UNESCO’s Cultural Heritage Lists: Protecting Indigenous Traditional Sports and Games

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Introduction

This paper explores the development of the United Nations Educational, Scientific, and Cultural Organization ("UNESCO") world heritage lists, from their origination as a protector of tangible cultural heritage, to their current expansion as a protector of intangible cultural heritage. Tangible cultural heritage lends itself to protections quite nicely. Slap a plaque on a monument, throw money at a renovation project, and a physical property is cared for. What, then, is to be done about intangible cultural heritage? How does one preserve something that cannot necessarily be touched, seen, or heard, at least not all at once?

In 2001, UNESCO laid the foundation for protecting intangible cultural heritage around the world by defining “intangible heritage” as cultural expressions and practices. In 2003, a convention was established for the protection of the same, which was fully adopted in 2006. In 2008, UNESCO put together its intangible cultural heritage list, which, like its tangible counterpart, documents hundreds of items of cultural significance in nearly every United Nations member state. This paper asserts that two items are missing from the intangible cultural heritage list, and lays down avenues for improvement.

The first missing item is solid parameters for the protection of intangible cultural heritage. This includes outlining how money is gathered and disbursed to member nations and how new culturally significant items are added to the list. With that groundwork laid, intangible cultural heritage can be better protected. The second missing item on the intangible cultural heritage list is something that nearly all nations have ingrained in their cultural identity in one way, shape, or form: indigenous traditional sports and games. To be a truly complete list of intangible cultural heritage, UNESCO’s list should include this quintessential sphere of human existence and interaction.
Traditional sports and games form the backbone of communities and help build and enrich cultural roots and identities. Thirteen years ago the need to create protections for indigenous sports and games was realized at the UNESCO convention of Punta Del Este in Uruguay. It was recognized that globalization was taking its toll on the existence of traditional sports and games by making such sports endangered. The reasons for endangerment are discussed further on in this paper. In 2006, an international platform was envisioned to bring this issue to the forefront. Since then, progress has stalled. UNESCO should approach the issue again and create a comprehensive list of traditional sports and games, which would aid in stemming the harmful effects of globalization and preserving traditional sports and games for present and future generations. UNESCO could achieve this by providing mechanisms for giving financial and organizational support to countries in order to promote and preserve their traditional sports and games.

Part One of this paper defines cultural heritage and discusses the importance of its protections. Part Two provides an overview of tangible and intangible cultural heritage, UNESCO, and traditional sports and games. Part Three sets forth proposals for improving UNESCO and protecting traditional sports and games. In Part Four the paper concludes.

I. Defining Cultural Heritage and its Importance

There is a general international consensus that cultural heritage needs to be protected; the problem lies in the definitions of “culture” and “cultural heritage.”\(^1\) As one scholar noted, “Culture is one of the two or three most complicated words in the English language.”\(^2\) In an effort to establish cultural heritage protections, an array of conventions, policies, laws,

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\(^2\) *Id.* at 441.
declarations, protocols, and guidelines have been established. Each UNESCO Convention “has a definition drafted for the purposes of that instrument alone; it may not…be possible to achieve a general definition suitable for use in a variety of contexts.” Therefore, it is with much difficulty that one arrives at the exact meaning encompassed by the term “cultural heritage.” The term, as used in international and domestic law alike, has expanded its definition in the last half-century. It is not uncommon for scholars to expect “cultural heritage” to cover everything imaginable.

The idea exists that there is a “world cultural heritage.” This idea posits that certain states possess cultural assets which they have the duty to protect and maintain not for their own sake, but for the sake of all mankind and future generations. The cultural assets are not owned by the state, but rather the state is merely a trustee of the asset for all humanity. The state is obligated to protect against the cultural asset’s destruction, or, if it is unable to, it is obligated to request the help of the international community. This is also known as the “common heritage of mankind.”

The recognition and protection of cultural heritage has been championed as a fundamental right under international law. As one scholar says, “All that we are is an expression of the culture we inherited, it is the notion of inheritance, of receiving something from one generation and possibly passing it on the next which intuitively underpins the notion of

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3 Id.
4 Id.
5 Id. at 442. Such examples of “everything imaginable” include monuments, architecture, art, archaeological sites, manuscripts, books, buildings, and other items that fit within a broad and vague all-encompassing definition of cultural heritage.
7 Id.
8 Id.
cultural heritage.”\textsuperscript{10} There appears to be recognition of the “human right to culture” and the acknowledgement by governments that they “have a responsibility for the social and cultural well-being of society.”\textsuperscript{11} International agreements speak of rights to “benefit from the cultural heritage[,] contribute towards its enrichment” and to “exercise…the right to cultural heritage.”\textsuperscript{12} While a workable definition of cultural heritage is not easy to discern, for the purposes of this paper, “cultural heritage” means those tangible and intangible aspects of communities that makes the community unique and has a special meaning to that community.

Despite its recognition in international agreements as a basic element of civilization and national culture, cultural heritage rights may be the most neglected category of human rights.\textsuperscript{13} When one talks about the cultural heritage rights of indigenous peoples, this discrepancy is even more apparent.\textsuperscript{14}

**II. Historical Overview of Cultural Heritage**

The following is a historical overview of the various forms of cultural heritage.

**A. Tangible Cultural Heritage**

The United Nations Educational, Scientific, and Cultural Organization (“UNESCO”), created in 1945, is the arm of the United Nations (“UN”) entrusted with the duty of preserving cultural heritage.\textsuperscript{15} The Organization was created only twenty-four days after the UN Charter came into force.\textsuperscript{16} The first calamity relating to international cultural heritage faced by UNESCO involved a dam project on Egypt’s Nile River that would permanently submerge

\textsuperscript{10} Id.
\textsuperscript{11} Id.
\textsuperscript{12} Id.
\textsuperscript{13} Id. at 156.
\textsuperscript{14} Id.
\textsuperscript{15} Id. at 170.
hundreds of historic archaeological sites.\textsuperscript{17} The situation attracted much public attention and appeals for help, and UNESCO launched a campaign to save the structures in 1960.\textsuperscript{18} UNESCO managed to salvage the priceless monuments, and the success of the venture, which was the first major instance of world support for the preservation of ancient sites. This helped UNESCO improve its ability to protect cultural heritage.\textsuperscript{19}

UNESCO’s World Heritage Convention was adopted in 1972 and ratified in 1975 to “protect, identify, and preserve natural and cultural heritage sites worldwide.”\textsuperscript{20} Since its creation, the World Heritage Convention has been deemed “the most successful global instrument for the protection of cultural and natural heritage.”\textsuperscript{21} However, it has also been criticized as “an instrument of foreign domination.”\textsuperscript{22} UNESCO made the distinction that sites, in order to make it on the list, must be of “outstanding universal value.”\textsuperscript{23, 24}

