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ARTICLE

Indigenous Advocacy and the Compliance Mechanisms of the World Heritage Convention: a TWAIL Reading

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Abstract

This article examines how Indigenous Peoples who depend on World Heritage sites for their culture and livelihood can appeal to the Committee when State Parties fail to comply with their obligations. While scholars criticize the World Heritage Convention for the lack of participation of Indigenous Peoples, particularly in the inscription and management processes, the framework of the Convention also allows representation and visibility. Indeed, compliance mechanisms offer opportunities for Indigenous advocates to negotiate Land sovereignty and environmental protection. TWAIL, which places the worldview of Indigenous Peoples at the center of legal practice, is crucial to understanding the interactions between Indigenous Peoples and the 1972 UNESCO Convention. TWAILers highlight how international law historically denies sovereignty rights to Indigenous Peoples. Article 6(1) echoes this absence of sovereignty. This article examines three cases in which Indigenous advocates petition to protect Native Lands against environmental degradations and colonization: Kakadu, Wood Buffalo, and Uluru. Ultimately, the challenges of Indigenous activists in their quest to preserve nature and culture reveal that the absence of sovereignty prerogatives remains a substantial issue. While the Convention provides a venue for advocacy and international awareness, Indigenous Peoples still must negotiate Land autonomy and cultural sovereignty with the State.

Keywords: World Heritage Convention; UNESCO; Sovereignty; Heritage Negotiation; Compliance; Environmental Justice

Introduction

The 1972 UNESCO Convention Concerning the Protection of the World Cultural and Natural Heritage, better known as the World Heritage Convention,[1] is equivocal on the question of whether it effectively protects Indigenous Peoples who live on World Heritage sites. On the one hand, scholars are concerned with the (mis-)treatment of Indigenous inhabitants of World Heritage properties.[2] The exclusion of Indigenous representation from institutions overseeing World Heritage is a recurring issue discussed in the literature.[3] On the other

[1] The Convention
[2] Vrdoljak, Liuzza, and Meskell 2021.
[3] Meskell 2013; Liljeblad 2019; Disko and Dorough 2022.

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hand, the Convention's stated purpose aligns with the conservation efforts of Indigenous Peoples: safeguarding land and traditional ways of living.[4]

This article argues that compliance mechanisms may offer opportunities for Indigenous advocates to negotiate Land sovereignty and environmental rights relative to World heritage sites against their respective states. It examines three cases in which Indigenous activists use the legal mechanisms within the Convention to leverage legal rights and preserve their environment. The compliance mechanisms of the Convention support Indigenous advocacy when governments fail the obligations they must hold under the Convention.

Land sovereignty, Indigeneity, and international law are primary concerns of the Third World Approach to International Law (TWAIL). TWAIL is a non-institutional intellectual movement that studies international law from the perspective of the post-colonial world and its history of oppression and dispossession. Critics lament that TWAIL only considers the post-colonial "State" and fails to take account of the legal experiences of Indigenous Peoples and ethnic/cultural minorities.[5] In fact, these critiques contribute substantially to the way we envisage TWAIL in this article. Antony Anghie, one of TWAIL's founders, affirms that Indigenous approaches are essential: "A study of the colonial experience of Indigenous Peoples is all the more important because it is the post-colonial States themselves – the States that fought for their independence from colonialism, that proclaimed the end of racism and that demanded equality – that are now inflicting further violence in turn on Indigenous Peoples."[6] In this sense, the contribution of TWAIL is crucial to international cultural heritage law and the study of Indigenous advocacy within the Convention.

This article considers the world view of Indigenous people and "their understandings of community, justice and governance"[7] to better understand the active role of Indigenous representatives in the power dynamics of heritage negotiation. We place great attention on Indigenous narratives by reviewing reports, scholarly works, ethnographic research, and artworks that express Indigenous voices and views on heritage custodianship.[8]

Finally, this article embraces an open and subjective definition of Indigenous and Indigeneity rather than referring to rigid definitions. For the scope of this research, we refer to UNESCO's working understanding of institutional proceedings. This approach allows for the inclusion of groups that may not enjoy official recognition[9] but maintain a confrontational relationship with the State due to their resistance to imperialist violence, settler colonialism,[10] or opposition to neo-liberal economics by favoring forms of globalization "more attuned to the natural economy of inter-human and cross-species relationships."[11]

Section 1 reviews the relationship between international law and Indigenous Peoples. TWAIL provides a new approach to the Convention and historicizes the exclusion of Indigenous representatives from the making of international law and sovereignty prerogatives. Section 2 examines whether compliance mechanisms of the World Heritage Convention provide an effective tool in the exercise of Indigenous sovereignty and autonomy through the lens of the Mirarr people, the traditional owners of Kakadu National Park in Australia, and The Miskew Cree First Nation (MCFN) in Wood Buffalo National Park in

[4] Preamble, UNESCO 1972; Sioux Nation Treaty Council 2015; Mikisew Cree First Nation 2016; Cecco 2018.

[5] Fukurai 2018; Manuel and Posluns 2019.

[6] Anghie 2023, 45.

[7] Ibidem.

[8] Sioux Nation Treaty Council 2015; Mikisew Cree First Nation 2016; Newcomb 2018; Kwaymullina 2018; Liljeblad 2019, 4.

[9] Fukurai 2018; Natarajan 2021.

[10] Manuel and Posluns 2019, preface x.

[11] Manuel 1974 cited by Fukurai 2018, 224.

