

Indigenous Expertise as cultural expertise in the World Heritage Protective Framework

Noelle Higgins¹

Abstract

This paper focuses on the engagement of Indigenous peoples with the international legal framework which seeks to protect world heritage. Significant concerns have been raised as to the role which Indigenous expertise can play in this framework.

There have been numerous criticisms regarding the Eurocentric nature of the framework, and concerns over its the decision-making processes, e.g. in respect of inscription of sites on the World Heritage List. All 3 of the UN mechanisms specific to Indigenous peoples (UN Permanent Forum on Indigenous Issues, UN Expert Mechanism on the Rights of Indigenous Peoples and UN Special Rapporteur on the Rights of Indigenous Peoples) have called on the World Heritage Committee, UNESCO and heritage advisory bodies to take remedial measures and to expand the role of Indigenous peoples in the protective framework. There have also been recommendations made as to how the World Heritage Committee, UNESCO and States can align the implementation of the World Heritage Convention with the principles and requirements of the UN Declaration on the Rights of Indigenous Peoples. As part of the move to be more inclusive of Indigenous voices, an Indigenous Peoples' Forum on World Heritage was established in 2017, however an Indigenous expertise deficit still remains within the world heritage framework. As cultural expertise is necessary to appreciate the context and background of cultural sites, and their status as 'culture', deserving of recognition under the world heritage framework, this paper addresses the role of Indigenous expertise as cultural expertise in the world heritage

¹ Noelle Higgins is an Associate Professor in the Law Department at Maynooth University, Ireland. She currently teaches and researches in a variety of fields of public international law, international humanitarian law, international human rights law and the rights of minorities and Indigenous peoples. Her recent publications focus mainly on the field of cultural rights, e.g. *Cultural Defences at the ICC* (Routledge, 2018) and *The Protection of Cultural Heritage During Armed Conflict: The Changing Paradigms* (Routledge, 2020). She was previously the Vice-Chair of the Ethical, Political, Legal and Philosophical Studies Committee of the Royal Irish Academy in Ireland and a member of the Irish Department of Foreign Affairs and Trade - NGO Forum on Human Rights. She currently sits on the Advisory Committee of International Communities Organisation and is a member of the European Coordinating Committee for Academic Freedom Advocacy of Scholars at Risk, Europe.

framework and underlines why Indigenous expertise is necessary in order to ensure that the framework is representative and valid.

Introduction

The current international framework on the protection and safeguarding of world heritage is a complex and multifaceted one, composed of a web of instruments, overseen and implemented by various bodies. This framework falls within the remit of the United Nations Educational, Scientific and Cultural Organization (UNESCO), a specialised agency of the United Nations (UN), founded in 1945, with the aim of building peace through international cooperation in education, the sciences and culture. The cornerstone of the extant legal framework on the protection and safeguarding of world heritage is the World Heritage Convention, adopted in 1972, and overseen by the World Heritage Committee (Francioni, 2008). The latter consists of representatives from 21 of the States Parties to the Convention, elected by their General Assembly. The Committee, which is advised by the International Council on Monuments and Sites (ICOMOS), the International Union for the Conservation of Nature (IUCN) and the International Centre for the Study of the Preservation and Restoration of Cultural Property (ICCROM), has developed criteria for the inscription of properties on the World Heritage List (Anglin, 2008; Rao, 2010). These criteria are contained in the 'Operational Guidelines for the Implementation of the World Heritage Convention' (2019). This document has been amended and revised a number of times by the Committee in reaction to new concepts, knowledge or experiences.

As well as the core World Heritage Convention 1972, a number of other instruments have been adopted by UNESCO in the fields of culture and heritage, including the Convention for the Safeguarding of the Intangible Cultural Heritage 2003, and the Declaration concerning the Intentional Destruction of Cultural Heritage 2003. Some international legal instruments focus on the protection of cultural heritage in times of armed conflict, such as the Hague Convention of 1954, and its Additional Protocols, and others relate to the stealing and export of cultural artefacts, including the UNIDROIT Convention on Stolen or Illegally Exported Cultural Objects 1995.

While the legal framework on the safeguarding and protection of cultural heritage is substantial in terms of number of legal instruments and expert bodies, there exists information and expertise deficits with regard to the heritage of Indigenous peoples

therein. Criticisms have been leveled at the current heritage safeguarding system for promoting a Western-centric idea of 'heritage', and overlooking or unacknowledging Indigenous conceptions, including in respect of nomination of sites for inscription on the World Heritage List (Meskell, 2013, p. 160; Brumann, 2018, p. 1211). All 3 of the UN mechanisms specific to Indigenous peoples (UN Permanent Forum on Indigenous Issues, UN Expert Mechanism on the Rights of Indigenous Peoples and UN Special Rapporteur on the Rights of Indigenous Peoples) have called on the World Heritage Committee, UNESCO and its advisory bodies to take remedial measures and to expand the role of Indigenous peoples in the protective framework. One central point which has been emphasised is that bodies charged with a role in heritage safeguarding and protection should ensure the alignment of their work with the principles and requirements of the UN Declaration on the Rights of Indigenous (UNDRIP), adopted in 2007. While several attempts had been made to address these criticisms over the years, by, for example, amendments to the Operational Guidelines for the application of the 1972 Convention, an expertise deficit remains.

This paper addresses the role of Indigenous expertise as cultural expertise in the world heritage framework, tracing how this has changed over time and underlining why it is now time to institutionalise Indigenous expertise within the framework. In the context of this article, Indigenous expertise is the special knowledge and experience of Indigenous peoples which locates and describes relevant facts in light of their particular history, background, and context, and facilitates the explanation of Indigenous concepts to a non-Indigenous audience. Cultural Indigenous expertise illuminates the 'value' of Indigenous cultural objects sites and traditions, for the purposes of the world heritage legal framework, and elucidates how they should be treated and managed.

The first part of this article analyses the international framework on the protection and safeguarding of world heritage, with a specific focus on the World Heritage Convention 1972 and the World Heritage Committee, highlighting a number of concerns in respect of Indigenous culture and heritage within this framework. The article then discusses why Indigenous expertise is needed within this framework before then assessing an abandoned attempted to include Indigenous expertise within the heritage framework through the proposed establishment of the World Heritage Indigenous Peoples Council of Experts (WHIPCOE). The paper recommends that such a body is necessary within the world heritage framework, and is in line with developments in international law concerning the rights of Indigenous peoples.