The first World Heritage List was created in 1978.\textsuperscript{25} As of March 2012, the World Heritage List includes 936 properties, including 725 cultural, 183 natural, and 28 mixed properties.\textsuperscript{26} These properties appear in 153 States Parties (the term that UNESCO uses to define the states which recognize the World Heritage Lists), and 189 States Parties have ratified the

\begin{flushleft}
\textsuperscript{17} Id. at 594.
\textsuperscript{18} Id.
\textsuperscript{19} Id. at 595.
\textsuperscript{21} Id.
\textsuperscript{22} Id.
\textsuperscript{23} Id.
\textsuperscript{24} A discussion of this verbiage appears on page 8 of this paper.
\textsuperscript{26} \url{http://whc.unesco.org/en/list/}. Last accessed 3/28/12. An example of a site that resides on both the natural and the cultural list is the Tikal National Park, which is a Maya center in a rainforest rich in diversity of plant and animals.
\end{flushleft}
World Heritage Convention. At the outset of the World Heritage List, only nine sites were in the United States; now, there are twenty-one.

The World Heritage Convention is a mechanism for safeguarding “outstanding examples” of the world’s natural and cultural heritage. UNESCO is the body that oversees this convention. The purpose of the Convention is to “establish 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.” The World Heritage Convention is unique in many ways. First, it provides for a broad definition of what world heritage consists of. It provides protection for both natural and cultural heritage. Historically,

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27 Id.
28 Id. For the curiously-inclined, the U.S. sites are:
- Mesa Verde National Park
- Yellowstone National Park
- Everglades National Park
- Grand Canyon National Park
- Independence Hall
- Kluane/Wrangell-St Elias/Glacier Bay/Tatshenshini-Alsek
- Redwood National and State Parks
- Mammoth Cave National Park
- Olympic National Park
- Cahokia Mounds State Historic Site
- Great Smoky Mountains National Park
- La Fortaleza and San Juan National Historic Site in Puerto Rico
- Statue of Liberty
- Yosemite National Park
- Chaco Culture
- Hawaii Volcanoes National Park
- Monticello and the University of Virginia in Charlottesville
- Pueblo de Taos
- Carlsbad Caverns National Park
- Waterton Glacier International Peace Park
- Papahānaumokuākea
29 Slatyer, supra note 25, at 140.
31 Slatyer, supra note 25, at 140.
these two areas were considered separate, but as is often the case, they can be intertwined. Another reason the World Heritage Convention is unique is it provides a fund, called the World Heritage Fund (the “Fund”), which consists of primarily voluntary and obligatory contributions from State Parties, which are countries that have joined the Convention. This fund provides assistance on an international scale to States Parties that otherwise cannot afford to tend to their heritage sites. The Convention was designed to complement, aid, and stimulate efforts by individual nations to protect heritage sites, not to merely replace them.

The World Heritage Convention is designed as a “tool for international cooperation and assistance through exchange of information, sharing of expertise, transfer of resources and training of experts in the field of conservation.” The convention consists of a committee, called the World Heritage Committee (the “Committee”), that sets the policies and, most importantly, establishes the criteria for inclusion of sites on the World Heritage List. The Committee also makes the decisions when it comes to nominations for additions to the World Heritage List and the World Heritage in Danger List, and requests for assistance under the Fund. Twenty-one States Parties make up the committee, and one third of the State members of the Committee are replaced every two years in order to build a rotation of Committee members. The members of each States Party’s Committee, which consist of an official delegation of specialists of cultural and natural heritage matters, meet annually. To aid the Committee in making funding and nomination decisions, non-governmental organizations

32 Id.
33 Id.
34 Id.
35 Id.
36 Id.
37 Litton, supra note 30, at 224.
38 Slatyer, supra note 25, at 140.
39 Id.
provide impartial advice on the nominations and help establish guidelines for further developing the work of the Convention, including the International Council for Monuments and Sites, the International Center for Conservation in Rome, and the International Union for Conservation of Nature and Natural Resources.\textsuperscript{40}

Once nomination and funding decisions are made, they are put into action by the Secretariat of UNESCO by doling out funds and creating Heritage List books and resources.\textsuperscript{41} Two different groups care for cultural and natural heritage, but many world heritage sites are handled in conjunction with both.\textsuperscript{42} All States Parties to the World Heritage Convention are given the power to submit nominees for cultural of heritage protection.\textsuperscript{43} To qualify for UNESCO protection, the site must meet certain strict criteria.\textsuperscript{44} At its incorporation, the World Heritage List had different criteria for natural and cultural properties.\textsuperscript{45} As the World Heritage List has been modified throughout the years, most recently in 2008, it has established a combined list of criteria.\textsuperscript{46} The criteria for sites are as follows. First, the property must be within the territory of the nominating State. Second, it must meet one of the ten following criteria to be considered of “outstanding universal value”:

i. to represent a masterpiece of human creative genius;
ii. to exhibit an important interchange of human values, over a span of time or within a cultural area of the world, on developments in architecture or technology, monumental arts, town-planning or landscape design;
iii. to bear a unique or at least exceptional testimony to a cultural tradition or to a civilization which is living or which has disappeared;
iv. to be an outstanding example of a type of building, architectural or technological ensemble or landscape which illustrates (a) significant stage(s) in human history;

\textsuperscript{40 Id.}
\textsuperscript{41 Id. at 141.}
\textsuperscript{42 Id.}
\textsuperscript{43 Id.}
\textsuperscript{44 Id.}
\textsuperscript{45 Id. at 142.}
\textsuperscript{46 Id. at 144.}
v. to be an outstanding example of a traditional human settlement, land-use, or sea-use which is representative of a culture (or cultures), or human interaction with the environment especially when it has become vulnerable under the impact of irreversible change;

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

vii. to contain superlative natural phenomena or areas of exceptional natural beauty and aesthetic importance;

viii. to be outstanding examples representing major stages of earth's history, including the record of life, significant on-going geological processes in the development of landforms, or significant geomorphic or physiographic features;

ix. to be outstanding examples representing significant on-going ecological and biological processes in the evolution and development of terrestrial, fresh water, coastal and marine ecosystems and communities of plants and animals;

x. to contain the most important and significant natural habitats for in-situ conservation of biological diversity, including those containing threatened species of outstanding universal value from the point of view of science or conservation.47

The protection, management, authenticity, and integrity of properties are also important considerations.48

To nominate a site, the State, with the endorsement of its government, must complete a form giving explicit details about the property, including characteristics, legal status, location, degree of current protection, films, map, and bibliographical references.49 The process then goes on to non-governmental bodies for evaluation of the merits of the nominated site.50

