with the drafting process of the United Nations Declaration on the Rights of Indigenous Peoples, this is not surprising. The inclusion of the right to self-determination was an obstacle of considerable height which had to be overcome prior the adoption of the declaration (Anaya 2004:110-111). This reluctance of State Parties to recognize an indigenous right to self-determination may very well present a similar hurdle for the recognition of indigenous peoples as 'rights-holders' in relation to the World Heritage Convention. Anaya, however, argues that a shift in the approach of State Parties did occur during the drafting of the United Nations Declaration on the Rights of Indigenous Peoples and seems to view remaining tension more as 'rhetorical sensitivity' than an actual rejection of the substance underlying the concept of indigenous self-determination (Anaya 2004:113). As far as the potential effect of this

term on the cultural lobbying of indigenous peoples is concerned, it has to be observed that their recognition as a group which holds distinct rights in relation to World Heritage would legitimize not only a claim to participation in the management of relevant heritage sites but could also be used to further a more general claim to cultural survival. A term such as 'rights-holders' holds an almost inherent notion of 'worthiness', at least where claims based on (cultural) rights are concerned. The present formulation of 'local communities' in the Operational Guidelines 2013, under which indigenous peoples can be subsumed, falls short of this on both accounts.

Conclusion

The conference for which this paper was prepared was entitled 'Between Dream and Reality: Debating the Impact of World Heritage' – the underlying question apparent: Does World Heritage listing have an impact, if any at all? In relation to indigenous peoples, case studies over the past years have emphasized that the potential impact so far has indeed been very real and frequently negative (exceptions i.e. IWGIA 2013:52). Not only has this been realized by multiple human rights actors (as observed in the introduction) but efforts have been made in an attempt to bring the listing process in line with the United Nations Declaration on the Rights of Indigenous Peoples and potentially change the impact of the convention on indigenous peoples into a more positive one.

At the outset of the paper, it was asked to what extent the current heritage system creates a space for indigenous activism – and what would be different if the amendments were to be adopted. As was shown, if the amendments are adopted, they will not only strengthen the protection of cultural rights themselves but also create a forum for indigenous concerns to be heard within the heritage system. Moreover, in terms of Niezen's theory on cultural lobbying, factors exist which would strengthen indigenous activism: The amendments would aid indigenous efforts to highlight the distinctiveness of their

culture. Potentially, the amendments could entail the use of indigenous free, prior and informed consent as a bargaining tool to ensure indigenous participation in the management of sites where the state is reluctant to create a platform for a more integrated site management.

However, at present these observations remain guesswork. Instead, the current state of affairs has a double negative impact on indigenous cultural lobbying on the national level. No indigenous advisory committee exists and neither the advisory bodies nor the World Heritage Committee have been granted the necessary powers to ensure that indigenous rights were respected on the national level in the process leading to the nomination. Thus it is impossible to react to human rights violations immediately on the international level, meaning prior to the inscription of a suggested site on the list of World Heritage. As a result of this, the pressure on cultural lobbying to succeed in either convincing the public to step in against the state where violations occur or to aid indigenous peoples in the securing protection of their culture on the national level is immense. Moreover, there is little in the convention or the current operational guidelines which could be used to strengthen the rhetoric of cultural claims by indigenous peoples on the national level. This is not to say that an inclusive approach towards indigenous World Heritage is made impossible, but it depends on the willingness of the State Party and other relevant stakeholders to pursue such a more integrative approach towards heritage and its management.

It can therefore be observed that the World Heritage Convention and the Operational Guidelines 2013 do not strengthen indigenous cultural lobbying on the national level nor give it an additional forum in which to act on the international level. Instead they increase the pressure for cultural lobbying to succeed on the national level. The refusal to take the indigenous character of indigenous properties into account in the Operational Guidelines, further results in increased difficulty for indigenous peoples to prove their distinctiveness and the worthiness

of their claim to 'their' heritage on the national level. The mere fact that State Parties are encouraged by the World Heritage Committee to consult indigenous peoples is not a sufficient basis for them to phrase their claims for inclusion in the listing process in a rights-based language. Indeed, the current state of affairs reflects observations made by Niezen in the context of the indigenous movement in general: The formation of a self-aware global indigenous community has by far outgrown the very slow-paced development of international institutions (Niezen 2009:41). This (understandably) increases the chances of the further disillusionment of indigenous communities worldwide with the efforts of UNESCO in general and the World Heritage Centre and Committee in particular. It is therefore crucial that the current efforts of 'reconsidering' the expert bear fruit if the World Heritage machinery does not want to lose all confidence of a part of the world's population which has been contributing to the creation and/or caretaking of our shared World Heritage for a considerable time.

Notes

- 1 This article was written in late 2013 and edited in spring 2014. Later developments could not be taken into account.

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Exploring heritage lives: indigenous peoples in World Heritage sites

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In this article, two anthropologists with diverse backgrounds, including indigenous studies, heritage and nature management, as well as social studies of science, test the postcolonial view of World Heritage. World Heritage landscapes are introduced as a scarce commodity in need of protection, and as sites that deserve a place within a global museum (Meskell 2002a). We investigate what happens when this uniqueness and need for protection is no longer approached as real but rather as socially constructed or ontologically co-produced. We examine how these particular landscapes are created and maintained. The wide circulation and relevance of World Heritage is made possible by three kinds of knowledge regimes: those of loss, mapping and auditing. This gives World Heritage an infinite scalable and world-encompassing quality. As the World Heritage machinery transforms from a colonial to a postcolonial project, new opportunities arise. Awareness of the constructedness of World Heritage may provide new reflexivity, and opportunities for more inclusive management. The question is whether such insights are enough. We investigate the postcolonial interface between World Heritage and indigenous lives with reference to World Heritage Sites in Alaska and in Swedish Sápmi.

Introduction

This paper approaches World Heritage as a construction process, a coming-into-being of particular kinds of landscapes that represent a scarce commodity in need of protection; sites, as Lynn Meskell says, that deserve a place within a global museum (Meskell 2002a). We will explore how these particular sites are created and the ways in which they are put into circulation. Our primary interest is the possibility of postcolonial

heritage regimes, and how indigenous land is dealt with within such World Heritage processes. We consider the interface created by processes of co-management, based on different historical and cultural narratives. These narratives are approached as practiced, and with a symmetrical focus, taking care to explain conflicting viewpoints in the same terms (Callon 1986:196). By way of a similar approach, Cruikshank

(2001:378) has asserted: 'The [...] crevasses separating these respective narratives seem so deep that they rarely intersect.' Our question, then, is whether co-management of indigenous sites is at all possible. We will investigate these issues with reference to two World Heritage Sites: Kluane/Wrangell-St Elias/Tatshenshini-Alsek in Alaska and Lapponia in Swedish Sápmi.

The many uses of heritage

Our interest in World Heritage came as a result of the work one of us, Ween, has done with indigenous groups that, in various ways, engaged with heritage issues. In the small coastal town of Broome, Australia, in the 1990s, local Aboriginal groups were able to use Aboriginal heritage legislation to gain control of town planning. The area was then on the brink of excessive tourist development. Not only were Aboriginal groups, through the local Land Council, able to secure significant sacred sites, but they were also able to secure co-management, employment and economic benefits. A similar process took place in Norway, where the Southern Sámi heritage movement was brought into being when the Norwegian Heritage Act was revised in the late 1970s. The Sámi were able to make use of this revised act to develop a new heritage methodology, create a folk movement, build institutions, and, through excessive registration of heritage sites, reclaim the landscape and their own history, thereby making themselves stakeholders in local area development (Ween 2010, 2012).

From these stories, we have learned a number of important points of relevance to this paper.

- Heritage is produced and reproduced.
- A number of practices and processes are involved in this production.
- Heritage intervenes in existing landscapes and histories.
- Heritage is never just heritage. What is interesting is what heritage does in particular contexts, what it can be used for.

Claiming that heritage is produced conduces what we might call a basic realist impulse: Surely we cannot merely produce our heritage when we are products of our heritage, or at least products of the natural and cultural history that our heritage testifies to. So, how can we both produce our heritage and be products of it?

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Crudely put, the commonsensical and modernist answer to this question is easy: Heritage points to an objective history that has made us what we are. Our understanding of this heritage is constructed by us and we know that it is shaped by our present-day political, cultural, and economic conditions. This answer reflects an ontology of realism and an epistemology of social constructivism. Note that here we do not think of 'social constructivism' as a theoretical position within the social sciences, as in Berger and Luckman's (1966) *Social Construction of Reality*, but in a common, realist sense: All realists know that the map is not the territory, and that it is made in accordance with social conventions.

The production of heritage, including World Heritage, has changed many times since its first colonial manifestations. From its original position, based on a colonial and European regime of protection and map-making (Byrne 2008), there have been changes toward greater reflexivity, including increased awareness of various political and cultural 'biases' in the social construction of 'heritage'. We may say that these changes are early instances of what Helen Verran has termed postcolonial moments (Verran 2002). Such early postcolonial events within the UNESCO system include the acknowledgement of people in parks, the introduction of the 'Man in the Biosphere model' (UNESCO 1971), the introduction of indigenous lands as cultural landscapes in the World Heritage Convention in

1992 (UNESCO 2013a), IUCN's introduction of co-management (IUCN 1999), as well as an ICOMOS' understanding of nature as sacred sites (ICOMOS 2005). These changes have been supported by academic writings on how human practice makes particular landscapes (see for example Ingold 2000). Falling short of Ingoldian insights, such early attempts to introduce 'Man' and his (sic) cultural products as aspects of natural parks did not question the basic realist assumption that when it came to protecting nature, the nature to be protected is still the real nature that can be mapped by the scientific measures of conservation biology.

