

THE ASCENDENCY OF DIPLOMATIC EXPERTISE AND DECLINE OF HERITAGE KNOWLEDGE IN WORLD HERITAGE DECISION-MAKING: THE CURIOUS CASE OF THE ROȘIA MONTANĂ MINING LANDSCAPE’S DUAL WORLD HERITAGE INSCRIPTION

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Over the past 25 years, the World Heritage Committee has become progressively willing to overturn recommendations made by independent technical experts. While the Committee is the ultimate adjudicator on World Heritage listings, there has been a recent surge in decisions that actively depart from expert advice, resulting in a proliferation of decisions that are technically deficient and threaten the credibility of the World Heritage system.

Advisory Body opinions that are pro-inscription are disproportionately upheld compared with opinions that do not recommend inscription and the most recent World Heritage meeting was almost entirely absent of any ‘negative’ outcome. The only exception to this was the Roșia Montană Mining Landscape in Romania, which was dually inscribed on the World Heritage List and In Danger List. This article uses the Roșia Montană Mining Landscape as a case study to demonstrate how the precedent of dual inscriptions has gone unchecked, allowing the World Heritage Committee to use diplomatic expertise to overshadow heritage knowledge, predominantly provided by the International Union for Conservation of Nature and the International Council on Monuments and Sites, to justify decisions. The consequence is that conservation is rapidly becoming irrelevant in the eyes of the Committee, with the World Heritage system serving as a vehicle for states to exclusively and indiscreetly prosecute their own political and parochial goals.

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I INTRODUCTION

The 44th Session of the World Heritage Committee was unprecedented in many ways. It was the first time the World Heritage Committee (‘Committee’)

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meeting was held fully online and the first time that two annual meetings had been condensed into one ‘extended’ session. It was perilously close to being the first time that the Committee inscribed every nominated property onto the List of World Heritage (‘World Heritage List’). Yet, it was far from the first time that a property was simultaneously inscribed on the World Heritage List and List of World Heritage in Danger (‘In Danger List’).

The Roşia Montană Mining Landscape, a Romanian gold mine with a history almost two millennia old, was considered by the Committee to possess Outstanding Universal Value (‘OUV’) despite the threats to its OUV concurrently deemed serious and imminent. Every property recommended for In Danger Listing in 2021 by the independent Advisory Bodies — collectively, the International Union for Conservation of Nature (‘IUCN’) and the International Council on Monuments and Sites (‘ICOMOS’) — evaded In Danger Listing, bar one, despite the fact that most have faced ascertained danger or potential danger for multiple consecutive years. The only exception to this was the Roşia Montană Mining Landscape.

The Committee comprises of 21 states party, elected for four-year terms.¹ Despite the United Nations Educational, Scientific and Cultural Organization’s (‘UNESCO’) efforts to address the historical heterogeneity of the World Heritage system, espoused in the Global Strategy and diverse composition of Committee members, there is a creeping convergence in Committee member behaviour and an increasing willingness to depart from Advisory Body advice. Existing research shows that diplomats have pivoted to become highly influential Committee voices;² however, diplomatic ‘expertise’ now almost entirely eclipses alternative expertise, namely technical knowledge. While the Committee has a clear precedent of allowing dual inscriptions on the World Heritage List and In Danger List, this article focuses on the most recent property to meet this fate to reveal how the Committee is eager to gravitate away from endorsing ‘negative’ outcomes (non-inscriptions) and uncritically engages with technical expert advice when inscriptions are recommended, to capitalise on ‘positive news stories’ and opportunities to advance their own foreign policy objectives and bilateral relationships. IUCN and ICOMOS now seem to serve a largely symbolic purpose in the eyes of the Committee, existing purely as relics of procedural necessity. This is resulting in many inconsistent, obscure and technically weak decisions, with Roşia Montană serving as the most recent example of this destructive propensity.

¹ In order to be elected, states party must be signatories to the *Convention for the Protection of the World Cultural and Natural Heritage*, opened for signature 16 November 1972, 1037 UNTS 151 (entered into force 17 December 1975) (‘*World Heritage Convention*’). States party are technically elected for six-year terms, but are expected to voluntarily relinquish their Committee member status after four years: see ‘The World Heritage Committee’, *UNESCO World Heritage Convention* (Web Page) <<https://whc.unesco.org/en/committee/>>, archived at <<https://perma.cc/299E-QHGH>>.

² See Luke James and Tim Winter, ‘Expertise and the Making of World Heritage Policy’ (2017) 23(1) *International Journal of Cultural Policy* 36; Herdis Hølleland and Joar Skrede ‘What’s Wrong with Heritage Experts? An Interdisciplinary Discussion of Experts and Expertise in Heritage Studies’ (2019) 25(8) *International Journal of Heritage Studies* 825, 831.