The overriding criterion for World Heritage recognition is that the property must be of “outstanding universal value.”51 The 2005 Operational Guidelines for the World Heritage Convention describes that term as follows:

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48 Id.
49 Slatyer, supra note 25, at 141.
50 Id. at 142.
51 Id.
Outstanding universal value means cultural and/or natural significance which is so exceptional as to transcend national boundaries and to be of common importance for present and future generations of all humanity. As such, the permanent protection of this heritage is of the highest importance to the international community as a whole. The Committee defines the criteria for the inscription of properties on the World Heritage List.\(^{52}\)

There is a consensus that some sites’ cultural significance – the Galapalagos Islands and the Grand Canyon, for instance – are very much of World Heritage quality.\(^{53}\) Some sites, however, are not so easily discernible as World Heritage quality. Still other sites are on the border between protected sites and “in danger” sites, making the decision as to which list to put a site on a difficult one.\(^{54}\)

Once the recommendations go from the non-governmental bodies to the Bureau (a group of high-ranking Committee members), the Bureau makes any of three recommendations to the Committee: accept, reject, or defer until a later point when more information is available.\(^{55}\)

Two consequences exist for a World Heritage List site. First, tourism, interest, and knowledge of a site dramatically increase.\(^{56}\) Second, added protections are given to the site.\(^{57}\)

One such protection is a method of periodically reporting on the sites to determine if they are

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\(^{53}\) Slatyer, *supra* note 25, at 142.

\(^{54}\) Litton, *supra* note 30, at 243. This article makes the startling statement that adding a site to the “In Danger” list represents a regulatory taking, or at the very least, a quasi-taking. The argument goes that many situations exist in which the listing of a site on the IN Danger list severely limits a third-party property owner’s ability to use his property. It undermines the property owner’s ability to utilize his property in a manner which would normally be in accordance with domestic law. One example is a land owner adjacent to a World Heritage site who plans to mine his land. The Committee send out a team of experts to inspect the land and the mine’s effect on the World Heritage site and determines that the site must be placed on the In Danger list. Without actually seizing the property, the Committee essentially exerts pressure on the private actor to act in a certain way to avoid being labeled as “the business that destroyed a World Heritage site.” A state will then feel pressure to force the land owner to stop the mine out of fear that their reputation will be blemished in the international sphere. This dilemma re-appears later on in the paper when discussing Traditional Sports and Games protections.

\(^{55}\) Slatyer, *supra* note 25, at 142.

\(^{56}\) Id.

\(^{57}\) Id.
still of outstanding universal value and what measures need to be taken to thwart any danger to the sites.  

This means that once a site is placed on the list, it does not necessarily remain listed permanently. Cultural properties are always changing (for better or for worse). It is inevitable that each site is threatened at least on some level, whether it is agricultural expansion, pollution, engineering work such as damming, urbanization, or others.  

Threats exist in both developed and developing countries; however, developing countries have more trouble, both financially and in terms of manpower, in protecting sites. That is why the Fund exists.

The Fund can be used for assistance in a number of ways. The first method is preparatory. The Fund assists states in identifying properties of World Heritage quality, preparing for nomination, and aiding in the formulation of technical cooperation and training requests. The second method the Fund uses to assist listed sites is through technical cooperation, which exists for sites already on the list. Examples include financial support for studies on particular scientific problems, providing experts for long-term projects, supply of essential equipment which cannot be provided locally, interest-free loans for large-scale preservation projects, and management plans to save forests, reduce consumption, and integrating sites into rural development schemes. The third method is with emergency assistance provided by the Fund for properties on the List which are in “immediate danger of total destruction or disappearance,” such as by landslide, floods, etc. Only two times in the history of the World Heritage Lists has this been approved: Kotor in Yugoslavia after damage

58 Id.
59 Id.
60 Id.
61 Id.
62 Id.
63 Id. at 144.
64 Id.
65 Id.
caused by an earthquake, and Shibam, an old walled city in Yemen, as the result of water drainage work. The fourth and final method of Fund assistance is support for training. This is flexible and can be adapted to fit the needs of individual countries, but it primarily provides group training, equipment, and educational courses to the affected country, so that the country can build up a core of specialists and intellectuals in the area of conservation. The Convention donates, on average, $4 million U.S. dollars a year from the Fund.

Article 7 of the Convention emphasizes that the protection of cultural heritage is achieved through establishing a system of “international cooperation and assistance designed to support States Parties to the Convention in their efforts to conserve and identify that heritage.” The Committee is formed by a treaty ratified by the States Party, which carry great legal weight. However, the Committee cannot create legal obligations which fall directly on domestic actors. The Convention states in Article 6 that “Whilst fully respecting the sovereignty of the States on whose territory the cultural and natural heritage…is situated, and without prejudice to property rights 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.” The Convention therefore creates a cooperative international obligation to protect shared heritage, and cannot create domestic legal rules.

Listings exists in a middle ground between private and state actors.

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66 Id.
67 Id.
68 Id.
70 Litton, supra note 30, at 232.
71 Id. at 245.
72 Id.
73 Id.
74 Id.
UNESCO acts like a contract since it does not by itself offer heritage protection. Rather, the Convention creates mutual obligations between each States Party to assume certain international obligations in regard to its cultural heritage that will require it to act or refrain from acting. In addition, the Convention requires that States Parties must act in good faith.

UNESCO has become the most widely accepted international instrument demonstrating successful implementation of cultural heritage protection on different levels. At the same time, issues regarding new categories of objects and responsibility have emerged. The concept of cultural heritage has expanded in recent years because of an increasing public awareness of the richness of heritage as well as of its vulnerability. Today, information and communication technologies and tourism facilitate a better response to this social demand. Because heritage must be “appropriated and made accessible in more imaginative ways, shared more widely within and among nations, used more creatively to re-invent a living culture (which will soon be valued as the heritage of the future) and last but not least, nurtured more wisely as an important source of income and employment.” One of these new categories of cultural heritage is intangible cultural heritage, a type of living culture.