Now, we might well acknowledge the moves away from colonial protectionism within the World Heritage system, but the cases we present challenge the existing ways of producing World Heritage more profoundly. Indigenous people in our two examples are interesting because they live in, and partly produce, a different reality than the one mapped through realist biology. If these sites are to be protected by the status of World Heritage in ways that both grant indigenous people rights to live in these sites and take the protection of these co-productions seriously, then the alternative ontologies of these people have to be respected.

This questions the realism of most conservation biology, but we should also note that it questions social constructivism. People have continuously created both the material reality and their understanding of it. Thus, we must make an ontological turn, and not only study different social constructions of an ancient reality, including their political or cultural 'biases', but we must also understand the production of these very realities.

There is an important difference between our ontological turn, on the one side, and the social constructivist epistemology and realist ontology on the other, namely their scalability (Tsing 2012). World Heritage is administered by a set of global conventions, regulations and scientific practices. These norms, ideally, can be scaled down to any local administration of any local site. Just as importantly, they can be

scaled up; local counting of an endangered species translates into a global concern for loss of biodiversity. Social constructivism allows for a similar scalability: Studying, or practicing, political games or maximisations of particular interests in the name of 'heritage' can be framed in similar ways at different places and on various social levels (local or global) – by means of a sociological language, as well as a set of regimes that we will return to in a moment.

To take an ontological turn is to challenge these kinds of scalability. The way that nature and culture is co-produced at a particular site in North America is different from the way it is co-produced at a site in Northern Europe. The one does not easily translate into the other, and neither of them can be used as generic models. Thus we may formulate our most important lesson:

- Heritage is not just produced through a generic process of social construction, but rather through a multitude of ontic processes; processes through which heritage is made inherently meaningful (Verran 1998:246).

Finally, we should note that taking an ontological turn does not imply that we abandon social constructivism altogether. It is important to understand how heritage is also socially constructed. But, this is just not sufficient. In the following we will explain why.



Figure 1 Lapoian area. Photo: Wikipedia commons.

Heritage from above

Heritage as a universal idea comes from above. The ambition of the World Heritage List is to secure the most outstanding monuments, natures and cultures for future generations of mankind. Since it was established in 1977, the List has become enormously popular. Logan (2012) refers to it as the 'magic list', expressing the status and expectation of benefits that comes with it. The first sites deemed worthy of protection as World Heritage were highly exclusive, such as the Great Wall of China, and the Galapagos Islands. Every year since 1977 new sites have been nominated, thoroughly evaluated, and a few are inscribed. This is a massive ongoing mapping exercise. Each country that has signed the World Heritage Convention (UNESCO 1972) contributes to the 'identification, nomination, protection, conservation, presentation, and transmission to future generations, of sites found on their territory' (UNESCO 2013b: point 15a).

Recent archaeological and anthropological writings (Meskell 2002a) describe World Heritage as brought into being as a scarce commodity. World Heritage is framed in a similar trope to a number of other United Nations global environmental discourses. From a panoptical view, one works to map, register, categorise and count every kind. What is to be protected is the outstanding quality of all kinds; the cultural, aesthetic, natural, the immaterial, even landscapes brought into being by interaction between people and environment.

Against the cartographic vision, archaeologists and anthropologists have argued that sites are not simply out there, waiting to be discovered. Sites are brought into being by particular governmental and bureaucratic processes, as part of economic, political and academic enterprises (Ween 2012). They are co-produced by a host of actors and interests, including the material site, but never by the site in itself. This is also recognised by many actors in the field. In his description of the World Heritage process, Jokilehto (2011), himself a World Heritage Committee member, notes that in the beginning the Outstanding

Universal Value of a site would be obvious, in the sense that Committee members would agree upon uniqueness. Since then, the list has grown to cover over 1000 sites. In the same time period, the size of the nomination dossiers has grown dramatically to become complex narratives and documents of justifications. Furthermore, as Jokilehto argues, it is these documents that often determine the Outstanding Universal Value of a site, not merely the site itself (Jokilehto 2011). As a consultancy company specialised in writing nomination dossiers writes:

A complete nomination dossier is the key component of a successful World Heritage nomination proposal. It does not only require knowledge of the site, its significance, history and management, but in-depth understanding of World Heritage procedures and terminology, the nomination format, as well as present standards for dossier submissions (Think Heritage! 2013).

This quote shows how important aspects of heritage are socially constructed, and viewed as such by central World Heritage actors. What should be added to this perspective is that World Heritage also is put into many kinds of circulations; it is an entity that can serve a number of purposes.

The colonial and objectivist mode of heritage production

The two authors of this article first came together to develop a new conceptual framework that would find new ways of intervening in existing natural resource management legislation by way of anthropology and social studies of science. We focused our attention on the ontological premises of heritage and protection work. From such a perspective, we saw the ongoing UNESCO production of heritage as a huge machinery, techno-scientifically and normatively integrated through three regimes. First, World Heritage is produced through a regime of auditing. Counting and ordering are core exercises. Heritage practice makes use of classification, list-making, table-making, the making of

statistics and mathematical calculations (for similar perspectives on natural resource management, see Kohler 2006; Asdal 2008; Jørstad and Skogen 2010; Verran 2010 and Ween 2012). Ordering, counting, listing and reporting are performative, they propel bureaucratic items such as cultural heritage sites, or species for that matter, into being. Secondly, heritage is a regime of mapping. Mapping practices perform knowledge, objectivity, value and place (Turnbull and Watson 1993). Within heritage management, the presence of particular sites, or the lack of them, is made visual through maps. Each of these mapping exercises is enacted as singular (Yusof 2011). Databases connect across ‘governmental levels’, from the local to the global; they conform and report to national and international treaties, while at the same time they can be used in municipal planning processes. The third ontological condition we have called a regime of loss. In both natural and cultural heritage management, loss as a cultural leitmotif is potent (Kohler 2006): Something about to be lost must be conserved. It is trusted that the regimes of auditing and mapping produce an oversight that might prevent future loss. These databases make loss present, within a particular aesthetic, as oddly combined gatherings of what is lost (Yusof 2011). This loss – loss of biodiversity, loss of ‘wilderness’ and loss of ‘cultural heritage’ – is more than a question of numbers. It has a strong emotional aspect and relates, as Yusof argues, to our vulnerability. As such, loss makes particular kinds of demands upon action; it is a powerful driver (Yusof 2011).

We want to call these regimes, taken together, a colonial mode of heritage. There are historical reasons for this. The regime of loss dates back to a colonial preservation of nature that greatly affected colonial subjects. To indigenous and minority groups, however, the loss of land has continued beyond the age of the colonial enterprise in the name of nature protection.

These regimes constitute an objectivist mode of heritage conservation. There is a premising ontology of these regimes, namely that the stuff to be conserved exists ‘out there’, as an



Figure 2 St. Elias National Park.
Photo: Wikipedia Commons.

entity which is independent of the regime that conserves it. The flip side of this ontology is an epistemology of social construction. Those who want to conserve the thing out there know that ‘the map is not the territory’. Mapmakers know that maps are based on social conventions and that the mapping and auditing practices are imperfect as means of getting a sufficiently useful representation. Despite its imperfections, mapping works, as it produces the universality and the scalability we introduced above. Scaling is what makes global norms and regulations move like immutable mobiles (that is, such norms and regulations becomes real when they circulate, they may be translated into different formats, but still hold their shape (Latour 1990)). The ever more widespread use of online computer-based maps enhances the possibility of scalability. Scalability refers to what can be expanded without distorting the framework. There are particular aspects of our time that make stuff such as heritage particularly scalable (Tsing 2012), notably, a computerised bureaucracy. In the case of World Heritage, global conventions govern the production of local maps, so that these conventions may organise the mapping of local sites. An example of this is the way in which formally acknowledged ‘red listed species’ are plotted into local maps (Jørstad and Skogen 2010), in the same way as Google Maps

plot the hotels of most cities in the world. The general is made locally applicable online.

However, there is a development that counters this movement towards ever more scalable global norms and regulations. This is the movement towards recognising local knowledge and local legitimacy as an integral part of any World Heritage site. We will see how 'local cultures' have been inscribed into the colonial epistemology of constructivism and the ontology of objectivism. But we will also see how these, 'local cultures', challenge the dominant regime to produce a mode of heritage that breaks with the dominant ontology – producing something new and unique to particular places. The new ontology is one of co-production rather than objectivism, and is closely tied to indigenous people-politics of World Heritage projects.

Making UNESCO parks:

Kluane/Wrangell-St Elias and Laponia

In the following section we present two examples of indigenous co-management of World Heritage Sites. Our first example is the Kluane/Wrangell-St. Elias/Tatshenshini-Alsek World Heritage Site on the border of Canada and Alaska (UNESCO 2013c), from now on described as the 'Kluane World Heritage Site'. The second is the Laponia World Heritage Site in Sweden (UNESCO 2013d). Both sites contain indigenous groups who live on the land and who continue to engage in subsistence activities. These parks were nominated at two very different points in time. Kluane/Wrangell/St. Elias, as it was back then, was listed in 1979 when there was little resistance to the concept of wilderness or to the problematic aspects of World Heritage natural site classification. Listed in 1996, Laponia, on the other hand, became World Heritage at a time when wilderness was becoming an increasingly difficult concept.