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Canada. Section 3 highlights domestic negotiations around the World Heritage site of Uluru Kata Tjuta National Park (UKTNP). Anangu Aboriginal traditional owners successfully advanced the implementation of Indigenous laws in the management of the site.

Ultimately, the conservation of Indigenous traditional culture and environment may benefit from intervention by the World Heritage Committee, but only when grounded in domestic dialogue. Only State Parties to the Convention can enforce tangible outcomes in conservation practices such as the removal of mining activities and guarantee non-inference in Indigenous custodianship.

Indigenous Peoples, and the World Heritage Convention

Firstly, this section provides a short review of the literature on the relationship between the Convention and Indigenous Peoples. Secondly, it highlights TWAIL's contribution to the issue. This reading contributes to a renewed understanding of sovereignty within the Convention.

A History of Friction, Oppression, and Mis(representation)

The World Heritage Convention was adopted by UNESCO in November 1972. Since its beginning, the Convention has been the subject of simultaneously praise and acerb criticism regarding its treatment of Indigenous Peoples.[12] On the one hand, scholars raised concerns that the Convention lacked engagement with the interests of Indigenous Peoples.[13] On the other hand, heritage advocates and Indigenous groups themselves saw the Convention framework as a platform where they could advocate for representation and voice concerns when their governments ignored their requests.[14] The section below examines the divided viewpoints in the literature on the subject.

Scholars in critical heritage studies and human rights express concerns about areas in which the Convention interferes with Indigenous Peoples living in or in proximity to World Heritage sites.[15] They highlight that the designation of sites for the World Heritage list excludes the participation of its inhabitants.[16] The procedure requires neither their participation nor their consultation. The management of World Heritage sites also raises concerns.[17] State governments forced communities who lived within the vicinity of these properties out of their homelands while claiming that they were implementing the Convention.[18]

Initially, the recognition of natural and cultural heritage in one international legal instrument was a celebrated feature of the Convention.[19] Indeed, the Convention is an instrument of international law that recognizes and protects both natural (for example, the Galápagos Islands and Wood Buffalo National Park) and cultural heritage (for example, Bagan, Historic Center of Rome). Initially, a site inscribed on the World Heritage List was either a natural site or a cultural site. Stefan Disko sees in this separation the plausible origin of the adverse effect of the Convention on Indigenous Peoples.[20] Indigenous territories were

[12] Whitby-Last 2008, 59.
[13] Disko and Dorough 2022.
[14] Lydon 2009.
[15] Vrdoljak, Liuzza, and Meskell 2021.
[16] Scholze 2008; Disko and Dorough 2022.
[17] Smith 2007, 169.
[18] Liljeblad 2022; Mattez 2022, 281.
[19] Francioni and Lenzerini 2008, 8.
[20] Disko 2017.

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initially integrated into the framework of the Convention as "natural sites" dissociating communities from the environment with which they were inherently linked. Although the separation of natural and cultural heritage is not the only obstacle that challenges Indigenous rights, it contributes to increased difficulties for Indigenous Nations. The Sioux Nation of the Dakotas, for instance, explains their dependence on the natural environment in which they live. The land, water resources, and the existence of the buffalo are inherent to the Sioux's cultural and spiritual subsistence.[21]

In December 1992, during the sixteenth session held in Santa Fe, the World Heritage Committee adopted a corrective amendment. Article 1 of the Convention introduced the notion of "Cultural Landscapes."[22] This revision intended to recognize the association value attached to people and communities and the human dimension of the landscape. The session report recognizes the fact that many sites cannot be separated into criteria of either culture or nature. Australian delegates brought this change forward from their domestic experience.[23] On the one hand, some scholars perceive this merger of nature and culture as opportunely confirming the "relationship between Indigenous Peoples and the environment."[24] The revision of Article 1 has indeed facilitated the recognition of the cultural and spiritual values Indigenous Peoples attach to their Lands as well as local practices.[25] Such was the case for Uluru-Kata Tjuta National Park, analyzed in detail below. Conversely, the revision is criticized because the recognition of Cultural Landscapes assesses the *quality* of the connection between Indigenous Peoples and the site.[26] This assessment thus imports a colonized criteria on the quality of Indigenous Peoples' relationship with their habitat. To achieve the recognition of a 'Cultural Landscape,' Indigenous Peoples must not simply coexist with their surroundings but must interact with their environment in a way that is "outstanding." Lynn Meskell further synthesizes that the cultural landscape category contributes to "essentialise Indigenous Peoples and values as inherently tied to the land, or to project a unified and simplistic image of Indigenous groups."[27] Finally, Kathryn Whitby-Last concludes that the architecture of the Convention perpetuates the dichotomy between cultural and natural heritage.[28]

More initiatives bring forward the cause of Indigenous Peoples and their cultural rights and sovereignty. In 2000, Indigenous delegates held a World Indigenous Peoples Forum in parallel to the 24th session of UNESCO's World Heritage Committee in Cairns, Australia. The Forum proposed the formation of a new committee: the World Heritage Indigenous Peoples Council of Experts (WHIPCOE). This committee would palliate the lack of expertise on Indigenous heritage and traditions. Internal politics and the structural tensions of the Convention aborted the initiative.[29] Member States, particularly those with a history of settler colonialism, opposed the institutionalization of the council.[30]

In 2007, the adoption of the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP) directed some criticism at the World Heritage Convention.[31] The Declaration explicitly expresses that Indigenous Peoples have "the right to maintain, control, protect and develop their cultural heritage, traditional knowledge and traditional cultural

[21] Sioux Nation Treaty Council 2015, 4.
[22] UNESCO 1992.
[23] Strecker 2020, 279.
[24] Kari and Rössler 2017; Hall 2022.
[25] Taylor and Lennon 2011.
[26] Harrison 2012, 116.
[27] Meskell 2013, 161.
[28] Whitby-Last 2008, 61.
[29] Meskell 2013, 157.
[30] Meskell 2013, 164.
[31] UNDRIP 2007.