B. Intangible Cultural Heritage

Intangible cultural heritage has been lauded as the “lifeblood of culture” and the “mother of all cultures.” In 2003, UNESCO adopted the Convention on the Safeguarding of Intangible Cultural Heritage. The Convention sought to safeguard the intangible cultural heritage, ensure

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75 Barfelz, supra note 9, at 172.
76 Id.
77 Melnychuk, supra note 6, at 54.
78 Id.
79 Id.
respect and appreciation for the materials, raise awareness of their importance, and provide for international cooperation and assistance.\textsuperscript{81} It was UNESCO’s first convention devoted entirely to the subject of the intangible aspects of culture, thus remedying the “historical blindness concerning the importance of safeguarding intangible cultural heritage.”\textsuperscript{82} The Convention covers practices, expressions, knowledge, representations, and skills.\textsuperscript{83} It was entered into force in April 2006, and now features more than 100 States Parties.\textsuperscript{84} Its supporters praise its flexibility; its detractors denounce its inventory system as reducing living cultures to lists and diagrams.\textsuperscript{85}

In 2005, UNESCO created the Convention on the Protection and Promotion of the Diversity of Cultural Expressions, focusing on the diversity of cultural expressions as circulated and shared through cultural activities and goods and services. Its aim was to create the conditions for cultures to “flourish and to freely interact in a mutually beneficial manner and to encourage dialogue among cultures and countries.”\textsuperscript{86} Entered into force in 2007, that Convention has ninety current States Parties.\textsuperscript{87} In 2007, the UN General Assembly adopted the Declaration on the Rights of Indigenous Peoples, (“DRIPS”), which declared that indigenous peoples have the right to “maintain, control, protect and develop their cultural heritage, traditional knowledge and cultural expressions, and manifestations of their sports and traditional games…oral traditions, medicines, technologies, and knowledge of the properties of fauna and flora, and maintain, control, protect and develop their intellectual property over such cultural

\begin{footnotes}
\item[81] Yu, \textit{supra} note 1, at 434.
\item[82] Slattery, \textit{supra} note 80, at 202.
\item[83] Yu, \textit{supra} note 1, at 434.
\item[84] Id.
\item[85] Slattery, \textit{supra} note 80, at 202.
\item[86] Yu, \textit{supra} note 1, at 434.
\item[87] Id.
\end{footnotes}
heritage, knowledge, and expressions.” While the focus of this paper turns to traditional games and sports in a later section, it is important to mention that less-developed countries and traditional communities actively push for stronger protection of all types of intangible cultural heritage.

One of the largest downsides of tangible cultural heritage is one of the largest upsides of intangible cultural heritage. Tourism is the world’s largest industry, bringing many economic benefits to a community. But it can also threaten fragile cultural sites such as Easter Island. The fact that intangible heritage is intangible means that it is not physically threatened by this increase in global curiosity of cultural heritage. Indeed, visitors watching a native Hindu dance do not compromise its integrity like visitors to an ancient cathedral in Romania would.

At the international level, collective rights have been used to protect a variety of resources that are of critical importance for furthering social membership and communal development. Cultural heritage is a typical example. Cultural heritage “promotes the shared identities of the inhabitants of a particular village, region, or country, or of the members of a social, cultural, or religious group, and facilitates communication of shared beliefs, customs,

88 Id. at 435.
89 Nathaniel C. Guest, Putting History on a Stone Foundation: Toward Legal Rights for Historic Property, 18 Temp. Pol. & Civ. Rts. L. Rev. 699 (2009). Guest writes an interesting article arguing for the extension of full property rights to natural objects such as trees, and to historic places such as Liberty Hall. He argues that property rights have expanded through the years to each class of humans and that the most natural next stage is to give it to inanimate objects. While I don’t push strongly for property rights of indigenous peoples for their traditional games and sports, I could see it working for some aspects of intangible heritage such as oral stories.
90 Barfelz, supra note 9, at 183.
91 Id. Barfelz talks about how Easter Island’s inhabitants are clearly benefitted by the economic advantages of an uptick in tourism over the past few decades. However, the Moai statues are threatened by tourism and may be in more danger than they otherwise would be from weather elements. Barfelz describes this catch 22 as follows: more tourists bring more revenue which enables greater preservation efforts, but the increased tourism bringing the revenue is the source of the threat creating the need for protection and preservation, and the best way to reduce the threat may be to reduce the tourists.
92 Id. at 184.
93 Haochen Sun, Fair Use as a Collective User Right, 90 N.C. L. Rev. 125, 166 (2011).
language, status within a society, and historical experiences. “This notion of an intangible cultural heritage reinforces collective rights in a community’s shared interests in improving its development. For example, the Convention for the Safeguarding of the Intangible Cultural Heritage states:

“[I]ntangible cultural heritage” means the practices, representations, expressions, knowledge, skills--as well as the instruments, objects, artifacts and cultural spaces associated therewith--that communities, groups and, in some cases, individuals recognize as part of their cultural heritage. This intangible cultural heritage, transmitted from generation to generation, is constantly recreated by communities and groups in response to their environment, their interaction with nature and their history, and provides them with a sense of identity and continuity, thus promoting respect for cultural diversity and human creativity.”

There is a loss of diversity in cultural practices around the planet. Music, dance, performances, and rituals have been lost or are in decline. These practices must be safeguarded. “To safeguard” means to take measures aimed at “ensuring the viability of the intangible cultural heritage, including the identification, documentation, research, preservation, protection, promotion, enhancement, and transmission, particularly through formal and non-formal education, as well as the revitalization of the various aspects of such heritage.” In order to safeguard something as Intangible Cultural Heritage, the heritage must be a viable, continued practice within and by the cultural community in which it exists.

94 Id.
95 Id.
96 Id.
98 Id. at 12.
99 Id.
The Intangible Cultural Heritage Convention posits that the people practicing the Intangible Cultural Heritage must want it to be protected.100 Experts should not declare something as heritage on behalf of the ones protecting it – rather, it should be a bottom-up approach. Safeguarding is about continuity of heritage, not the freezing of it in time.101

Cultural heritage is a “living fabric” serving as a source of creativity, identity, and cultural diversity.102 Intangible Cultural Heritage is threatened today by cultural standardization due to globalization, tourism, the degradation of the environment, migration, industrialization, armed conflict, and rural exodus.103 Tangible heritage by its very nature is designed to survive long after the death of the person who produced it. Conversely, the fate of intangible heritage is closely related to its creators.

Article 7 of UNESCO’s Universal Declaration on the Protection and Promotion of the Diversity of Cultural Expressions proclaims that “heritage in all its forms must be preserved, enhanced and handed on to future generations as a record of human experience and aspirations, so as to foster creativity and to inspire genuine dialogue among cultures.”104 The importance of protecting intangible heritage is especially important in Third World countries. As one scholar memorably illustrates, “In Africa, when an old person dies, a library burns down.”105

For these reasons, adequate measures should be developed to safeguard this heritage, which the UNESCO convention formulates but does not perfect.