Kluane National Park was the first natural site to cross an international boundary. It protected an area of more than 98,000 square kilometres, and represented the largest World Heritage nature site listed. Its protection was justified with reference

to four natural criteria: exceptional natural beauty; outstanding examples of Earth's history and geological processes; significant ongoing ecological processes; and as a significant site for the conservation of biological diversity and threatened species (UNESCO 2013c and e).

To give an indication of the grandness of the time, heritage-wise, the other sites to become listed in 1979 were Versailles in France, and Thebes and the Giza pyramids in Egypt. As a piece of realist nature, Kluane National Park was not set apart from culture for long. In 1994, Tatshenshini-Alsek Provincial Wilderness Park was included on the World Heritage List (UNESCO 1994). This time, attention was drawn towards the site as an area representing the important interchange of human values; unique testimony to cultural traditions; and outstanding landscape illustrating significant stages in human history.

Three Yukon aboriginal groups have their traditional territories in the greater St. Elias region: the Kluane, White River, and Champagne and Aishihik First Nations. The parks were ordered according to the Man in the Biosphere model (UNESCO 1971), designed to enable the co-existence of protected nature and people. According to this model, an area can be divided up and protected to different extents; areas can be separated out for recreational purposes and areas with rare species or vulnerable nature formations can become Game Reserves or other, stricter, categories of protection. Local use can be allowed in places where this can be sustainable, and tourism can be permitted and encouraged in others.

There were four general land classes in the Kluane Park, and subsistence harvest was originally permitted in only some of the four areas. Albeit its ambition to include (local) human activities in protected areas, the Man in the Biosphere model still rested on the understanding that there are natures with objective needs for protection. Such needs can be located, registered, compared and evaluated from a panoptical point of view, and improved human-nature relationships are to be achieved

through scientific means. Within such a realist framework, there is little room for reflexive perspectives, for example how rare plants are mostly found where you look, as opposed to where you do not look (Kohler 2006). This is exemplified in the case of Kluane by Danby and Slocombe (2005), who argue that the endangerment of species here was brought into existence when the newly-built Alaskan highway made wilderness available to scientists.

The early anthropologist of Alaska, Frederica de Laguna, argued that in this region, international boundaries imbricated by parks, preserves, sanctuaries, and national forests 'proved more divisive to travel, sociality, and exchange than mountains and glaciers ever were' (de Laguna 1990 in Cruikshank 2001:380). De Laguna was concerned firstly with the effects of national boundaries, and later national park boundaries, on First Nations. She says, 'even single families, in the area, had already been divided once' (Cruikshank 2001:380). The problem was also, as Cruikshank (2001) later pointed out, that such boundaries soon become naturalised, self-evident and self-explanatory (Cruikshank 2001:252).

In the 1990s, the Champagne and Aishihik First Nation Final Agreement and the Kluane First Nation Final Agreement created a new era in the management of Kluane World Heritage Site. Since then, First Nation representatives have had the majority of votes on the Kluane National Park Management Board. First Nations were also empowered to influence recreational activities, and there were guidelines made acknowledging and instituting traditional knowledge next to scientific research to guide management decisions (Nadasdy 1999). This is a true postcolonial moment, a move away from the managerial regimes of colonial conservation, albeit, of course, a partial one.

Looking closer at the Kluane National Park and Reserve Management Plan from 2010, it does however become clear that First Nations really mostly provide for cultural activities (Parks Canada 2010). There is a dedication to the recording of history and of local knowledge.

In this document, Kluane First Nation and the Champagne and Aishihik First Nations were enabled to educate tourists in cultural awareness and they were provided with opportunities within the tourist industry. To be fair, there were activities designed to comply with the ambition of integrating science and local knowledge, such as science-camps and joint species monitoring programs (Danby et al. 2003). Still, in the 2010 Kluane National Park and Reserve of Canada Management Plan, these activities, and the pages that describe them, are physically as well as administratively set apart from natural resource management, underlining the division of labour between science and local knowledge. Ten years after the Final Agreement, First Nation initiatives were ordered alongside, rather than as part of the actual nature management. In the 2010 Kluane National Park and Reserve of Canada Management Plan, there is no doubt that science-based natural resource management stood firm as the foundation for the governing of nature. The infrastructure of nature decision-making remained the same: the mapping, zoning and ordering, the classification and numbering of species, the set-up of the management board, their management plans and reporting, all remained the grounds for which decisions regarding nature were made.

Word Heritage as sites of indigenous people-politics

Our outline of the establishment of the Kluane/Wrangell-St Elias/Tatshenshini- Alsek World Heritage Site reveals many classic features of the pros and cons of World Heritage to indigenous people-politics. Its early days, including the Kluane Nation's 1943 incident when people were forcefully removed from a site designed as a game sanctuary, exemplifies classic features of colonial nature protection, where indigenous peoples were removed for nature to be protected. A number of historical and anthropological accounts from similar time periods describe this. For example, Sneed (1997) describes how Yellowstone was protected in order to hinder

indigenous peoples from living or using the natural resources in the area. Terence Ranter (1999 in Cruikshank 2001:251) describes how Matopos Hills in Zimbabwe was first emptied of African residents and then appropriated as World Heritage. Likewise, in Dukuduku National Park and the St Lucia Wetlands area in South Africa, the park area was nominated in order to stop local people from using the area for subsistence purposes (Nustad 2011).

The introduction of the Man and the Biosphere model, appearing simultaneously with worldwide Indigenous Rights movements in the 1970s, was thought of as an attempt to reintroduce people into parks, and for that we labeled its introduction a postcolonial moment. The model, however, is based upon similar mapping, auditing and fear of loss regimes as in World Heritage itself. Nature and culture exists 'out there', and simply needs to be ordered and made accountable. Some areas do actually have more endangered species, while others have less, and people can be moved into the objectively less vulnerable areas.

During the 1980s, sustainability became a key concept in nature protection. The concept has always connoted a strong connection between economy and ecology, stemming from 'sustained yield' in German forestry (dating back to 18th century) (Freerk Wiersum 1995). Capitalisation of wilderness and wilderness activities soon became considered as sustainable use of nature parks (Ween 2009). It was, and still is, widely assumed that indigenous peoples too will embrace such new income opportunities and, as often as not, they did, as for example in the development of 'sustainable tourism'. Many however object that the opening of land to sustainable tourism simply involved new kinds of transference of ownership, often along with the redefinitions of legitimate use (Jacoby 2001; Nustad 2011; Ween 2012 and Ween and Lien 2012). To combat these trends (although they are still ongoing), the development of Indigenous Rights legislation, the Rio Declaration 1992 and the work of IUCN have served to re-empower indigenous peoples as part of these landscapes.

To some extent these developments have changed the World Heritage Convention, its institutions, policies and practices in a way that better supports indigenous peoples and minority groups: Today local people should be supportive if an application hopes to be successful. At the same time, as we will return to in our examples, there is no unique 'World Heritage approach' to, say, natural parks or cultural landscapes. There are guidelines that may be followed or not. The management of World Heritage Sites does not translate as 'perfect immutable mobiles' i.e. the management is not the same from one site to another, because management takes place according to each state's national guidelines. Many nations lack the ambition to cater for indigenous cultural practices (Ween 2012, Ween and Colombi 2013), and there is little that the World Heritage Committee can do to enforce 'best practice' among its member countries (Hazen 2008:254). Even if countries have signed Indigenous Rights conventions such as ILO 169, lower level bureaucrats are often unaware of these conventions, or fail to see their significance for the work they do. Consequently, these obligations do not so easily 'trickle down' into local practice (Ween 2009).

These bureaucratic challenges make it difficult to fully meet the political and ethical challenges raised by the existence of cultural and social differences. But there is more to this ontological divide than cultural difference. As anthropologists, we have experienced that the 1980s acknowledgement of cultural difference, and the answer to this, cultural relativism, did not bring us further into the postcolonial. Our profound challenge is that there is no 'perfect machine' available to make local indigenous life translatable into something like a World Convention. This is because these political machines are based on an ontology that allows for such translations; whereas local life is based on ontologies that do not translate.

Ontological troubles

As most anthropologists would agree with Nadasdy (1999), the merger of science and local knowledge implied in the establishment of co-management in the Kluane Park is by no means unproblematic. Here, as in many other places, indigenous concerns with heritage very much include awareness of the ontological politics such cooperation involves and the friction caused in such encounters between different kinds of transnational flows (Tsing 2005). For example, a significant issue for First Nation people in the Kluane Park is inappropriate tourist behaviour and its consequences (Cruikshank 2001). One serious First Nation prohibition in this, the largest non-Arctic ice field in the world, was 'cooking with grease' (Smith in Cruikshank et al. 1990:209). Many elders expressed dismay at the idea that overnight campers in the national park were frying bacon near glaciers. This might strike the reader as an odd example of the difficulties of communication between nature managers and indigenous peoples, but the First Nation people in the Kluane Park do have long experience with glacier avalanches, and hold that in given circumstances they may be set off by frying bacon (Cruikshank 2005).