II BACKGROUND

The Government of Romania has claimed that Roşia Montană ‘contains the most significant, extensive and technically diverse underground Roman gold mining complex currently known in the world’.³ Located in historic Transylvania (central-west Romania), the property first served as a gold mine for the Roman Empire from 106 CE to 271 CE.⁴ Archaeological evidence indicates that following the Roman Empire’s abandonment of the area, subsequent gold mining occurred throughout Late Antiquity, the Middle Ages, the Renaissance and throughout the Modern Era.⁵ After undertaking a comparative analysis of other Roman mines across Europe, ICOMOS has considered the typology ‘much more varied at Roşia Montană compared to anywhere else’.⁶

Mining at Roşia Montană continued into the 19th and 20th centuries. While extractive activities were temporarily suspended during the First and Second World Wars (with private ownership halting altogether in 1948), nationalised mining operations persevered, with state-owned mining operations ceasing not even 20 years ago.⁷ One of the last exploitation licences for gold and silver mining was agreed between the Romanian Government and Gabriel Resources Ltd, a Canadian TSX-listed mining company on 21 December 1998, and came into effect the following year.⁸

Yet, Gabriel Resources has never been able to commence mining activities.⁹ In 2002, the World Bank President, James Wolfensohn, directed the International Finance Corporation’s Executive Director to drop loan negotiations for the project.¹⁰ The proposed mining activity received strong objection, including from Alburnus Maior, a non-governmental organisation (‘NGO’) that was established by local residents, who claimed that 880 dwellings would be demolished (which eventually were destroyed) and more than 2,000 people relocated if Gabriel Resources’ extractive operations went ahead.¹¹

³ *Roşia Montană Mining Landscape: Nomination for Inscription on the World Heritage List* (Executive Summary, December 2016) 7 (‘Executive Summary’).

⁴ ICOMOS, *Evaluations of Nominations of Cultural and Mixed Properties: ICOMOS Report for the World Heritage Committee*, 44th sess, UNESCO Doc WHC-21/44.COM/INF.8B1 (2021) 266 (‘Advisory Body Evaluation’).

⁵ *Ibid.*

⁶ *Ibid.* 267.

⁷ *Ibid.* 266.

⁸ Roşia Montană Gold Corporation, *Environmental Impact Assessment Study* (Report, 2006–07) 4 (‘EIA Study’).

⁹ While the mining activities were initially explored by Gabriel Resources Ltd, the company has since formed the Roşia Montană Gold Corporation (‘RMGC’) which is 80% owned by Gabriel Resources Ltd, 19.31% owned by the Romanian state mining company Minvest Roşia Montană SA, with the remainder being owned in equal by three minority shareholders: *ibid.* 6.

¹⁰ ‘World Bank Rejects Controversial Gold Mine Project’, *Bretton Woods Project* (Web Page, 26 November 2002) <<https://www.brettonwoodsproject.org/2002/11/art-16109/>>, archived at <<https://perma.cc/N5WX-M6ZW>>.

¹¹ Alburnus Maior, ‘Update from Alburnus Maior’ (News Release, MiningWatch Canada, 27 January 2006) <<https://miningwatch.ca/news/2006/1/27/update-alburnus-maior>>, archived at <<https://perma.cc/R36A-F7D9>>; Ioana Florea and Hannibal Rhoades, ‘Learning from Roşia Montană and Yaigojé Apaporis Anti-Mining Struggles’ in Elia Apostolopoulou and Jose A Cortez-Vazquez (eds), *The Right to Nature: Social Movements, Environmental Justice and Neoliberal Natures* (Routledge, 2018) 84, 85.

Concerns were also raised by the Romanian Academy of Sciences and environmental groups¹² as the extraction of gold and silver involves the use of cyanide, which Gabriel Resources has accepted ‘can be dangerous if released to the environment’.¹³ The company has acknowledged that annually 12,000 tonnes of cyanide and 13 million tons of mining waste would be produced,¹⁴ but that a detoxification facility would process the waste and mitigate this risk (in accordance with the company’s Cyanide Management Plan).¹⁵ In 2006, the company also became a signatory to the International Cyanide Management Code for the Manufacture, Transport and Use of Cyanide in the Production of Gold.¹⁶ Despite its best efforts, Gabriel Resources has never secured permits (an additional requirement to the exploitation licence) to commence mining, largely due to a failure to comply with Romanian environmental legislation.¹⁷