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100 Id. at 13.
101 Id.
102 Id.
103 Id.
104 Slattery, supra note 80, at 209.
105 Id. at 220.
1. Difficulties of Intangible Cultural Heritage Protection

Inventoring Intangible Cultural Heritage could potentially “devalue communities’ cultural capital to an extent where it destabilizes the socio-cultural foundations upon which the heritage existed before, together with the foundations upon which it depends for future existence.”106 By categorizing cultural heritage, there is a risk of possible distortion of the communities’ cultural capital by way of making it more ubiquitous than it was prior to inventorying, and therefore less valuable.107 An argument can be made that the less known about a cultural practice outside the community that practices it, the more valuable it is to the community and nation.108 Secrecy seeds wealth.109

Some scholars put forth arguments that intangible cultural heritage may well be protected by property rights. However, objects of cultural heritage are of such cultural, historical, and traditional importance that it is impossible to fully subject it to the “bundle of sticks” approach of property rights.110 In most instances, intangible heritage cannot be alienated, cannot be conveyed, and cannot be appropriated by any one individual because it is the common heritage of a community as a whole.

The focus of World Heritage has shifted over the years because of globalization. It has gone from “monuments to people; from objects to functions; from preservation to sustainable use.”111 In order for the collective community memories of today to be shared with future generations more widely and creatively, more participation in the protection of World Heritage is

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107 Id.
108 Id.
109 The Kietumetse article talks about how people would be harmed by inventorying their burial practices.
110 Guest, supra note 89, at 729. “Bundle of sticks” is a common property law metaphor for individual property rights.
111 Melnychuk, supra note 6, at 66.
imperative. This is only possible, however, if the people have an understanding of their own heritage. This creates the desperate need for inventories of heritage which are complete and meaningful.\textsuperscript{112} In order for this to be done, governments must examine what its society considers its heritage, and work to raise awareness of its value.\textsuperscript{113}

The Convention for the Safeguarding of the Intangible Cultural Heritage serves many purposes: to provide protection, encourage respect, raise awareness, and encourage cooperative effort among countries.\textsuperscript{114} The primary mechanism used by the Convention to safeguard intangible cultural heritage is implementation of inventory systems established and maintained by individual States Parties.\textsuperscript{115} The Convention recommends that countries establish holistic programs to study and conserve their intangible cultural heritage.\textsuperscript{116} States are encouraged to develop legal and administrative instruments that will protect and provide access to Intangible Cultural Heritage for studying and understanding.\textsuperscript{117} Finally, the Convention suggests that states engage in educational efforts to raise public awareness of Intangible cultural heritage and potential dangers that exist to destroy the heritage.\textsuperscript{118} These additional measures serve to strengthen and increase the effectiveness of inventory systems.\textsuperscript{119}

Drawbacks to the UNESCO inventory system of intangible cultural heritage include the difficulty of creating the systems, the potential for value judgment bias when compiling the inventory, and the possibility that some cultural groups simply may not want to have their

\textsuperscript{112} Id.
\textsuperscript{113} Id.
\textsuperscript{114} Slattery, supra note 80, at 224.
\textsuperscript{115} Slattery, supra note 80, at 225.
\textsuperscript{116} Id.
\textsuperscript{117} Id.
\textsuperscript{118} Id.
\textsuperscript{119} Id. at 226.
intangible cultural heritage inventoried.\textsuperscript{120} There exists a simple way that each of these difficulties could be circumvented. First, the difficulty in creating the system can be addressed by providing the resources and people necessary to complete the task.\textsuperscript{121} The use of value judgments can be assuaged by creating multiple lists that include minority groups along with the majority groups, and by inviting members of minority groups to help create the lists.\textsuperscript{122} In an attempt to convince hesitant cultures to buy into the inventory system, efforts should be made to earn and keep the trust of the group and to involve its leaders in the inventory process.\textsuperscript{123} This may make the group more receptive to the idea.\textsuperscript{124} However, it is imperative that if the group is still reluctant, that their wishes must be followed.\textsuperscript{125}

Inventory systems have been successful in other international realms, such as the Masterpiece Program, an intangible cultural heritage inventory system in Japan.\textsuperscript{126} In addition, the United States has had much success with the National Register of Historic Places.\textsuperscript{127} The inventory system is not the only means to protect intangible cultural heritage as promoted by the 2003 Convention. A bevy of actions, such as transmitting, documenting, and raising awareness serve to protect intangible cultural heritage. There is no one size fits all type of program; rather, each state must “develop its tailor-made programs to respond to the particularities of intangible cultural heritage of each country.”\textsuperscript{128}

\textsuperscript{120} Id. at 224.
\textsuperscript{121} Id. at 245.
\textsuperscript{122} Id. at 246.
\textsuperscript{123} Id. at 250.
\textsuperscript{124} In Muckleshoot v. US Forest Service (177 F.3d 800), an Indian tribe was willing to forego a connection with culturally significant land in order to maintain the secrecy of their cultural practices.
\textsuperscript{125} Slattery, supra note 80, at 250.
\textsuperscript{126} Slattery, supra note 80, at 258.
\textsuperscript{127} Id.
\textsuperscript{128} Id.
Intangible cultural heritage is fragile, perhaps even more so than tangible heritage. Fifty percent of the world’s 6,000 languages are endangered.\textsuperscript{129} Globalization and cultural uniformity threaten intangible cultural heritage.\textsuperscript{130} Many cultural groups recognize and desire the need for intangible cultural heritage protection.\textsuperscript{131} As one Native American put it, “They have taken our land, water, dead relatives, culture, and shoes. Little tangible is left. Now they take what’s intangible.”\textsuperscript{132}

The Convention created a fund from voluntary members’ dues and donations, as well as an international committee to ensure the safeguarding efforts are based upon evaluation and empirical research. This then operates much the same as the tangible World Heritage List. The intangible Convention also creates two lists: the first, for items already designated as Masterpieces by UNESCO, and the second for endangered items that are recommended for immediate safeguarding.\textsuperscript{133}

One obligation of the 2003 Convention is that “those who practice the traditions should have the major responsibility for their safeguarding and that States Parties have to work with them to do so.”\textsuperscript{134} Governments’ involvement with cultural communities is difficult because it can be hard to identify who speaks for a cultural tradition. The difficulty of working with and engaging with isolated communities of indigenous peoples in safeguarding activities can be logistically and sociologically challenging.\textsuperscript{135}

\begin{flushleft}
\textsuperscript{129} Id. at 228.
\textsuperscript{130} Id.
\textsuperscript{131} Id.
\textsuperscript{132} Id.
\textsuperscript{134} Id. at 72.
\textsuperscript{135} Id.
\end{flushleft}
Many nations currently have their own archive system in place documenting intangible cultural heritage, but generally lack the resources to keep up with cataloging in the digital age. Dissemination programs for intangible cultural heritage typically take the form of organized festivals, exhibitions, audio recordings, films, videos, books, conferences, educational materials, and web pages. Overall, however, nations lack the human and fiscal resources required to produce displays of intangible cultural heritage in a regular, high-quality manner.