Other sites of ontological politics regard human-animal relations. In Canada and Alaska, as authors such as Cruikshank (2001), Fienup-Riordan (2005), Nadasdy (1999), Ingold (2000), and Wishart (2004) have described, human relations with animals are managed according to ontologies very different to those implied in Western techno-scientific natural resource management. In Canada and Alaska, world-making includes the understanding that game will present itself to good hunters. As long as hunters and their families show respect to animals, both in life and in death, the animals will continue to be available to people. To live well entails living morally good lives, killing in good ways, not wasting, and sharing what people are provided with. Here, nature needs to be used in order to keep being plentiful. In a larger perspective, whether nature is healthy is

about how people behave towards each other and towards the land. If there is hostility, unrest, self-destruction and moral decline, then the same will occur in nature within and between animal populations. In other words, to First Nations people in Alaska and Canada, nature protection strategies are maybe more about remaining on good terms with nature. Thus a game sanctuary, where hunting is strictly forbidden, could have the completely opposite effect to what we expect.

This exemplifies Cruikshank's concern regarding 'historical and cultural crevasses separating narratives so deep that they rarely intersect' (Cruikshank 2001:387). Furthermore, the anthropologist Paul Nadasdy (1999), who worked on interfaces between aboriginal knowledge and natural resource management in the same region, concluded that information obtained through such different ontologies cannot be integrated, and that attempts to do so would actually work against aboriginal empowerment.

These Alaskan/Canadian First Nations have similar life projects with regard to what we call nature as Sámi people in Northern Scandinavia. Meachhi is not the kind of abstract unspecific nature (in Sámi this is called *luondo*) but is rather the larger areas regularly employed for subsistence activities. In Sápmi, nature consists of a number of non-human actors that one must try to cooperate with. Relations between humans and animals, as Ingold (2000) has described, are based upon trust: trust that animals will return, and that new prey will be secured. This trust is based upon our ongoing sharing with animals (Ingold 2000:69). Kuokkanen (2006) elaborates on this, using the Sámi term *láhi* as a starting point (Guttorm 2011). *Láhi* describes ongoing relations to nature, as a relation in balance that must be upheld. *Láhi* is about what we receive from nature and our ability to share what we receive. Kuokkanen (2006), and later Guttorm (2011), connect this sharing with the term *luondo láhi*, 'what nature should have'. This term explains luck; to be lucky in hunting and fishing, as well as bad luck. An important sentiment is that one must be humble if one is to be lucky in hunting and fishing activities, but one

must also be satisfied with bad luck (Kuokkanen 2006 in Guttorm 2011:69). Nature is, however, not entirely predictable. An often repeated Sámi saying is that ‘One year is not the brother of the next’. This means, humans cannot control nature. We can facilitate, do what is good and necessary, but this does not guarantee a certain outcome.

Let us move to the other World Heritage Site in this paper, the Swedish World Heritage Site of Laponia. Laponia was inscribed as a mixed site in 1996. Its listing was accepted on the basis of the following criteria: as an outstanding landscape; as Europe’s largest area of almost untouched nature; as a unique example of a cultural practice; and the largest area in the world (and one of the last) with an ancestral way of life based on the seasonal movement of livestock (UNESCO 2013d).

Anthropologists Dahlström (2003) and Green (2009) both described how the Sámi in Laponia were worried that reindeer herding would be reduced to museum objects or only presented for tourism purposes (Ween 2012, Ween and Colombi 2013). Sámi reindeer herders were worried that their lands would become approached as ‘wilderness’, that their land would become rewritten, emptied of people, activities and history (Green 2009). Reindeer herders were also suspicious of natural resource management and its understanding of how nature protected and controlled (Green 2009). To protect themselves reindeer herders demanded majority representation on the Park Management Board. Initially this demand was not met. However, after many years of conflict and negotiations between natural resource management, non-Sámi locals and reindeer herders on this World Heritage Site, Laponia has now become a very different park. Laponiatjuottjudus was established in August 2011 and took over the management of the Laponia World Heritage Site in January the next year. The term tjuottjudus is Lule Sámi and means ‘to take care of’. The Reindeer herders now hold the majority of representatives on the board, but decisions must be made on the basis of mutual consent, reached with representatives from municipalities, from the County

administration as well as the natural resource management authorities. Laponiatjuottjudus is an experiment, to be evaluated in December 2014. Laponiatjuottjudus has particular management strategies according to Sámi ontics. It aspires to keep a holistic approach; to not only manage nature, but also Sámi culture, the reindeer herding industry and the heritage of past lives in the park. In line with Sámi life-projects, Laponiatjuottjudus wants to be a learning management. The management board insists that Laponiatjuottjudus should remain a searvelatnja, as one of many such learning sites in Sámi life worlds. Searvelatnja, is a term promoted by Sámi philosopher Mikkel Nils Sara (2004), meaning a site of learning where people come together from different experiences and backgrounds, all contributing to a joint process of learning. To exemplify, this is what happens in the reindeer corral, when young and the old, men and women, friends and family are invited to partake in work with the reindeer. Searvelatnja implies openness towards differences in experience, and insists that these differences should not be approached from a hierarchical perspective. It is a qualitative, continuous and transparent dialogue (Laponia 2012). Within this new management body, decisions should be made as close to those affected by them as possible. Locals must participate and be collectively responsible for the management of the site. This means that all knowledge should be approached in the same way. Searvelatnja stresses humility in the face of others. Decision-making also involves rádedibme - open meetings - where locals and interest groups are invited, with the intention of building local knowledge of the management of Laponia. Meetings may also take place out on the land, for practical observation and illustration of the issues at stake.

To conclude

We started off noting that, from an anthropological perspective, heritage is produced and reproduced, it intervenes in existing landscapes and histories, and it is never just heritage, heritage

becomes part of other existing narratives and is put into circulation in particular ways that both disenfranchise and empower indigenous peoples. Our main concern here is what happens when World Heritage attempts to approach the postcolonial. We observe the evolution of perspectives that in various ways enable the inclusion of people in nature, such as the Man in the Biosphere model, where nature is understood as cultural sites. However, these acknowledgements are not in themselves enough because they remain true to the basic perception of the World Heritage machinery. That is, that although it is recognised that sites are socially constructed, it is still clear that sites are out there to be counted, ordered, mapped and collected. These heritage practices are inherent to the scaling power of the UNESCO machinery, or at least one of the reasons why it is unstoppable. These practices, moreover, are made inherently meaningful through larger, heterogeneous ontic processes, such as the conservational regimes of auditing, mapping and loss.

This article problematises the postcolonial potential of co-management, by comparing an early and a recent version. In the early case, Kluane park management kept scientific and local knowledge apart, associated with respective realms of nature and culture. Ontic premises of the two knowledge regimes involved where consequently kept apart, and the management plan could remain in flow, scalable both within the Canadian national park system and within the UNESCO machinery. The Lapponia management body on the other hand, attempted to construe new kind of heritage, one that relates to the UNESCO machinery without accepting as exclusive its ontological premises. In this case, the ontic premises of Lapponiatjuottjudus are revealed as non-scalable. Not surprisingly, given the UNESCO ambition of the universally outstanding, the non-scalable often is considered awkward; the cultural stuff clogs the machines (see Tsing 2012). Whether there will be more or less of the non-scalable out there in the future is hard to say. Searvelatnja at least relieves the Sámi in Lapponia of the ontological necessity

of conforming to the existing WH machinery and represents an example of the possibility of building postcolonial bridges over Cruikshank's (2001) previously 'unbridgeable crevasses'.

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Mt Ruapehu's looming lahar

Exploring mechanisms of compliance in the World Heritage regime

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Drawing on the theories developed within the field of International Relations, this article explores mechanisms of compliance within 'the World Heritage regime'. This is done through the examination of risk management and monitoring of the volcano of Mount Ruapehu at the World Heritage Site of Tongariro National Park in New Zealand. Following Mount Ruapehu's eruption cycles in 1995-1996 it became clear that a lahar, a mudflow of pyroclastic rocks, would occur in the relatively-near future. Based experiences from previous lahars, it was clear some form of lahar management had to be implemented in order to mitigate the damage the upcoming lahar would cause. The question, however, was how. By examining the debates on how to manage the lahar, this article explores how the 'lahar issue' became a case of regime compliance and thereby addresses to what extent the park's World Heritage listing impacted the New Zealand decision-making process. Thus the article contributes to expanding the relatively-scarce empirical literature concerning the relationship between domestic and international dimensions of regime compliance.

Introduction

On 18 September 1995, less than five years after New Zealand's Tongariro National Park made the World Heritage List, the largest of the park's three volcanoes, Mount Ruapehu, erupted. The eruption emptied Ruapehu's Crater Lake and left a dam of tephra or ash at its edge. Once the Crater Lake filled up, the dam would burst and a lahar, a mudflow of pyroclastic rocks, would flow down the nearly 3000 meter high mountain. The predicted lahar left the New Zealanders concerned; they knew that the lahar had to be managed in order to mitigate the damage it would cause. Examining the debate on the lahar risk mitigation this article uses

the World Heritage Site of Tongariro National Park as a means to address which mechanisms of compliance are at work within the World Heritage Convention. In order to examine empirically how the World Heritage Status may impact local and national management issues and to try to give answers as to why the 'lahar issue' became a case of compliance, I use archival material¹ in combination with theories of international regimes and global governance as developed within the field of International Relations. The article therefore starts with a brief theoretical introduction to the World Heritage regime before I present the 'managerial

dilemma' Tongariro's park managers faced when managing the lahar mitigation. The main part of the article is dedicated to examining the tensions between scientific assessments and advice, public opinion and domestic politics in the decision-making process. Finally the article concludes with a more general, if tentative, analysis of mechanisms of regime compliance within the World Heritage regime.