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expressions" and highlights Indigenous connections to the fauna and flora (Article 31.1). Although the Declaration does not carry authority over the World Heritage regime, it expresses significant expertise and consensus on Indigenous rights. Thus, the Declaration has limited effect on the practice of the Convention. One notable exception is the introduction of the new strategic objective to enhance the role of communities in the implementation of the World Heritage Convention. In July 2007, the World Heritage Committee echoed UNDRIP in recognizing the "critical importance of involving Indigenous, traditional and local communities in the implementation of the Convention."[32]

A plethora of initiatives challenge the monopoly of State Parties on the World Heritage discourse. Notably, in 2017, Indigenous delegates established the International Indigenous Peoples' Forum on World Heritage (IIPFWH).[33] The Forum advocates for Indigenous rights and representation in World Heritage processes. If the number of initiatives is on the rise, the outcome however remains marginal.[34] For instance, representatives intervene only after decisions are taken. So far, the literature focuses on representation challenges in the inscription and management of sites rather than compliance. Reading the Convention through TWAIL further explains the shortcomings of Indigenous representation in the practice.

TWAIL and the Indigenous World

Although the learnings of TWAIL rarely engage with the sphere of heritage law, TWAIL offers especially insightful perspectives on the workings of the legal mechanisms of the Convention. TWAIL encompasses the work undertaken by scholars whose research highlights how international law is, mostly, not on the side of Indigenous Peoples and their perception of nature and culture. Among them, Rajshree Chandra, in her study on international environmental law, highlights that concepts of "common concern of mankind" in relation to global public goods often result in the unintended consequence of "displacing Indigenous Peoples from their customary habitats and livelihoods."[35] She writes that, usually, structures of management and control of nature further market capitalism and its ethics rather than the Indigenous ethic of subsistence.

Antony Anghie provides an account of TWAIL as an intellectual movement rather than an affiliation or an institutionalized school.[36] TWAIL emerged in the 1990s and bound together legal scholars opposed to the mainstream reading of international law. Scholars in TWAIL, or TWAILers, highlight that traditional legal thought fails to recognize the role of race, colonization, capitalism, or imperialism in shaping international law, and thus reproduces injustice and poverty. TWAIL also shares features and overlaps with other streams of scholarship such as critical legal studies,[37] law and political economy,[38] and historical studies in international law. TWAIL, however, distinguishes itself by the central role of the third world, indigeneity, and the vulnerability of its people in contemporary international law.[39] Hiroshi Fukurai raises concerns over the "pandemic Indigenous Peoples struggles for independence," and the violation of minority groups' rights in South and Southeast Asia.[40] In light of the twenty-first-century outbreaks of violence against ethnic

[32] UNESCO 2007.
[33] https://iipfwh.org/ (accessed 10 January 2024).
[34] Meskell and Liuzza 2022, 400.
[35] Chandra 2020.
[36] Anghie 2023.
[37] Kennedy 2006.
[38] Kennedy 2018; Kroncke 2023.
[39] Nesiah 2018.
[40] Fukurai 2018, 224.

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minorities (for example, the Rohingyas[41]) and Indigenous Peoples (for example, the Pashtuns, Okinawans, and Irula), the approach of this article includes approaches from the fourth world in its account of TWAIL.[42] Thus, it encompasses scholarship on the dispossession of traditional lands and its long-lasting consequences on Aboriginal and other Indigenous Peoples.[43] Zeina Jallad argues that land dispossession encompasses what she refers to as "identify annexation," a form of alienation that extends beyond land to selfhood and identity.[44]

TWAIL scholars James Anaya and Antony Anghie, in their respective works, highlight the central role that the first interactions with Indigenous populations in the Americas were the root origin of international law itself.[45] In 1537, Francisco de Vitoria, the primary professor of theology at the University of Salamanca, gave two ground-breaking lectures (*relectiones*). They were entitled: "On the Indians" (*De Indis*) and "On the Law of War Made by the Spaniards on the Barbarians" (originally: *De jure belli hispanorum in Barbaros*).[46] His inquiry aimed to find ethical ground for interactions between Spain and the newly found people of the Americas. Anghie highlights this point as essential: international law did not precede the conception of indigeneity but was "created out of the unique issues generated by the encounter between the Spanish and the Indians."[47]

Much can be deduced from this first account of Indigenous Peoples in international law.[48] On the one hand, Vitoria's lectures shaped international law itself as he considerably influenced Grotius, the precursor of modern international law. On the other hand, his views placed Indigenous Peoples in a passive role in the making of the international legal order for centuries to come. Vitoria made a long-lasting choice when he interpreted the relationship between the Spanish and the Indians as not a relation between sovereign states.[49] The Spaniards were sovereign, and as such they possessed certain powers. The interaction between the two parties is therefore regulated by rules managing and limiting the exercise of such powers. International law became the kind of law that decided who had sovereignty and who did not: Spain and other European nations of the time were justified by their status of sovereign states while Indians were not.[50] Vitoria suggested that the Indians possessed a different set of rights and certain original autonomous powers that the Europeans were bound to respect. Vitoria and his colleague Las Casas argued that the American Indians were *under* the law and must be "ethically" ruled upon. Their scholarship provided grounds for their humane treatment but did not qualify Indians as sovereign subjects.[51] Moreover, they methodically outlined the rationale on which Europeans could legitimately acquire Indian lands or assert authority over them.[52] Since its origins, international law has apprehended Indigenous Peoples not as sovereign subjects but as "something under the law" with rights and some obligations rather than legal subjects, active in the making of international law. In the practice of the Convention, the effects of Vitoria's doctrine perdure. Indigenous Peoples are titular of some rights, but not sovereignty.[53]