One drawback of the Convention is that it may be over-reaching. Culture changes and evolves, and practices of the past are discarded when they cease to be “useful or symbolically meaningful to a community.” UNESCO should not freeze cultural practices under the pretext of preserving cultural diversity or defending against cultural globalization. This is why working with the cultural community to enact the protections that it wants for the heritage it wants protected is imperative.

The Convention is a living, breathing thing that is often adapted by States Parties to make it better-suited for protecting intangible cultural heritage. In summation, the Convention reinforces the idea that the practice of one’s culture is a human right, it seeks government recognition and respect for cultural traditions, and seeks to reinforce the idea that all cultures give purpose and meaning to lives and thus deserve to be protected.

C. Traditional Sports and Games

The division between the ability to protect something and the ability to protect something well is a fine line. This is especially the case when it comes to protecting cultural heritage, and

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136 Id. at 73.
137 Id.
138 Id.
139 Id. at 74.
140 Id. at 74.
141 Id. at 75.
even more so when that cultural heritage is an intangible heritage. Traditional sports and games, a form of intangible cultural heritage, are not protected on an international scale. Without international protections, traditional sports and games are in danger of being lost. Globalization, lack of knowledge, lack of interest, and lack of funding all play a part in the endangerment of traditional sports and games worldwide. An international instrument of protection would help countries preserve their traditional sports and games for generations to come.

In recent years, there has been a scholarly call to arms regarding the treatment of traditional sports and games. One scholar went so far as to state that “[c]ultural activities, including the practice of physical education and sport, ought to be treated as a fundamental right for all human beings of the world.”\textsuperscript{142} UNESCO’s measures to support the teaching of physical education and sport is underpinned by the International Charter of Physical Education and Sport, adopted in 1989.\textsuperscript{143} The Charter sought to combat the dangers of the spread of violence and drug-taking, as well as excessive commercialization of sport.\textsuperscript{144} The Charter also deemed physical education and sport as a fundamental human right. It was conscious of the need to extend the scope of “sport” beyond those competitive activities that are practiced internationally, so that traditional sports and games, as well as all forms of physical exercise, are adequately promoted for the well-being of all.\textsuperscript{145} The costs of many sports facilities are a heavy burden on poorer countries, which restricts public access to them.\textsuperscript{146} The Charter states that appropriate structures must be established for the training of personnel for physical education and sport, and


\textsuperscript{144} Id.

\textsuperscript{145} Id.

\textsuperscript{146} Id.
adequate and sufficient facilities and equipment must be provided.\textsuperscript{147} There is a call for international cooperation in order to promote and stimulate cultural development in this field, which will contribute to the preservation of “lasting peace, mutual respect and friendship and will thus create a propitious climate for solving international problems.”\textsuperscript{148}

There are unique inherent values attached to traditional sports and games, as some of them maintain cultural elements of religious rites, historical re-enactment, and the struggle for daily survival that showcase how sport is preferable to war and killing.\textsuperscript{149} There is a “powerful movement underway to secure a safe anchorage of [indigenous peoples’] rights to international law. These rights are largely cultural, insofar as they tend to guarantee the survival of the language, religion and distinct way of life.”\textsuperscript{150}

A future role of UNESCO may include assisting States Parties to devise innovative national programs, courses, conferences, and other events of relevance to a scientific discussion of sport, as well as designing training materials devised with the ethical and moral values of sport in mind.\textsuperscript{151} In addition, UNESCO may become involved in promoting government and agency cooperation, and soliciting funds from agencies, particularly in the interest of physical education and sport in the Third World.\textsuperscript{152}

In 2006, UNESCO hosted a round table meeting on Traditional Sports and Games. The final report stated the following conclusions:

- Traditional sports and games are treated as an element of national policy in many nations;
- Traditional sports and games are treated as a part of intangible cultural heritage and guarantee of enrichment for societies;

\textsuperscript{147} \textit{Id.} at 100.
\textsuperscript{148} \textit{Id.}
\textsuperscript{149} \textit{Id.} at 101.
\textsuperscript{150} Barfelz, \textit{supra} note 9, at 156.
\textsuperscript{151} \textit{Id.}
\textsuperscript{152} \textit{Id.}
- Traditional sports and games are treated as an element of just gained independence;
- Traditional sports and games festivals support a growing ethnic cultural identity;
- Traditional sports and games scientific foundations would serve as a common cultural platform for humanity;
- Traditional sports and games are important in promoting cultural diversity and in protecting cultural identities at the local, national and international levels;
- Traditional sports and games play an important role in national, regional, and international construction – in particular by fostering intercultural contacts, protecting the memory and the national cultural and sports heritage, and impact national cohesion and respect for the identity of communities from different cultural backgrounds;
- Traditional sports and games serve an educational dimension, sharing knowledge and enhancing understanding, especially among younger generations;
- Traditional sports and games should be inventoried and mechanisms capable of revitalizing or ensuring their continued existence should be identified;
- Traditional sports and games should have their own UNESCO website dedicated to sharing initiatives and the provisions of a database;
- Traditional sports and games should be promoted;
- Traditional sports and games should be incorporated into cultural components as major sports events and festivals at the national level;
- Traditional sports and games should have a world festival;
- Traditional sports and games directory should be initiated along with academic research and scientific data; and
- Governments should endorse UNESCO as a worldwide body on traditional sports and games.

The conclusions reached at the round table meeting are a good indication of the direction UNESCO can go in advancing traditional sports and games on an international scale. Traditional sports and games provide opportunities to experience, learn about, and appreciate aspects of certain cultures, as well as essential training in social interaction.

1. Examples of Indigenous Traditional Sports and Games

There are many fine examples of indigenous traditional sports and games. Many fall into three particular categories: those that are well-protected by its own state, those that show globalization’s effect on indigenous sports, and those that deserve UNESCO protection. Three

indigenous traditional sports and games are particularly compelling to consider: Irish hurling, Malaysian sepak takraw, and Argentinean pato.

Irish hurling is an outdoor stick-and-ball game similar to field hockey and lacrosse. It has long been recognized as the national sport and pastime of Ireland. References to hurling can be found as far back as the thirteenth century in manuscripts. The stick used is called a hurley. For centuries, the game was played between rival Irish clans. It is still one of the two most popular spectator sports in Ireland to this day, and provides an example of a traditional sport that is well protected by its own state by way of continuing national interest and participation.