Introducing the World Heritage regime

The World Heritage Convention can usefully be conceptualised as the source of a *global regime of governance*². The notion of global regimes of governance draws on two theoretical strands within International Relations; 1) the notion of *regime* is drawn from the older concept of international regimes developed in the 1980s, most famously defined by Kresner (1983:2) as '...sets of implicit or explicit principles, norms, rules and decision-making procedures around which actors' expectations converge in a given area of international relations'. Over the years the concept of international regimes has, however, been criticised for focusing too narrowly on states as the primary actors within the regime and thereby failing to grasp the full complexity to the multi-layered structure of global issue areas (Paterson 1999; Pattenger 2014:118-120). Thus 2) the notion *global governance* was launched to expand the units of analysis and include actors other than states (e.g. Paterson 1999), and has been defined as '...the sum of the informal and formal values, norms, procedures, and institutions that help all actors – states, intergovernmental organisations (IGOs), civil society, transnational corporations (TNCs) and individuals – identify, understand and address trans-boundary problems' (Weiss 2013:loc 307). The protection and preservation of humanity's cultural and natural heritage has become one such global trans-boundary problem or 'issue area' (List and Rittberger 1992:86; Joyner 2007:102; Hunter 2014:126; Mauerohofer and Nyacuru 2014:489-490; O'Neill 2014:104).

Characterising World Heritage as a global regime of governance is therefore a means to signal that the regime not only includes the 191 States Parties, but also international organizations and other non-state actors which are associated with the over 1000 World Heritage Sites. Even though the states are undoubtedly key actors, this article highlights how the non-state actors of the regime can impact the states' actions through the shared governing documents, namely the convention governing itself and, more importantly, the regularly revised *Operational Guidelines for the Implementation of the World Heritage Convention* (henceforth the Operational Guidelines, UNESCO 2013a). These governing documents lay out the principles, norms and rules of practice which guide the international expert Advisory Bodies' – the International Centre for the Study of the Preservation and Restoration of Cultural Property (ICCROM), the International Council on Monuments and Sites (ICOMOS) and the International Union for Conservation of Nature (IUCN) – advice to the governing body of the World Heritage Committee³. Together the advice of the Advisory Bodies and the decisions of the World Heritage Committee are to ensure that the States Parties behave 'to acceptable parameters' by respecting its enforcement powers⁴ (Maswood 2000:358).

The World Heritage regime's enforcement powers range from reactive monitoring, through State of Conservation reports via the List of World Heritage in Danger, to ultimately removing sites from the World Heritage List altogether⁵. While the World Heritage Centre stresses that 'in danger listing' should not be seen as a sanction, it is nonetheless commonly considered a form of blacklisting and reputational hazard by States Parties as it indicates that a World Heritage Site, for various reasons, is under serious threat (e.g. UNESCO 2013b). The prospect of in danger listing can therefore serve as a deterrent that puts pressure on States Parties to comply with the recommendations of the World Heritage Committee. Until the early 2000s⁶, the World Heritage regime maintained a relatively high level of compliance largely due to the regime's



Figure 1 Tongariro National Park. From left to right, the volcanoes of Tongariro, Ngauruhoe and Ruapehu. Taken from State Highway 4, upon entering the village of National Park. Photo: Herdis Hølleland.

emphasis on science-based decision-making (e.g. Maswood 2000; Jokilehto 2011; Cameron and Rössler 2013). Working from the premise that scientific advice is objective, States Parties acting in congruence with the Advisory Bodies' 'politically neutral' scientific expert advice has been central for the World Heritage Convention's reputational credibility (e.g. Maswood 2000:357, 359-361). Science⁷ has in other words functioned as a persuasive tool which has contributed to maintaining a high degree of regime compliance (Ferrucci 2012:22, 29).

However, even if it is assumed that States Parties are more likely to accept recommendations backed by scientific data (presented as evidence), compliance based on science may prove problematic as interpretation of scientific evidence is not always unitary (e.g. Maswood 2000; Ferrucci 2012; Allison 2014:63-64; Karvonen and Brand 2014). New data or revised calculations may, for example, alter the perception of risk, and the way in which risk is managed, and thus contribute to contradictory advice which exposes scientific contradictions. Indeed, identifying scientific uncertainties has enabled States Parties such as Australia to strategically use the uncertainties to challenge the World Heritage Committee's recommendations time and again (e.g. Hutton and Connors 1999:175-179;

Lawrence 2000:171-175, 227-223; Maswood 2000; Aplin 2004; Lines 2010:290-295, 355-357; Hølleland 2013:157-178). As will be discussed in the following, there were a number of uncertainties associated with the calculated risks of Mt Ruapehu's lahar. Estimating risk was in other words a central feature of the scientific discussion within New Zealand (e.g. Hancox et al. 1997; Webby 1999; Taig 2002; Keys and Green 2010:487). However, in contrast to Australia the uncertainties associated with the lahar risk calculation never entered the international debate and were not used to challenge the regime. Rather the contrary; the international advice and opinions were used strategically to counteract critical voices within New Zealand. Thus Tongariro National Park is a good case to explore which factors motivate States Parties to comply with international scientific advice.

Furthermore, Tongariro is a good case to explore because it stands in contrast to other cases which have dominated the discussion on regime compliance and maintenance within the World Heritage regime. So far, discussions have been centred on cases such as Yellowstone National Park, the Galapagos Islands, the cathedral in Cologne, Dresden, and Kakadu National Park, which undoubtedly have occupied much time at the World Heritage Committee meetings because

Chronology of events and outcomes 1995-2007.

Year	Event	Decision / recommendation / outcome
1995-1996	Ruapheu's eruptions cycle	
1997-1998	First assessments the Crater Lake's rim and the future lahar situation by Hancox et al.	
June 1998	IUCN presents lahar management issue and the case is discussed at the World Heritage Breau Meeting	The World Heritage Bureau raises concern against the prospect of intervention at the Crater Lake. Resolves to monitor the developments.
October 1998	DOC releases the Draft Assessment of Environmental Effect for public comment	
21-22 November 1998	Tongariro's World Heritage Celebration where the Director for the World Heritage Centre attends.	The Bureau request that IUCN and the World Heritage Centre to continue to monitor the management developments.
November 1998	The World Heritage Bureau follows up the new information from DOC.	Majority of the comments against intervention.
Late 1998 – early 1999	Period of public comment	Report recommended that no engineering intervention at the Crater Lake, that (a) a warning and response system is developed, (b) a revised hazard response plans in potential lahar zones is developed and (c) there is further investigation of a bund.
April 1999	DOC finishes the report Environmental and risk assessment for the mitigation of the hazard from Ruapheu Crater Lake – Assessment of the Environmental Effect.	
Mid-late 1999	Decision-making delayed due to New Zealand General Election.	
27 November 1999	General Election.	National Party is replaced by Helen Clark's Labor-Alliance. Sandra Lee (Alliance) becomes the new Minister of Conservation.
May 2000	Minister of Conservation announces an Alarm system (The Eastern Ruapheu Alarm and Warning system) will be developed.	Alarm system to be installed.
December 2000	Minister of Conservation announces that the construction of a bund to protect public safety along State Highway 1 and Tongariro River will be undertaken.	Bund to be constructed.
Mid 2001	Parliamentary debates between Nick Smith and the government concerning risk management. Smith trying to push an interventionist solution in alliance with local and regional governments.	
July 2001	Establishment of a Scientific and Technical Advisory Panel advising the Minister on the impact on the lahar	Establishment of a Scientific and Technical Advisory Panel advising
October 2001	Establishment of a Minister Committee consisting of ministers which issue areas may be affected by the lahar	Establishment of a Minister Committee
7-16 December 2001	World Heritage Bureau and Committee meetings in Helsinki. New Zealand updates the committee.	Resolves to continue to monitor the development.
18 December 2001	Minister decides not to intervene at the Crater Rim	Non-interventionist position taken
Late 2001-Early 2002	The Eastern Ruapheu Alarm and Warning System installed	
February 2002	Bund completed	
April 2002	World Heritage Bureau commends New Zealand for its non-interventionist position and welcomes the construction of the bund and the installation of the alarm system	
May 2003 and March 2004	The non-interventionist position maintained	
18 March 2007	The lahar occurs	The lahar occur

Table 1

of their position either as candidates for or sites on the List of World Heritage in Danger (e.g. Maswood 2000; Affolder 2007; Zacharias 2006, 2008; Goodwin 2009; Gaillard 2014). These World Heritage Sites in (possible) danger are not, however, representative of the majority of sites within the World Heritage regime. The majority of World Heritage Sites have more in common with Tongariro in that they may occasionally be monitored through a State of Conservation report whose recommendations are acted upon by the States Parties. In this sense Tongariro National Park's lahar management issue serves as a useful case study of the domestic-international dimensions of regime compliance⁸. In order to do so, it is necessary to discuss the major stages and hurdles of Tongariro's decision-making process in more detail (see table 1 for a brief overview).