[41] Mattez 2022, 219.
[42] Manuel and Posluns 2019.
[43] Henderson, Benson, and Findlay 2000; Watson 2006.
[44] Jallad 2023.
[45] Anaya 2004; Anghie 2005.
[46] Vitoria 1917.
[47] Anghie 2005, 15.
[48] Anaya 2004, 10.
[49] Anghie 2005, 13.
[50] Anghie 2005, 196.
[51] Koskenniemi 2002, 142.
[52] Anaya 2004, 10.
[53] Vrdoljak, Liuzza, and Meskell 2021, 18.

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Sovereignty and Indigeneity in the World Heritage Regime

So far, critiques of the World Heritage regime only focus on their reproaches of the shortcomings within the Convention itself. TWAIL widens its perspective by exemplifying how such shortcomings originate in historical institutions in international law.

In the practice of the Convention, critical heritage scholars successfully denounce the state-centered nature of the Convention.[54] The implementation of the World Heritage Convention is overseen by a rotating membership of the 21 countries that constitute the World Heritage Committee. The Committee is the executive organ of the Convention and the main organ responsible for compliance. Its members are generally career diplomats who represent the interests of their State Parties. The State-centred nature of the Convention contributes to the marginalization of indigenous interests as the agenda of the State Party is the only one represented within the Convention's regime.[55]

TWAIL's study of Indigenous Peoples and international law provides a wider historical context on the marginalization of Indigenous Peoples in international legal instruments. The historical negation of sovereignty rights translates into practice. Some critiques of the World Heritage Convention regime fail to see that the lack of engagement of Indigenous Peoples in the World Heritage regime was not an issue embedded in the Convention alone, but an issue inherent to the development of international law from its early beginnings.[56] The literature in TWAIL provides perspective and envisages the legal means for Indigenous Peoples to actively participate in international cultural heritage law.

Thus, this inquiry is interested in how Indigenous sovereignty activists may exercise prerogatives of sovereignty over their cultural heritage. As TWAILers emphasize, intra-state cultural minorities such as Indigenous Peoples often lack formal sovereignty prerogatives. Despite their historical marginalization during the drafting and ratification of the World Heritage Convention, can Indigenous advocates act directly, unmediated by the State? The following section contends that compliance mechanisms should be explored as a potential avenue for exercising sovereignty. The case studies emphasize Indigenous voices and agency, as actors of heritage protection rather than titularies of abstract rights.

The Compliance Mechanisms in the World Heritage Convention: Instruments of Indigenous Agency?

When the exploitation of natural resources threatens the ecosystems of World Heritage sites, does the Convention provide legal grounds for direct action by Indigenous communities? To find answers to this question, this section examines the legal doctrine on compliance and analyzes two cases in which Indigenous communities petition to enforce compliance to the Convention against Australia and Canada.

Reactive Monitoring, In Danger List (IDL), and Deletion

Hamman and Holleland recently published a comprehensive work on the compliance mechanisms of the World Heritage Convention.[57] It frames the relationship between the member states and the executive organs of the Convention, notably, the World Heritage Committee. This book is a valuable resource for studies about compliance and the Convention. However, its reviews point out the lack of critical assessment of the notion of

[54] Bjerregaard and Nielsen 2014; Meskell et al. 2015; Bertacchini and Saccone 2012.
[55] Mattez 2024a, 173.
[56] Shrinkhal 2021.
[57] Hamman and Holleland 2023.

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compliance, which is central to the research.[58] Sherine Al Shallah notes the technical legalistic reference to the term compliance and the lack of reference to institutional power dynamics. Considering the research at hand, this section proposes to remedy missing analysis and include the role of non-state actors, in particular the role of Indigenous Peoples living on World Heritage Sites.

According to international law, only State Parties have rights and obligations in the World Heritage legal regime. They must take appropriate measures for the protection, conservation, and presentation of their natural and cultural heritage.[59] They are responsible for the degradation of the Outstanding Universal Value (OUV) of their enlisted properties. These obligations are at the core of the Convention's compliance mechanisms. The term "compliance" refers to the extent to which States Parties adhere to or diverge from the obligations imposed upon them under a legal regime.[60] In the World Heritage regime, these obligations further include the Operational Guidelines and World Heritage Committee decisions, in addition to the Convention itself.

The notion of compliance differs from the notion of implementation. Jacobson and Brown Weiss define implementation as the "measures that States take to make international accords effective in their domestic law."[61] Translating international legal obligations into domestic law is a major necessity in making international law effective; the process, however, never guarantees that governments will indeed comply with the obligations at hand. Compliance includes implementation but goes beyond this textual process.[62] While the implementation of international cultural heritage law has been prolifically commented upon,[63] the literature on compliance is less engaged. Moreover, Indigenous Nations never assume a role in the process of implementing international law, which is exclusively the prerogative of State Parties. They are, at best, consulted. Scholars show cases in which states implement the Convention to the detriment of Indigenous residents.[64] While Indigenous communities might be being ignored in implementation processes, they may take an active role in compliance mechanisms and reclaim agency through advocacy at the World Heritage Committee.