Sepak takraw is a Malaysian game that combines volleyball with soccer.\textsuperscript{154} The game is played by two teams on opposite sides of a net. Sepak takraw uses a ball made from a palm tree called rattan, and allows players to only use their feet, knee, head, and chest to touch the ball. Sepak takraw originated in Malaysia but is now recognized as a sport native to the Malay-Thai peninsula. It has seen an increase in play both in Southeast Asia and worldwide. It is an example of globalization’s effect on traditional sports and games.

Pato is the national sport of Argentina that is played on horseback and combines polo with basketball. In its early stages in the seventeenth century, Pato, Spanish for “duck,” used a live duck kept inside a woven basket in place of a ball. The basket with a duck inside was passed around the field from player to player, and a team scored when the basket was thrown through a vertical ring. Pato has been banned many times throughout its history due to the injuries inflicted both to the duck and to the players, who often were trampled by their own horses. In the nineteenth century, Pato bans were commonplace. In the 1930’s, Pato was transformed into its modern rule system inspired by polo. It then achieved legitimacy and was

\textsuperscript{154} \url{http://smm.hubhuman.com/rules/s-sports/sepak_takraw.cfm}. Last accessed 3/28/12.
declared the national game of Argentina in 1953. Modern pato involves two four-member teams riding on horses fighting over a ball containing six handles. However, even though pato is the national game of Argentina, it is steadily losing significance. It is an example of a traditional sport that is losing its identity and deserves safeguarding.

2. Traditional Sports and Games v. Other Forms of Intangible Cultural Heritage

Giving indigenous cultures property rights over traditional sports and games does not make sense because it is different from other forms of intangible cultural heritage that may be the subject of protection. The knowledge of making a certain type of pottery, for example, could be protected because the knowledge creates a physical item. The knowledge to play a sport, however, manifests itself into a game, which is a social event more than a physical thing. It simply does not fit into the contours of property protection. However, traditional sports and games do not require property protections to be safeguarded.

Some cultural stories may be forgotten, dances may be swept aside, and artistic knowledge may be left behind. But it seems that traditional sports and games have easily survived the generations, a true testament to the cultural importance of sports and games to all cultures. Therefore, traditional sports and games are unlikely to ever be deemed “unnecessary” in most cultures, and therefore likely to always deserve UNESCO’s protection.

Unlike other forms of intangible heritage, and certainly all tangible heritage, tourism to witness sports and games would not threaten their existence; quite the opposite, in fact. The point of traditional sports and games is communal in nature. Sports and games do not survive unless there is an audience that cares about its existence and the outcome. Therefore, if

\[155\] Id.

\[156\] Id.
traditional sports and games were inventoried and used as a type of tourism, problems that exist at physical sites such as Easter Island would not exist with traditional sports and games.

While the nature of intangible heritage means it is harder to destroy than tangible heritage, it also means that it is harder to protect. One large concern with the protections of traditional sports and games is the opinion of the community that participates in the games. What should be done if indigenous peoples simply are not playing the games anymore, or do not want their games inventoried? No one can force the group to continue playing or to inventory the game. Rather, it should be more of a recording of the elements of the game and its importance to present and past communities, for the documentation of mankind’s traditional sports and games.

Traditional sports and games are not as secret or spiritual as other intangible cultural heritage tends to be. While many cultures may very well consider their indigenous games to be a spiritual part of their culture and desire to maintain its relative secrecy, sports and games are inherently social, physical, and competitive in nature, and therefore there would be less of a loss if the secrecy of the games are lost by inventoring them. It simply does not attain the emotional connection to a culture as, say, oral traditions and medicinal knowledge might. Globalization is a real threat to indigenous traditional sports and games. The presence of sports and games on a UNESCO cultural heritage list will not be the final solution to their preservation, but it will go a long way towards slowing the grave impact that globalization has on indigenous sports and games.
D. Effect of Globalization on Cultural Heritage

One of the objectives of indigenous cultural heritage protection is for cultural privacy. Globalization, the digital revolution, and increase of information have enriched the lives of many traditional communities, but have equally threatened these communities by allowing for the “instantaneous distribution of knowledge and materials that are sacred or intended to be kept secret.” Such unauthorized reproduction and distribution remains one of the largest problems faced by indigenous groups today. From the viewpoint of traditional communities, secrecy is important for both spiritual and cultural purposes. Even when materials are used whose use is not offensive in the eyes of an indigenous group, the group may still prefer to keep their knowledge and ideas out of commercial channels. Some indigenous peoples challenge the fundamental assumptions of globalization because they do not accept the presumption that humanity is benefitted from the construction of a world culture of consumerism, which may have little meaning to many indigenous groups. To indigenous peoples, heritage is a “bundle of relationships,” rather than a bundle of property or economic rights, which shows that many indigenous peoples value cultural privacy over cultural property rights for intangible heritage.

157 Yu, supra note 1, at 455.
158 Id.
159 Id.
160 Id.
161 Id. at 457.
162 Id.
163 Id.
III. Proposals and Observations

The following are proposals and observations for protecting traditional sports and games.

A. Difficulty of Protecting Cultural Heritage

The only true way to estimate the value of cultural heritage is from the inside. Just because mechanisms are put into place to protect heritage, does not mean they will be meaningful or sufficient to do so. As the landmark case *Penn Central Transportation Co. v. City of New York* asserted, important elements of our heritage continue to disappear because “there is a consistent failure to include adequate consideration of the value [heritage] represent[s] in decisions about their fate.”\(^{164}\) That is one of the problems with adequately protecting intangible cultural heritage. Many people do not realize the full value that some forms of heritage have to the community in which it exists.

Therefore, a bottom-up approach is best suited for the protections of traditional sports and games. Merely preserving traditional sports and games for indigenous people may not be enough to protect traditional sports and games. Ensuring some local control over, or at least participation in, the preservation process may be “an essential condition for the enjoyment of their internationally recognized cultural rights.”\(^{165}\)

B. UNESCO’s Failings

UNESCO is not without its deficiencies. It is a complicated organization whose early successes as an international body promoting cultural protection are dwindling.\(^{166}\) These successes are being replaced by bureaucratic struggles and underhanded money deals for influence between the Committee and States Parties.\(^{167}\) Some commentators question whether

\(^{164}\) Guest, *supra* note 89, at 701.
\(^{165}\) Barfelz, *supra* note 9, at 156.
\(^{166}\) Keough, *supra* note 16, at 599.
\(^{167}\) *Id.*
UNESCO’s position in international preservation has diminished significantly from the gold standard it set in the early stages. One commentator critically states that the World Heritage emblem has come to represent a “grandiose marketing tool, for ‘things to see before you die’ coffee table books.” The World Heritage Convention is in desperate need of an overhaul, according to one scholar. The broad language of the convention allows for the proliferation of greed and power-hungry politics, with committees overseeing almost all the decisions, including the most important one – the choice of a site to receive funds. While the Committee cannot nominate a site, States Parties are eager to make nominations, whether culturally significant or not, only because of the cash flow that results from an accepted nomination. Because the final arbiter is the Committee, little exists to reign in the sweeping definition of “outstanding universal value,” and the Committee is able to choose nearly any nomination that arrives on its desk, leaving open the potential for misuse of power.