Introducing the managerial dilemma

Mt Ruapehu's 1995–1996 eruptions left New Zealand's Department of Conservation⁹ with a 'managerial dilemma' (Green and Keys 2002): Knowing that a lahar would occur sometime in the relatively-near future, the Department of Conservation had to come up with a solution that not only secured public safety, but also paid respect to the natural processes and the area's Outstanding Universal Values – its superlative natural beauty (current criterion (vii)), its volcanic landscape signifying an outstanding example of major stages of the earth's history (current criterion (viii)) and its associative cultural landscape (current criterion (vi)) (DOLS 1986, DOC 1993)¹⁰. The cultural landscape criterion highlights the fact that the volcanic landscape is an area directly associated with living traditions and beliefs of the Maori *iwis* (tribes) of Ngati Tuwharetoa and Ngati Rangī¹¹. The mountain peak of Ruapehu, where the Crater Lake is located, is sacred and has been the burial ground for Ngati Rangī chiefs. The peak is therefore an area which should remain pristine. To many Maoris' dismay, however, the top of Mt Ruapehu is far from pristine. The vast peak area is in fact home to two of New Zealand's most

popular commercial ski fields and every year the area is visited by a large transient population of skiers. The largest of the ski fields, Whakapapa, is not only New Zealand's biggest commercial ski field, it is also the ski field most exposed to risk from volcanic hazards, including lahars, from Mt Ruapehu (Leonard et al. 2008:201–202).



Figure 2a The Crater Lake in 2004. Photo: Department of Conservation.



Figure 2b The Crater Lake in February 2007 – a month before the lahar. Photo: Department of Conservation.



Figure 3 Whakapapa ski field. Photo: Herdis Hølleland.

Adding to the managerial complexity, some 1500 meters down the mountain, and within the reach of a large lahar, lay regionally and nationally important physical infrastructure such as bridges and roads as well as small villages and towns in need of protection (Keys and Green 2002, 2004, 2008, 2010). Thus resolving the managerial dilemma had to become an act of balancing the Outstanding Universal Values whilst ensuring the safety of the area's many recreational users and its nearby infrastructure.

Even through the World Heritage status was only one of many concerns, it came to hold a central position in the domestic and international debate on lahar management. As the focus of this article is regime compliance, the following sections focus primarily on how the views of the

Advisory Bodies, the World Heritage Bureau¹² and Committee impacted New Zealand's lahar management. Briefly speaking, one can divide the regime involvement into three main stages: The initial scientific assessment and regime response (1995–October 1998); debating legal precedence and risk management (October 1998–November 2001); and resolution (December 2001–April 2002). Thus the regime's involvement ended long before the lahar occurred on 18 March 2007, and indeed failed to take note of the continued debates on the risk management which reoccurred in New Zealand in 2003–2004 (for summary of the later discussions, see Dittmer 2008).

The initial scientific assessments and regime response

Scientifically assessing the risk of the lahar

A possible lahar issue was identified by scientists in November 1995 and, once confirmed in 1996, it became clear that some form of action to mitigate the hazard would be necessary. Initially, this meant gathering information and assessing the scale of the risk. During 1997–98 the foundational scientific estimates of the size of the lahar and its potential damage to the surroundings were undertaken by the Institute for Geological Nuclear Sciences (Hancox et al. 1997 and 1998). The first report, released in June 1997, confirmed that a lahar would occur once the tephra dam broke. Moreover, their findings were alarming; showing that the future lahar was likely to exceed the 1953 lahar and this made the issue of public safety precarious. The 1953 lahar, following Mt Ruapehu's 1945 eruption, occurred on Christmas Eve 1953. With a speed of 64 km/h, the lahar wiped out the railway bridge at Tangiwai over the Waitangi River just as the 3pm express from Wellington to Auckland was entering the bridge. Several of the carriages fell into the river, leaving 151 people dead, and was thereby one of the worst accidents in New Zealand history (Dittmer 2008:14–15). The Tangiwai disaster has become deeply embedded in the New Zealand public memory, and became a reference point for the current lahar management discussions reminding the public that the future lahar had to be managed in order to ensure such a disaster would not be repeated.

In order to reduce the impact of the lahar, the Institute for Geological Nuclear Sciences (Hancox et al. 1997) recommended that a trench be excavated in the tephra barrier to reduce the future lahar. Initially the response from Tongariro/Taupo Conservation Board was positive, but it soon became clear that while the sheer practicality of such an undertaking proved more difficult than envisaged, the issue of practicality was only part of the problem (Dittmer 2008:131). Rather, the scientific

recommendation to excavate became the kernel around which both the domestic and international debates formed, and empirically illustrates how heritage management becomes politically entangled: The suggestion signaled that the Outstanding Universal Values and the respect for the natural processes would be compromised for public safety. Unsurprisingly this was soon challenged by actors within the World Heritage regime.



Figure 4 Inspecting the Tangiwai disaster. Photo by John Le Cren. [Archive Reference: AAVK W3493 D1022] Archives New Zealand The Department of Internal Affairs Te Tari Taiwhenua.

The initial regime response

It was IUCN that first presented the lahar management issue to the World Heritage Bureau in June 1998 (UNESCO 1998a:15). However, rather than debating the intricate scientific calculations of the lahar, IUCN noted that the engineering did not seem to threaten the natural values of the park (i.e. current criteria (vii) and (viii)). Instead IUCN, in concert with ICOMOS, drew attention to the fact that engineering action

was problematic because of the area's status as an associative cultural landscape (i.e. current criterion (vi)).

The fact that it was IUCN rather than ICOMOS that raised the issue of ensuring the integrity of the cultural values of the park seems largely due to IUCN's Vice-Chair of World Heritage at the time, P. H. C. 'Bing' Lucas. Having had a long professional history at the Department of Conservation's forerunner, the Department of Lands and Survey, prior to working full-time for IUCN, Lucas was familiar both with the history of Tongariro National Park, the New Zealand context and the World Heritage regime. Indeed, functioning as a 'broker' in the multi-levelled World Heritage regime Lucas had been instrumental in the process of establishing the new category of 'associative cultural landscape' in 1992 which then led to the re-nomination of Tongariro in 1993 (Hølleland 2013:113-117; for more on the role of brokers see Eriksen and Neumann 1993:248; Levy et al. 1995:285; Kurin 1997; Turtinen 2006). Following the New Zealand debate closely, Lucas was also aware of the Maori concern over intervention at the Crater Lake. A positive stand towards intervention could reflect badly on the World Heritage regime as it was likely to damage the convention's emerging position among the Maori communities. This in turn would threaten Tongariro's position as a regime 'success story', being the World Heritage List's very first cultural landscape. Protecting the cultural legacy of Tongariro thus ensured the legal effect of the cultural landscape category with the regime. Thus the World Heritage Bureau's concern resulted in a clear message to the New Zealanders that the lahar management would be monitored; being monitored contributed to highlighting the issue of regime compliance at a relatively early stage of the New Zealand decision-making debates.

Debating risk and legal precedence

The period of public comment highlights the complexity of the managerial dilemma: While the basis for much of the reasoning is centred on issues of legal precedence of the national and international protection of the natural and cultural heritage, the issue of ensuring public safety gained most media attention. While these two aspects are part and parcel of the same decision-making process, they came to stand in opposition to one another in the political discussions which dominated the debate once the Department of Conservation's Assessment of Environmental Effect was completed in April 1999. Examining the arguments of both sides in the New Zealand debate enables one to reflect on *how* domestic politics and political shifts impact regime compliance.

The Department of Conservation's draft Assessment of Environmental Effect

Preparing its own Assessment of Environmental Effect, the Department of Conservation drew on the findings of Hancox et al. (1997 and 1998) (Hancox et al. 2001:403). Furthermore, following the Management Resource Act, work was also influenced by a series of stakeholder consultations which were undertaken between May 1997 and August 1998. Then, in October 1998, DOC's draft Assessment of Environmental Effect was released for public comment. The assessment laid out 23 mitigation options within six main categories (see table 2). Briefly speaking, the options ranged from heavy intervention, through building structures to direct the lahar down the mountain and to bulldozing a trench through the rim of the Crater Lake, to a relatively non-interventionist approach of setting up an alarm and warning system and letting the natural processes unfold. Unsurprisingly the core of the public and political arguments concerned the question of whether or not intervention at the Crater Lake was necessary to ensure public safety.

**The six main lahar management categories laid out in DOC's draft
Assessment of the Environmental Effect**

- 1 Allow the lahar to occur naturally and develop an alarm warning system and improve land-use planning without any engineering intervention at the crater
- 2 Allow the lahar to occur, but reduce its size by intervening in the lahar flood zones
- 3 Try reducing or preventing the lahar by hardening or perforating the tephra barrier by grouting, tunnelling etc.
- 4 Prevent or reduce the lahar by excavating a trench through the 1995-1996 tephra barrier using e.g. a bulldozer or explosives
- 5 Prevent the lahar and reduce the volume of the lake by excavating a trench into the underlying lava at the outlet of the lake
- 6 Defer, prevent or reduce the lahar by other options such as siphoning (after Keys and Green 2007:287)

Table 2

The public comments – highlighting the issue of legal precedence

Whether or not to intervene at the Crater Lake was ultimately a question of whether or not to comply with national and international legislation such as New Zealand's National Park Act, Conservation Act and Tongariro's Management Plan as well as the World Heritage Convention. During the review process, the Maori tribe Ngati Rangi, basing their argument on their *tikanaga* (customs and traditions), the concept of *mana* (authority and influence) and notions of guardianship and respect for the land and natural processes, was the first to strongly oppose any form of engineering on the Crater Lake's rim. Ngati Rangi's view was in the end seconded by most of the tribes associated with Tongariro National Park, including Ngati Tuwharetoa (Dittmer 2008:132-134; Keys and Green 2008). With the majority of the Maori rejecting intervention, the managerial dilemma became an issue of legal precedence: An interventionist solution would be a breach of the 1987 Conservation Act's Section 4; that of giving effect to the principles of the Treaty of Waitangi¹³ (DOC 1997). Following the Conservation Act, the solution taken should enhance partnership and ensure that Maori retain *rangatiratanga* (autonomous authority) over their resources and *taonga* (cultural treasures).