In August 2013, the Romanian government sought to curtail this by allowing mining activities to commence, passing a Bill to grant the right of mining to the SC Roşia Montană Gold Corporation SA (‘RMGC’), arguing that the project is justified on grounds of ‘public utility and [is] of special national interest’.¹⁸ The Bill, which sought to force the eviction of residents from their homes in the area sparked outcry, with tens of thousands flocking to the streets of Bucharest in protest.¹⁹ In November that same year, the Romanian Parliamentary Commission rejected the controversial law, which was eventually accepted by the Romanian Senate.²⁰

With few options left, Gabriel Resources filed a request for arbitration with the World Bank’s International Centre for Settlement of Investment Disputes in July 2015, claiming that Romania had breached several international bilateral

¹² Chad M Briggs, ‘Water Regulation through Two Transitions: The Case of Hungary’ in Velma I Grover (ed), *Water: Global Common and Global Problems* (Science Publishers, 2006) 135, 140.

¹³ *EIA Study* (n 8) 13.

¹⁴ Claudia Ciobanu, ‘Romanians Mobilise in Protest against Gold Mine Plans’, *The Guardian* (online, 17 September 2013) <<https://www.theguardian.com/environment/2013/sep/17/romanians-mobilise-gold-mine>>, archived at <<https://perma.cc/2KGQ-X7PY>>.

¹⁵ *EIA Study* (n 8) 43.

¹⁶ ‘International Cyanide Management Code’, *Gabriel Resources* (Web Page) <<https://www.gabrielresources.com/sustainability/policies/icmc/>>, archived at <<https://perma.cc/55WT-66RV>>.

¹⁷ Adriana Mihai, Adina Marincea and Love Ekenberg, ‘A MCDM Analysis of the Roşia Montană Gold Mining Project’ (2015) 7(6) *Sustainability* 7261, 7262.

¹⁸ ‘United We Save Rosia Montana: Thousands of Romanians March the Streets against Plans for Gold Mining Using Cyanides’, *WWF* (Web Page, 7 October 2013) <https://wwf.panda.org/wwf_news/?211153/%20United-we-save-Rosia-Montana>, archived at <<https://perma.cc/9V97-AVZ7>>.

¹⁹ *Ibid.*

²⁰ Simona Manea, ‘The Dispute over the Rosia Montana Mining Project Represents an Opportunity to Reshape Romania’s Sustainable Development Policy’, *EUROPP: European Politics and Policy* (Blog Post, 28 November 2013) <<https://blogs.lse.ac.uk/europpblog/2013/11/28/the-dispute-over-the-rosia-montana-mining-project-represents-an-opportunity-to-reshape-romania-sustainable-development-policy-2/>>, archived at <<https://perma.cc/G59J-XBYS>>.

investment protection treaties with Canada and the United Kingdom.²¹ Gabriel Resources is seeking a hefty USD4 billion in damages (which equates to approximately 2% of Romania's GDP), as a result of being unable to extract from the mine.²² Over half a decade later, the case is still yet to be settled.

While the largest gold mine proposal in Europe has never been realised, the Romanian Ministry of Culture, in an attempt to protect the region, vied for the property to be included on the World Heritage Tentative List in 2016. It was first considered for inscription at the 42nd Session of the World Heritage Committee in 2018.²³ The Committee assessed the nomination and agreed with ICOMOS's evaluation, concluding that the property had demonstrated OUV and was on track for inscription. However, only days before the Committee meeting, Romanian Prime Minister Florin Cîțu requested for the Committee not to inscribe the property. Romania sought a referral (delay) of the inscription, stating that the ongoing arbitration threatened the ability of the government to 'implement the measures required to ensure the protection and management of the potential OUV of the property'.²⁴ Romania expressed concern that the decision to inscribe the Roşia Montană Mining Landscape would negatively impact on judicial proceedings and serve to disadvantage the Romanian government in arbitration. While the Committee agreed that 'the nominated property justifies Outstanding Universal Value'²⁵ the consent of the concerned state party under whose jurisdiction the property falls must be obtained in order to inscribe a property on the World Heritage List.²⁶ Romania's request therefore prevented the Committee's ability to inscribe the Roşia Montană Mining Landscape.

The decision to 'refer' the property set a three-year expiry in which the Committee could review the nomination, after which Romania would be required to submit a new nomination, causing even further delay to the inscription of the property.²⁷ The Roşia Montană Mining Landscape was therefore placed on the agenda again at the 2021 Committee meeting. The property faces an uncertain future as arbitration is still ongoing, and yet despite the status of legal proceedings remaining unchanged, not one Committee member vocalised dissent

²¹ 'Gabriel to File \$5.7 Billion Arbitration Claim against Romania' (Press Release, Gabriel Resources, 29 June 2017) 1 n 1 <http://www.gabrielresources.com/site/documents/ICSID_Memorial_PR_29062017.pdf>, archived at <<https://perma.cc/FM94-HUK5>>.