For natural heritage sites and cultural landscapes where Indigenous Peoples reside, communities often demonstrate more interest than the State Party's government in preserving their habitats and the biodiversity on which they directly depend. As James Anaya reminds us, in remote places such as Wood Buffalo, in boreal lands, or Kakadu, in the desert:

> Indigenous peoples were mostly left to continue lifestyles built around harvesting abundant wildlife resources within vast territorial domains. But even the most isolated Indigenous groups are now threatened by encroaching commercial, government, or other interests motivated by prospects of accumulating wealth from the natural resources on Indigenous lands.[65]

There are three compliance mechanisms in the Convention. Firstly, reactive monitoring (RM) ensures an exchange of information between States Parties and the World Heritage

[58] Mattez 2023, 395; Al Shallah 2023, 626.
[59] UNESCO, Articles 4 and 5 of the Convention.
[60] Hamman and Holleland 2023, 8.
[61] Jacobson and Brown Weiss 1995, 123.
[62] Hamman and Holleland 2023, 12.
[63] Gerstenblith 2017; Chechi 2018.
[64] Dorough and Wiessner 2020.
[65] Anaya 2004, 4.

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Committee.[66] The Operational Guidelines define RM as being reporting on the state of conservation of specific World Heritage properties that are under threat.[67] RM is the "softer" means of implementation of obligations, but is also the most used. For instance, the Committee has made ample use of this mechanism in the case of Wood Buffalo National Park.[68]

Secondly, if monitoring missions reveal that the conservation measures are insufficient or inappropriate, and the OUV of the site is under threat, the Committee may inscribe the site on the List of World Heritage in Danger (IDL).[69] The efficiency of this mechanism raises controversy in the scholarship.[70] This will be analyzed in our review of the Wood Buffalo National Park, below.

The last compliance mechanism of the Convention is the deletion of the property from the World Heritage List. Deletion is the final and most radical sanction. Scholars also question the effectiveness of the deletion mechanism.[71] In the half-century-long history of the Convention, only three sites were ever delisted.[72] Deletion, although probing certain effects, goes against the "spirit of the Convention."[73] It is, indeed, a failure rather than a victory for heritage protection to find that a property has lost its outstanding character.

The following sub-sections analyze two cases in which Indigenous communities face the destruction of their natural environment due to mining concessions the State granted to polluting private companies, violating their obligations towards both the Convention regime and Indigenous inhabitants. Kakadu National Park (Australia) and Wood Buffalo National Park (Canada) are both World Heritage sites in which Indigenous communities reside and are the first ones to experience, witness, and monitor environmental degradation. In both cases, Indigenous communities petitioned for their respective States to comply with their obligations under the Convention.

Kakadu

Jane Lydon provides a detailed account of a landmark case in which the Aboriginal Mirarr community successfully petitioned against mining activities in Kakadu National Park, in Northern Australia.[74] Mirarr advocates successfully convinced the UNESCO World Heritage Bureau to dispatch a mission for an investigation into the adverse effects of the Jabiluka uranium mine on both Indigenous cultural practices and the environment. Kakadu National Park became a World Heritage Site in 1981 as a so-called mixed (cultural/natural) World Heritage site for its outstanding natural values as well as Aboriginal cultural values. The park is managed jointly by the Mirarr, the traditional owners of the land, and the Director of National Parks. There were two uranium deposits (Jabiluka and Koongarra) and one uranium mine (Ranger) inside the park. These areas were surrounded by the park without technically being a part of it. Unsurprisingly, mining activities impact the fauna and flora of the park.

[66] Cameron and Rössler 2013; Hamman and Holleland 2023, 108; UNESCO, Sheppard, and Wijesuriya 2019.

[67] UNESCO 2023a, paragraph 169.

[68] Government of Canada 2022.

[69] Article 11(4) of the Convention.

[70] Meskell, Liuzza, and Brown 2015.

[71] Hamman and Holleland 2023, 219.

[72] According to the UNESCO World Heritage Centre, as of June 2024, three sites have been delisted: Arabian Oryx Sanctuary, Oman, delisted in 2007 due to poaching, habitat degradation, and plans to reduce the sanctuary's size; Dresden Elbe Valley, Germany, delisted in 2009 after being inscribed on the IDL in 2006 due to plans for the Waldschlösschen Bridge; Liverpool Maritime Mercantile City, UK, delisted in 2021 due to major redevelopment that UNESCO says was detrimental to the site's authenticity and integrity.

[73] Hamman and Holleland 2023, 13; UNESCO 2022, 4.

[74] Lydon 2009.