An interventionist solution would in essence do the exact opposite and thus be a breach of the Conservation Act. Furthermore, the Advisory Bodies and the World Heritage Bureau had already made it clear that intervention would negatively impact the integrity of the associate cultural landscape. This position was further strengthened following the attendance of Bernd von Droste, Director of the World Heritage Centre, attendance at Tongariro's World Heritage Celebration in November 1998 (for details see Hølleland 2013:208-218). At the World Heritage Bureau meeting in Kyoto a few days later, von Droste personally conveyed the messages from Ngati Rangi and Ngati Tuwharetoa to the bureau members, leading the Bureau to repeat their decision to continue to monitor the case (UNESCO 1998b:36-37, 1998c).

However, it was not only the Maori communities that favoured non-intervention, and even if they were initially not taken note of internationally, the reasons extend beyond the cultural heritage of the area. One of the most influential points was made by Guy Harding, a member of the New Zealand public, pointing out another issue of legal precedence: Carrying out excavations at the Crater Lake would essentially mean intervening with the volcano's natural processes. By allowing intervention, one would not only go against the objectives in Tongariro's Management Plan and the National Park Act, but also set a problematic precedent of disregarding the natural processes in New Zealand conservation management (Keys in Dittmer 2008:131). By early 1999, when all public comments were analysed, there was a clear majority for the non-interventionist option (DOC 1999). The issue of ensuring long-term public safety was solved by installing a new early alarm warning system and improving land-use planning (Keys and Green 2008). Having kept an open mind until the end of the submission period, the key actors at the Department of Conservation regional office, scientist Dr Harry Keys and his boss the Regional Conservator Paul Green, were certain that intervention should be avoided

(Dittmer 2008:134; Keys and Green 2010:487; Green 2011).

The reasons for opting for a non-interventionist solution rested on a combination of the issue of legal precedence and the desire to develop a long-term solution to risk management in the area: Undertaking engineering work at the Crater Lake would be a short-term solution to *one* lahar. However, as Mt Ruapehu is an active volcano, lahars are part of the natural processes and will occur again. Thus there was a need to develop solutions which could benefit the area in a long-term perspective rather than clear the risk of one lahar (Keys 2007:159-161; Keys and Green 2008:288). The Department of Conservation's final report therefore recommended against one-time intervention and proposed a long-term risk management solution consisting of a combination of the development of a warning system, strategic land-use planning, and the strengthening of protective measures around infrastructure such as the state highways associated with the park (DOC 1999). The department's recommendation, in other words, complied with both the view of the majority of the New Zealand public on the one hand and with New Zealand legislation and Tongariro's Management Plan on the other. Thus regime compliance was first and foremost argued through the existing national legislation, but as the World Heritage Bureau's overlapped with that the Department of Conservation's, regime compliance was also ensured. However, the final decision was political rather than scientific-bureaucratic; it was New Zealand's Minister of Conservation's decision to make. By looking more closely at the political decision-making one comes to appreciate how political shifts really can impact heritage management.

The political decision-making – arguing with risk, risking compliance

During the assessment process it was Dr. Nick Smith from the National Party who was New Zealand's Minister of Conservation. Nicknamed 'Bulldozer Smith' by the press, Smith belonged

to a forceful minority that preferred intervention at the Crater Lake. Thus the Minister was pushing for a solution which would become one of non-compliance with Tongariro's Management Plan, New Zealand legislation as well as the World Heritage regime. Furthermore, an interventionist solution was hugely problematic within New Zealand as it neither found support within the scientific-bureaucratic communities at the Department of Conservation nor reflected the majority of the general public. New Zealand's Crown Law was therefore forced to raise questions about the relationship between the national and international legislation and the discretion of the Minister. However, as the country was approaching a general election, a full-scale conflict and debate did not occur as the decision regarding the lahar management was left to the new Minister of Conservation.

On Election Day, 27 November 1999, the National Party was defeated and replaced by Helen Clark's Labour-Alliance coalition and the Alliance Party's Sandra Lee replaced Smith as the Minister of Conservation. This shift in office of course meant delays, but it created a context for a new political debate on the Assessment of Environmental Effect. In May 2000, Lee announced that an Early Alarm System would be installed at Mt Ruapehu. However, until Professor V. Neall had delivered an independent review of the Department of Conservation's Assessment of Environmental Effect, Lee noted she would keep 'an open mind on options involving engineering intervention' (Minister of Conservation 2000, Galley et al. 2004). In December 2000 the Minister recommended the construction of a bund (embankment) just outside the National Park to prevent the overflow of the Whanganui River into the Tongariro catchment area (Green and Keys 2004:5). The issue of engineering at the Crater rim remained unresolved. Thus despite two years international monitoring and a year in office, the question of both national and international legal compliance remained open. At the time the lahar was still believed to be some years away, but in April 2001 the lahar concern reached a new critical height; it was revealed that the Crater

Lake had filled at twice its normal rate during the New Zealand summer of 2000-2001. This led the Department of Conservation's scientist, Harry Keys, to predict that the lahar could occur as soon as the following year (Dittmer 2008:18). Nature itself, as it were, actualised the need to make a final decision and thereby contributed to heated political debates on public safety.

Unsurprisingly, it was in particular Smith, the former Minister of Conservation, who ensured the lahar management gained national attention in June 2001. No longer in conflict with his own department, but rather a member of the opposition, Smith expressed his views in the Parliamentary Debates and the media. Smith's argument was centred on perceptions of risk to human life. Using the previous Tangiwai disaster as a spring board, he questioned the government's risk management strategies arguing that the government put lives at risk by installing an alarm system rather than controlling the lahar flow through minor engineering work. Additionally Smith argued that intervention would not only save lives, it also bore relatively low costs compared to developing an entire new alarm system. Trying to shift public opinion Smith turned the debate into one of Indigenous politics arguing that if the government chose not to intervene it would be jeopardising public safety by race-based preference to the country's Maori minority (Parliamentary debates 2001a, b, c and d, Scoop Parliament 2001, see Dittmer 2008:111-112 for overview over media coverage). Thus the wider issue of legal precedence for New Zealand conservation management and the long-term strategy for lahar management at Ruapehu was downplayed, and instead the Maori were given the blame for the Department of Conservation's 'politically correct' non-interventionist position. Smith soon gained support from Ruapehu's District Council (local council) and Horizon Regional Council (regional council) who tried lobbying the government to go for an interventionist solution. Their reasons for supporting Smith were based partly on the concern for public safety in the areas adjacent to the park, but were in part also due to the

financial constraints their involvement in the lahar emergency response were causing (Dittmer 2008:19, 136). Hence sections of local, regional and national political actors were trying to move the sitting minister into a non-compliance position.

With the increasing pressure to act and indeed intervene at the Crater Lake, a scientific advisory panel was set up to give sound scientific advice to the new ministerial committee (Minister of Conservation 2001a; Dittmer 2008:19, 139). The ministerial group consisted of the Civil Defense and Police Minister, the Maori Affairs Minister and the Defense Minister in addition to Lee and reflected the wider social and infrastructural scope of the lahar and the move towards a non-interventionist position. However, no final solution regarding engineering on the Crater Lake had been reached when the case was discussed at the World Heritage Bureau and Committee sessions in Helsinki in early December 2001. This enabled the World Heritage regime to once again put pressure on New Zealand.

The international pressure – pushing for compliance

Prior to the World Heritage Bureau and Committee sessions in Helsinki, a summary of Tongariro's latest State of Conservation report was prepared by the Department of Conservation in October 2001. In addition to presenting the latest decisions taken, the report made clear that intervention was seen as an 'over-reaction to the degree of threat' and would 'significantly harm both the cultural and natural values associated with the Crater rim' (UNESCO 2001a:33). Finally the issue of legal precedence, both within Tongariro and national parks more generally, was presented. Based on the discussion at the Bureau meeting, one can observe that IUCN's line of argument had shifted and was now confined to the organisation's 'core area' – natural heritage. Interestingly, this shift in argument coincides with staff changes following the death of P. H. C. 'Bing' Lucas in late 2000. Drawing on the Department of Conservation's own arguments, IUCN now recommended that

the lahar occur naturally as intervention would create problematic legal precedence in national parks. ICOMOS, on the other hand, maintained the need to find a ‘culturally appropriate solution’ to the lahar management (UNESCO 2001b:22-23). At the following committee session, IUCN and ICOMOS’ views were repeated before the State Party of New Zealand commented on the matter. The General Manager for Maori issues at the Department of Conservation, Eru Manuera, and the Paramount Chief of Ngati Tuwharetoa, Tumu Te Heuheu represented New Zealand. Manuera could only inform the committee that the Minister of Conservation ‘would be making a public announcement regarding management of the ash build-up in the very near future’ (UNESCO 2002a:31). As earlier, the committee took note of the statements and resolved to continue to monitor the case requesting that New Zealand present a progress report for the upcoming World Heritage Bureau meeting in April 2002.