The policing and monitoring of a site become issues once the site is placed on the list. Neither UNESCO or the Committee have powers to ensure that the states properly use funding and administer sites accordingly. In addition, the handling of the Fund does not have strict accounting standards.

The ideology of cultural nationalism “puts states at odds with one another, as each considers its own sites more valuable and more worthy of preservation than others’ sites, and also puts states at odds with UNESCO, as any criticism of a state’s actions regarding its sites can

168 Id.
169 Id.
170 Id.
171 Id. at 600.
172 Id. at 601.
173 Id. at 601-602.
174 Id. at 603.
175 Id.
176 Id. at 604.
be taken as criticism of the state’s expression of its culture.”\textsuperscript{177} Therefore, States Parties and the organization are frequently balancing disparate interests, despite a public display of solidarity in identifying sites to preserve.\textsuperscript{178}

Another large fault of UNESCO is that it has had no answer or response to the fragility of sites threatened by increased tourism after being labeled a UNESCO site.\textsuperscript{179} Expansion of the list can also be harmful to UNESCO’s reputation.\textsuperscript{180}

Changes can and should be made to UNESCO, and these changes should be analogously transferred to UNESCO’s intangible heritage lists. First, one scholar suggests that the power to nominate sites should be taken from individual states and given to independent groups of archaeologists, anthropologists, ecologists, sociologists, and other relevant “ologists” and groups.\textsuperscript{181} This will ensure that nominations are being made for non-interested, scientific, and prudent reasons.

Second, UNESCO can cut off or threaten to cut off funding to States Parties that do not care for their sites in good faith. Of course, states that cannot afford to adequately protect, but have been doing all they can to do so with their available resources, should not be punished. Rather, states that have been given adequate funding or who do not show a continued interest in protecting their sites should be punished. This will give states extra incentive to develop action plans for protecting their cultural heritage.

Third, UNESCO should look to independent bodies from which to receive monetary gifts, and give the groups peace of mind by stating, and following through on, exactly what the

\textsuperscript{177} \textit{Id.} at 605.
\textsuperscript{178} \textit{Id.} at 606.
\textsuperscript{179} \textit{Id.} at 609.
\textsuperscript{180} \textit{Id.} at 610. Consider the fact that UNESCO placed the mining town of Iwami, Japan on the List, even though it seemingly fits no world heritage criteria, just because Japan saw the tourism potential.
\textsuperscript{181} \textit{Id.} at 613.
money will be put towards. Currently, many groups are hesitant to offer funds due to the current bureaucratic nature of UNESCO. UNESCO should cooperate more with independent agencies and private donors, and be more willing to partner with independent businesses.

Fourth, UNESCO should conduct research of the site’s sustainability in anticipation of increased tourism before adding a site to the heritage list. This will give the site’s state the information, tools, and foresight it needs in order to protect its cultural heritage from the detriments of tourism.

Finally, UNESCO should provide more oversight of site protections instead of maintaining its almost entirely hands-off approach. This includes keeping track of a state’s natural, economic, political, and cultural status. This will have the effect of combating problems before they become too big to handle.

UNESCO presents too rosy a picture when it implies that only a handful of significant cultural heritage sites are at risk. While UNESCO’s cause is noble, it has done too little to raise awareness of the destruction going on. The unfortunate reality is that few sites in the developing world comply with all of UNESCO’s rules, and UNESCO does nothing to squelch this reality.

C. Problems with Current Cultural Heritage Treaties

None of the existing treaties protecting cultural heritage specifically authorize a right of intervention in the national policies of a host state that fails to provide adequate protection for

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182 Id. at 614.
184 Id.
185 Id.
186 Id.
187 Id.
culturally important property.\textsuperscript{188} Nation-states are given the opportunity to protect their own heritage first. In order to better protect international cultural heritage, international bodies should be given the power of intervention as a last resort to protect heritage sites. It is a fine line to walk with property rights and sovereign rights in relation to intervention.\textsuperscript{189} But as a general guide, this power of intervention should only be put to use it when all else fails, or when the individual host nation has either willfully or negligently failed to protect its heritage.\textsuperscript{190} Heritage cannot protect itself – it is up to the host nations to implement policies and develop plans to preserve it. If those national policies should fail, it is up to the rest of the world to step in and preserve our common heritage or risk losing it forever.\textsuperscript{191}

D. Proposal for Traditional Sports and Games Protection

I propose that there should be two lists of traditional sports and games created by UNESCO or some other international body of relative adherence. The first is a list whose existence is for preservation protection. This list would include traditional sports and games that the subject culture agrees to have inventoried and showcased on an international scale, such as Ireland currently does with hurling. The second list would be for documentation protection, which would list the basic elements of the game in cultures that do not wish to have their traditional sports and games preserved by an international body. This way, at the very least, the game would be recorded into history for the benefit of future generations to look back on and marvel at.\textsuperscript{192}

Another issue is addressing who should be in charge of leading the efforts to safeguard traditional sports and games. The answer is a combination of the state governments,

\textsuperscript{188} Barfelz, supra note 9, at 173.
\textsuperscript{189} Id. at 176.
\textsuperscript{190} Id. at 177.
\textsuperscript{191} Id.
\textsuperscript{192} …or condemn, as in the case of the Gladiator games in ancient Rome.
international bodies, universities, museums, and non-governmental organizations. With the cultural sensitivity of the state government, the diplomacy functions of international bodies, the training and education abilities of universities, archiving skills of museums, and funding and research possibilities of non-governmental organizations, safeguarding indigenous traditional sports and games is achievable. We, as a collective international community, must have the sang-froid to determine the best methods necessary for protecting cultural heritage.

IV. Conclusion

The road ahead is not clear, and there are certainly many routes that can be traversed by those seeking to protect traditional sports and games, and more generally, intangible cultural heritage. What is known is that UNESCO is not perfect, and the current conventions will not get the job done. The bones of a successful convention are in place, however, and the international community must come together to present ways in which to better facilitate the process of safeguarding heritage. Making decisions with the best interests of both humanity and specific cultural groups in mind will ensure that no culture will be overlooked or exploited. Those in power must always keep in mind that no action should be taken without the consent of the cultural group affected by the action. It is the hope of this author that the international community steps up the plate and ensures the survival of indigenous traditional sports and games for generations to come.