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The Ranger site started mining in 1980 despite the opposition of the Mirarr people. Moreover, in August 1997, the Australian Government approved the project of mining in Jabiluka. Again, the Mirarr and environmental protection groups opposed the decision. This time, the Mirarr started petitioning the World Heritage Committee, highlighting that the newly created mining site threatened Kakadu's cultural and natural values.[75]

Yvonne Margarula, senior traditional owner, and Jacqui Katona carried the cause of the Mirarr through public campaigns, public forums, and international lobbying.[76] Jacqui Katona placed her faith in the compliance mechanisms of the Convention when she expressed that "the World Heritage Bureau is the only one that can properly articulate the issues."[77] Activists suggested placing Kakadu National Park on the IDL if more mining were to happen. The mine in Jabiluka would certainly threaten wildlife and waters in direct proximity.[78] The Committee dispatched a monitoring mission to Kakadu and Canberra. In November 1998, the mission released a report stating that the uranium mining in Jabiluka would indeed pose serious threats to the cultural and natural values of the Kakadu World Heritage Area and gave Australia six months to rectify the situation.[79] The Australian government suspended the construction of the mine. For climate activists and Aboriginal communities, the petitioning process surely was a victory. The World Heritage Committee proved to be an effective ally in staging international advocacy. It provided leverage for negotiations with mining industries and the Australian federal government.

While the affair was concluded with a tangible positive outcome, with the abandonment of the mining project and Mirarr activists successfully preserving their preserved homelands, the legal argumentation behind the victory remains ambiguous. Indeed, it is important to note that the Committee never placed Kakadu National Park on the IDL. The possibility was discussed during a Third Extraordinary Session held by the Committee in Marrakesh.[80] The decision of the Committee emphasizes the particular importance of Article 6(1) of the World Heritage Convention which highlights "fully respecting the sovereignty of the States on whose territory the cultural and natural heritage is situated."[81] The report of the Rapporteur reveals a recurring concern for Sovereignty.

Instead of celebrating the active participation of the Mirarr people, some State Parties present at the meeting expressed the apprehension that Indigenes, and thus non-state actors, could enforce compliance mechanisms. They argued that only State Parties were sovereign in the World Heritage regime. Canada released a Statement reminding the Committee that "in 1972, the World Heritage Convention was negotiated among State Parties as an instrument of international co-operation."[82] Canada refers to Article 6 of the Convention, insisting that it is for States, and States only, to protect heritage sites of outstanding universal value. The United States expressed support for the Canadian Statement and its interpretation of sovereignty.[83] In other words, Australia and Canada are sovereign State Parties, while Mirarr and other Aboriginal Nations are not. Thus, in their views, sites cannot be inscribed on the IDL without the consent of the State. The affair of the Kakadu National Park reached a positive outcome because Australia, as a State, conceded and renounced the mining project in Jabiluka. If petitioning the Committee caused Australia

[75] Lydon 2009, 43.
[76] Katona, Perera, and Pugliese 1998.
[77] Goldman Environmental Prize 1999.
[78] UNESCO 1999, 65.
[79] UNESCO 1998.
[80] UNESCO 1999.
[81] UNESCO 1999, 23.
[82] UNESCO 1999, annex VX, 83.
[83] UNESCO 1999, annex VXI, 86.

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embarrassment, this is the limit of its legal effects. The legal argumentation withheld by the Committee echoes Vitoria's lecture: Indigenous Peoples do not have Sovereignty.[84] They might have rights but only the Sovereign State may enforce and negotiate in international instances.

Wood Buffalo National Park, Canada (Natural Heritage)

Decades later, Indigenous inhabitants, living in proximity to Wood Buffalo National Park brought a similar petition against the Federal government of Canada to UNESCO. The argument of sovereignty and state prerogative resurfaced. This case highlights that if the State Party is unwilling to collaborate with Indigenous representatives for the conservation and preservation of the property's OUV, the situation becomes more complex to navigate.

Wood Buffalo National Park in Canada became a World Heritage site in 1983 solely for its outstanding natural value, under these criteria:

(vii) as having "great concentrations of migratory wildlife (…) of world importance"
(ix) for being "the most ecologically complete and largest example of the entire Great Plains-Boreal grassland ecosystem of North America, the only place where the predator-prey relationship between wolves and wood bison has continued, unbroken, over time."
(x) for containing the only breeding habitat in the world for the whooping crane.

However, the world heritage site is also the ancestral and spiritual home of some of Canada's First Nations people. The Cree, Chipewyan, and the Métis inhabited the region long before Canada became a State. None of them were consulted on the nomination and management process. In 2014, the lack of consultation and participation by Indigenous Peoples surfaced as a major issue. The Miskew Cree First Nation (MCFN) submitted a petition to UNESCO over fears the ecosystem was rapidly being harmed.[85] Community members reported that they no longer drank the fresh water from lakes or streams over fears of contamination and reported that wild fish and game developed abnormal flavors and deformities.[86] These deteriorations are a direct consequence of Canada building dams and giving mining and other permits to industries in proximity to the park. Not unlike the Mirarr people, they submitted their request directly to the Committee.

During the meeting in Bonn in 2015, the Committee noted these environmental concerns together with Canada's lack of engagement with indigenous communities.[87] The advocacy of the Miskew Cree First Nation successfully triggered the activation of the first compliance mechanism: the Committee enjoined Canada to organize a reactive monitoring mission and submit a report by December 2016. The Reactive Monitoring mission took place. The report was submitted with a delay in February 2017.[88]

The Committee re-examined the environmental degradations in Wood Buffalo during the World Heritage meeting in Krakow in 2017. The ethnographic research of Wheatley and Westman reports on the realities of MCFN advocacy at the World Heritage Committee in great detail.[89] They followed the advocacy of Melody Lepine for the MCFN and chronicled the clashing exchanges between Indigenous representatives and the Canadian official

[84] Anaya 2004; Anghie 2005.
[85] UNESCO 2015; Mikisew Cree First Nation 2016.
[86] Cecco 2018.
[87] UNESCO 2015.
[88] UNESCO 2017.
[89] Wheatley and Westman 2023.