Resolution – regime compliance

There is little drama in the minutes from the committee session, but looking more closely at the Department of Conservation’s own archives, it is clear that compliance with the World Heritage regime was becoming a domestic matter: Following the committee meeting, Manuera reported to the department’s Director General that he assumed that if an interventionist approach was taken ‘the inscription would be withdrawn’ (DOC 2002). Thus even if the final, political decision was based on a broad assessment of the complexity of risks involved and national legislation, the convention’s soft enforcement powers made an impact, as for the first time the possibility for a delisting was highlighted. This is reflected in the Minister of Conservation’s final announcement, taken only a few days after the committee session: When announcing there would be no intervention at the Crater rim, Lee drew attention to the fact that ‘engineering intervention at the Crater Lake would be inconsistent with the provisions of

the National Parks Act, the Tongariro National Park Management Plan and the World Heritage Convention’ (Minister of Conservation 2001b). Thus again one observes how national legislation works in conjunction with the convention. However, the argument had shifted; from acknowledging all the Outstanding Universal Values, the Minister only referred to natural values when arguing for the non-interventionist position, reflecting the role and scope of the National Park Act (Minister of Conservation 2001b). Hence one can observe that over the course of time, perhaps as a response to the media, the opposition’s tendency to blame the Maori and the scope of the national legislation, the reasons for not intervening moved from one of cultural concerns to one of nature conservation. This shift is also reflected in the World Heritage Bureau through the summary of the state of conservation (UNESCO 2002b:12-13; 2002c:18, 2002d). With the Bureau taking note of the non-interventionist decision at its April 2002 meeting, the case was closed within the World Heritage regime as the lahar issue had become a matter of compliance.



Figure 5 The top of Mt Ruapehu with its Crater Lake a week after the after the 2007 lahar (Wikipedia Commons 2014).



Figure 6 The Whangaehu River discharges quietly from through the former tephra barrier at the Crater Lake.
Photo: Department of Conservation.

Conclusion: Domestic and international dimensions of regime compliance

Cases of compliance contribute to building and maintaining the World Heritage regime as State Parties indicate respect for regime regulations by acting in the defined 'acceptable manner'. Thus through their actions State Parties contribute to giving effect to the regime. However, rather than the regime alone, it is often a combination of domestic and international pressure from non-state actors that forces the State Party to act in an acceptable manner (Maswood 2000). Hence one can say there are both domestic and international dimensions to compliance – both of which are present in the current case.

As Maswood (2000:368) points out, 'Support and pressure for compliance can come from environmental lobbies and non-governmental organisations, which not only influence national decisions directly but also indirectly by mobilising public opinion'. In the lahar management, non-governmental voices were given a formal role through the period of public comment and directly brought the issue of legal precedence to the forefront of the governmental discussion which was later integrated into the international discussion by IUCN. Furthermore, it is clear that the sheer interest in the lahar management issue indirectly impacted the political decision not to intervene: Listing the reasoning behind her final decision, the Minister of Conservation noted

that ‘the intense interest in the area’ would have made intervention ‘highly controversial and there would have been considerable uncertainty as to whether the required consents could have been obtained’ (Minister of Conservation 2001b). Thus the direct and indirect domestic pressure contributed to ensuring compliance with the World Heritage regime. However, the extent to which this pressure would have had an impact if the National Party remained in office is questionable; indeed had Smith remained Minister of Conservation his discretion may have made Tongariro a real contender for the in danger listing. Nonetheless, Smith was replaced and in her final decision not to intervene, the new Minister of Conservation also pointed out that intervention was problematic because it would be ‘inconsistent’ not only with the national legislation but also with the World Heritage Convention (Minister of Conservation 2001b).

Reflecting on the event, Paul Green, the Regional Conservator at the time, highlights the importance of the international dimension when arguing that the World Heritage Convention was equally, if not more, important than New Zealand’s National Park Act:

...I believe that the World Heritage values and responsibilities perhaps led to a non-intervention philosophy at the Crater Lake in order to particularly protect those natural and cultural values. That probably led to that stronger than the National Parks Act on its own would have. It made people think just a little bit more and perhaps made the alternatives of changing infrastructure outside the Park that would be helpful to management over a long period of time, not just that one event, more viable. I think that the World Heritage status helped that decision greatly. So that’s the single biggest benefit I have seen from World Heritage at Tongariro (Green 16.03.2011).

Even if dependent on the political shift within New Zealand, one can argue that the lahar management serves as a clock-work example of the convention’s enforcement power: By following up the state of conservation monitoring,

New Zealand acted on the possibility Tongariro National Park that could be delisted. Equally important, at no point did New Zealand challenge the Advisory Bodies. The World Heritage regime’s science-based decision-making mechanisms were thereby allowed to function; by not challenging the regime’s own scientific expertise, New Zealand’s behaviour made it easy for the World Heritage Committee to stand by the scientific advice. This could happen because the international advice was in congruence with the national legislation and management principles. Furthermore, the situation was helped by the fact that the internal discussions within New Zealand and the uncertainties surrounding the scale of the lahar and estimation of risk to life never entered the international discussion properly. The oppositional voices such as Smith did not lobby the World Heritage Committee in order to expose scientific uncertainties. Thereby the international discussion remained free of the nitty-gritty scientific estimates and proceeded at clear-cut principle level. Furthermore, from when the Department of Conservation completed its Assessment of Environmental Effect in April 1999, the department, the Advisory Bodies and the World Heritage Bureau and Committee could draw on each other to build and reinforce each others’ arguments for compliance. Hence the World Heritage listing is allowed to make an impact at sites such as Tongariro because the World Heritage Convention enforces already-existing national legislation and management principles.

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Notes

- 1 This article draws on material gathered as part of my doctoral thesis *Practicing the World Heritage*. Approaching the changing faces of the World Heritage Convention (Hølleland 2013). Archives consulted were UNESCO's archive (at UNESCO's headquarters and online), Archives New Zealand, Te Rua Mahara o te Kāwanatanga (Auckland and Wellington branches), New Zealand's Department of Conservation (Turangi and Whakapapa offices), New Zealand Parliamentary Debates (Hansard records).
- 2 While the notion of 'heritage regime' is not new and has been applied also in relation to World Heritage (e.g. Bendix 2012), there is surprisingly little World Heritage research which explicitly draws on the regime theory as developed within the field of International Relations (for exceptions see Maswood 2000, Schmitt 2009).
- 3 The World Heritage Committee is comprised of 21 of the States Parties to the World Heritage Convention. Normally a State Party serves as a member for four years.
- 4 It is important to stress this is a 'evolutionary' rather than a static regime as what is considered 'acceptable' is clarified in the Operational Guidelines which is revised at regular intervals.
- 5 Only two World Heritage Sites have so far been delisted – Arbaina Oryx Sanctuary (Oman) and Dresden Elbe Valley (see Gaillard 2014 and this volume).
- 6 The level of compliance has, however, gradually dropped since the mid-1990s with a significant drop in the last decade. The reasons for this are complex and beyond the scope of this paper. For discussions, see Schmitt 2009; Claudi 2011; Jokiletho 2011; Meskell 2012, 2013; Hølleland 2013, forth; Cameron and Rössler 2013: loc6134-6183.
- 7 'Science' within the World Heritage regime is used in a broad sense ranging from natural sciences (in particular biology, ecology, geology) within IUCN to human and social sciences (such as archaeology, history, architecture, anthropology) within ICCROM and ICOMOS.
- 8 Furthermore, the article provides an international perspective on the interpretation of the lahar management issue. The majority of the research conducted so far has been focused on either the natural scientific calculations of the lahar and the on-site risk management and perceptions of the risk management within New Zealand (e.g. Hancox et al. 2001; Keys 2007; Dittmer 2008; Keys and Green 2002, 2008, 2010; Leonard et al. 2008).
- 9 The Department of Conservation (DOC) was established on 1 April 1987 and report to the Minister

of Conservation. DOC consists of a central office in Wellington and a series of regional conservancies (the number has varied with time). During the late 1990s and early 2000s Tongariro National Park was under Tongariro-Taupo Conservancy and its daily management was run through the regional office in Turangi and local office in Whakapapa.

- 10 Tongariro was first nominated as a mixed World Heritage Area by the New Zealand government in 1986 (DOLS 1986). However, it was only listed for its natural values in 1990 (UNESCO 1990). Following the introduction of the new category of cultural landscapes, Tongariro was renominated and listed in 1993 (DOC 1993, UNESCO 1994a).
- 11 While the 1993 nomination centered on the Ngati Tuwharetoa's notions of the landscape, Ngati Rangī's views have increasingly been taken into consideration (DOC 1993, for a full account of the nomination process, see Hølleland 2013).
- 12 The World Heritage Bureau consists of seven of the 21 members of the World Heritage Committee and elected annually.

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Hølleland

Mt Ruapehu's looming lahar