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delegation: the interactions were chilling. MCFN mostly accused Canada of committing in public, such as promising reconciliation with Indigenous Peoples, and assures it will make changes to improve the waters of Wood Buffalo while never taking real actions. It is precisely because of the shortcomings of national negotiations that First Nations turn to UNESCO. MCFN's presence at the World Heritage meeting gathered the attention of international media and sympathy from UNESCO and its advisory bodies.

Melody Lepine admitted that the decision of the Committee not to put the park on the IDL was disappointing. Instead, Canada was given a year to develop a solution to stem the rapid deterioration of the park. It is clear for the Indigenous inhabitants of the boreal forests of Canada that Wood Buffalo is in danger[90] and that they hold more interest than the government of Canada in the natural preservation of the site: "Our health, our way of life and our culture depend on Wood Buffalo. We have spiritual ties to that area that go far deeper than Canada's commitment to it."[91]

Since then, the Committee has examined the situation of Wood Buffalo during its meetings in Baku,[92] Fuzhou,[93] and Riyadh.[94] Despite a series of alarming reports, the property was never placed on the IDL nor considered for delisting. The conservation status has not improved since the first monitoring report of 2016 and the OUV is declining. After each examination, the Committee requests action plans and further monitoring reports, the last one was in February 2024. The Committee explicitly chooses the mechanism of reactive monitoring, as a preferred compliance mechanism, over deletion and in danger list.

Indigenous Peoples and the Politics of Compliance Mechanisms

This section explains the Committee's resistance to the ILD and its clear preference for reactive monitoring processes (UNESCO n.d.). Why is Wood Buffalo not on the list of the IDL despite the concerning reports and Indigenous advocacy to do so? The simple explanation is that Canada does not want to see Wood Buffalo National Park listed as IDL. This answer extends two further questions. Firstly, for which reasons is Canada averse to IDL ? Secondly, it poses questions on the interpretation of the Convention: is the State Party's consent required for inscription on the IDL?

The question of consent was addressed during the Committee proceedings on the status of Kakadu National Park.[95] Article 11 of the Convention has an ambiguous phrasing that refers to "consultation" with the State Party before moving a site to the IDL. Legal scholars generally accept that "consent" is not required, although State Parties routinely argue otherwise.[96]

Lynn Meskell pinpointed States Parties' aversion to the IDL around 2010.[97] Expert advice is consistently set aside for the profit of State politics: "National pride and aggressive lobbying politics among States Parties had greater impacts than ever before."[98] Thailand's delegate affirmed that moving property to the "List of World Heritage in Danger is a punishment."[99] The drafters of the Convention certainly did not imagine compliance as a

[90] Wheatley and Westman 2023, 78.
[91] Cecco 2018.
[92] UNESCO 2019.
[93] UNESCO 2021.
[94] UNESCO 2023.
[95] Affolder 2007.
[96] Hamman and Holleland 2023, 43.
[97] The Economist 2010.
[98] Meskell 2012, 146.
[99] UNESCO 1999, annex XII, 77.

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form of punishment. Nevertheless, Thailand's position is illustrative of the State Parties' experience of the IDL. This tendency has only increased over the past decade.

The empirical study of Tiffany Morrison et al. reveals that not just Canada, but all States Parties to the Convention, are reluctant to appear on the IDL, in particular for environmental threats.[100] State Party's governments fiercely resist the listing of their properties on the IDL. Thus, the Committee meetings on the IDL become increasingly politicized. Moreover, the results of the study challenge the assumption that poor governance only happens in less technologically advanced economies.[101] Wealthy countries such as Australia and Canada engage in poor governance too. Even more so, the study shows that management system plans for heritage sites fail because powerful industries wield more influence in blocking environmental governance. They conclude that natural site management is not improved in developed economies in comparison to so-called developing countries.[102]

Among the 56 properties on the IDL, a striking majority of sites are in zones of armed conflicts in Africa and the Middle East.[103] The inscription on the IDL indicates a situation of political emergencies, such as the historic center of Lviv and Saint Sophie Cathedral in Kyiv Ukraine.[104] Thus, the listing echoes either foreign aggression or a failure of domestic institutions. Internal UNESCO experts are concerned about the negative assumptions surrounding the IDL. In a report, David Sheppard and Gamini Wijesuriya assess this bias among heritage professionals.[105] The Committee seeks to ensure that the inscription on the IDL reflects international concern and genuine support for cultural properties at risk.[106] While this interpretation of the IDL remains possible regarding cultural heritage sites at risk due to foreign armed presence, such a twist will be difficult to achieve regarding natural heritage. Heritage parks are at risk due to the State's poor conservation efforts or caused by privileges granted to industries. Governments never want to appear to their electorate as being responsible for endangering heritage sites.

Domestic Negotiation over World Heritage: Indigenous Law and World Heritage at Uluru Kata Tjuta National Park (UKTNP)

Contrasting the two case studies above, in the Uluru Kata Tjuta National Park (UKTNP), Indigenous traditional owners advanced compliance with Indigenous Law without resorting to the Committee. Anangu Aboriginal people, who have lived in the area for over thirty thousand years, brought forward a vision of heritage conservation based on Indigenous values. This case study highlights the effects of the Convention on heritage sovereignty in the domestic context.

Uluru became World Heritage in 1987 for both its cultural and natural heritage values.[107] The site is managed by both Anangu (the traditional owners) and Western management practices. Uluru is a remarkable monolith of arkosic sandstone and is a spiritual landmark for Indigenous Peoples. In terms of science, Uluru is a geological wonder. The sandstone monolith rises abruptly over flatland surroundings to over 300 meters in height. The changing colors of the rock shift from different tones of red, violet, and orange as sunlight, shade, and rain wash across their flanks. On a map, Uluru appears in the middle of Australia,

[100] Morrison et al. 2020.
[101] Morrison et al. 2020, 950.
[102] Morrison et al. 2020, 952.
[103] Meskell and Liuzza 2022, 402; Al Jazeera 2023.
[104] UNESCO 2023b; Mattez 2024b, 545.
[105] UNESCO 2022.
[106] UNESCO 2022.
[107] UNESCO 1987.

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a dry and inhospitable desert. The rock attracts and retains rainwater, making the surrounding place a haven for plants, animals, and people. In the Aboriginal world, Uluru is one of the most sacred places.

The treatment of Uluru by settlers reflects the violent history of dispossession and identity annexation suffered by the Aboriginal people of Australia.[108] As illustrated by the artist Robert Campbell Jnr in the "Map of the massacres of blacks in the Macleay Valley,"[109] physical violence was inflicted and endured. The suppression of Aboriginal narratives materialized in the previous naming of the place. In 1873, William Gosse, the first non-Aboriginal person to see Uluru, named the place Ayers Rock after the Chief Secretary of South Australia Henry Ayers. When UNESCO first listed Uluru as World Heritage, it was under the colonizer's name.

The touristic exploitation of Uluru furthered colonial sentiment. Despite clear requests not to climb the sacred rock of Uluru, since the creation of the national park, many visitors chose to climb the rock. The study of Julian Bickersteth, David West, and David Wallis provides great details of how the colonial practice perdured through the touristic exploitation of Uluru.[110] The tourism industry generated important revenue for the Northern Territory State. This created pressure on park managers to encourage the practice. In the mid-1960s, climb posts were installed to provide a pathway for visitors to hold onto while climbing up and down Uluru. In November 2017, the park authority decided to permanently close the climb and remove the infrastructure. They closed the climb forever in 2019.[111]

The removal of the climb is a celebrated victory in the recognition of Aboriginal laws that precede the settler's establishment. Sammy Wilson, an Anangu community leader, explains that Uluru was always a sacred place restricted by law. He further explains: "Country has meaning that needs to be respected. (…) Tjukurpa includes everything: the trees; grasses; landforms; hills; rocks and all."[112]

The experience of Uluru highlights that when Indigenous traditional owners and the State find common ground for dialogue and the Federal government or Northern Territory is willing to invest the financial means to implement Indigenous perspectives on conservation, the role of the World Heritage Convention is limited.

Conclusion

This article reviews three World Heritage properties in which the State and Indigenous Peoples hold conflicting interests in conservation priorities and strategies: Kakadu, Wood Buffalo National Park, and UKTNP. In natural heritage sites and cultural landscapes, Indigenous communities maintain a greater interest than the State Party's government in preserving their habitats and biodiversity because they reside and depend on the Land.

However, according to the current state of international law, States hold the prerogative of sovereignty whereas Indigenous communities do not. Analyzing this question through the lens of TWAIL highlights the historical exclusion of Indigenous Peoples from the making of international law and the attribution of sovereignty prerogatives. Moreover, this reading sheds new light on the criticism directed against the World Heritage Convention. Critiques of the regime tend to overlook the lack of engagement of Indigenous Peoples, as embedded within the Convention itself. In this article, the TWAIL reading reveals that this issue reflects

[108] Jallad 2023.
[109] Campbell 1991.
[110] Bickersteth, West, and Wallis 2020.
[111] Tarabay and Abbott 2019.
[112] Bickersteth, West, and Wallis 2020, 10.

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the broader development of international law since the times of Vitoria and Las Casas, and the embedded definition of sovereignty.[113] Indeed, the continued lack of sovereignty prerogatives and the persistence of colonial hierarchies between States and intra-national groups limit the prerogatives of traditional custodians of the Land. Article 6(1) of the Convention echoes this principle of international law when it recognizes "fully respecting the sovereignty of the States on whose territory the cultural and natural heritage" but never acknowledges the sovereignty of traditional owners of the Land.[114] The regime favours State representatives over Indigenous advocates. The plethora of reports analyzed above highlight States' concern for sovereignty, particularly those with a history of settler colonialism.[115]

At the same time, the World Heritage Convention can serve as a tool for Indigenous environmental advocacy – allowing representatives of Indigenous Nations to raise awareness, rally support, and collaborate with environmental activists. These strategies cannot, however, replace dialogue and cooperation at the State level. Indigenous environmental negotiation strategies must navigate this tension inherent to the World Heritage regime to enforce the right to a sustainable and culturally sound environment. It is necessary to build effective advocacy strategies for Indigenous communities that can leverage the World Heritage Convention framework to assert rights to a sustainable environment. It is not always the case that Indigenous interests align with the objectives of the World Heritage Convention regime.[116] However, this article shows that Indigenous interests and the Convention sometimes align. This alignment makes it particularly interesting to examine compliance mechanisms. Ultimately, Indigenous advocates can exercise heritage sovereignty rights within the context of international law and leverage compliance mechanisms in their favor.

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[113] Koskenniemi 2002, 142.
[114] UNESCO 1972.
[115] UNESCO 1999, 23.
[116] Meskell 2013; Liljeblad 2019; Disko and Dorough 2022.

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