²² *Gold-Digging with Investor-State Lawsuits: Canadian Mining Corporation Sues to Force Romanians to Accept Toxic Roşia Montană Goldmine* (Report, February 2017) 6 <https://corporateeurope.org/sites/default/files/attachments/gold_digging_with_investor_state_lawsuits.pdf>, archived at <<https://perma.cc/VZL3-E44E>>.

²³ 'Opening of the World Heritage Committee in Manama (Bahrain)' (News Release, UNESCO World Heritage Convention, 25 June 2018) <<https://whc.unesco.org/en/news/1835>>, archived at <<https://perma.cc/8825-9CGH>>.

²⁴ World Heritage Committee, United Nations Educational, Scientific and Cultural Organization, *Decisions Adopted during the 42nd Session of the World Heritage Committee*, 42nd sess, UNESCO Doc WHC/18/42.COM/18 (4 July 2018) Decision 42 COM 8B.32 para 4 ('42nd Session Decisions').

²⁵ *Ibid* Decision 42 COM 8B.32 para 2.

²⁶ *World Heritage Convention* (n 1) art 11(3).

²⁷ Intergovernmental Committee for the Protection of the World Cultural and Natural Heritage, United Nations Educational, Scientific and Cultural Organization, *Operational Guidelines for the Implementation of the World Heritage Convention*, UNESCO Doc WHC.21/01 (31 July 2021) [159] ('Operational Guidelines').

against the draft recommendations to inscribe the property on both the World Heritage List and In Danger List simultaneously.

III INSCRIPTION ON THE WORLD HERITAGE LIST

The *Operational Guidelines for the Implementation of the World Heritage Convention* ('*Operational Guidelines*') sets out 10 criteria which, when satisfied, demonstrate the existence of OUV.²⁸ These criteria cut to the very essence of what it means to have OUV: exquisite masterpieces, unique natural phenomenon and exceptional symbols of human culture are all examples of places bearing enough worldwide significance to be acknowledged and protected. States party may only nominate properties within their own jurisdiction and are responsible for selecting the criteria they believe best qualifies their nominated property for inscription. This is then evaluated by ICOMOS (cultural properties) and/or IUCN (natural properties). However, the power to determine whether the nominated criteria are met rests with the Committee. In the case of the Roşia Montană Mining Landscape, the Committee fully accepted ICOMOS's advice (inscribed under criteria (ii),²⁹ (iii)³⁰ and (iv)).³¹ The property was also nominated under criterion (vi) which ICOMOS considered had not been met, to which the Committee agreed. The Advisory Bodies play an important role as the independent evaluators of heritage, and while the Committee can depart from their advice, doing so frequently risks setting a dangerous precedent of discarding the sound technical basis under which properties are inscribed. This has inevitably led to a corrosion of the legitimacy and impartiality of Committee decision-making — a growing criticism in recent years.³²

A Integrity

The 10 criteria aforementioned are not the only criteria, however, that must be met in order to demonstrate the existence of OUV. It is also noted that '[t]o be deemed of Outstanding Universal Value, a property must also meet the conditions of integrity and/or authenticity and must have an adequate protection and management system to ensure its safeguarding.'³³

What is meant by 'integrity' and 'authenticity' is incredibly nebulous. All properties must possess integrity — yet this 'requirement has simply compounded confusion'.³⁴ The *Operational Guidelines* explain that '[i]ntegrity

²⁸ Ibid [77]; see also *World Heritage Convention* (n 1) art 11(2).

²⁹ Criterion (ii): 'exhibit[s] 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': *Operational Guidelines*, UNESCO Doc WHC.21/01 (n 27) [77(ii)].

³⁰ Criterion (iii): 'bear[s] a unique or at least exceptional testimony to a cultural tradition or to a civilization which is living or which has disappeared': ibid [77(iii)].

³¹ Criterion (iv): 'be an outstanding example of a type of building, architectural or technological ensemble or landscape which illustrates (a) significant stage(s) in human history': ibid para 77(iv).

³² See, eg, Enrico Bertacchini, Claudia Liuzza and Lynn Meskell, 'Shifting the Balance of Power in the UNESCO World Heritage Committee: An Empirical Assessment' (2017) 23(3) *International Journal of Cultural Policy* 331.

³³ *Operational Guidelines*, UNESCO Doc WHC.21/01 (n 27) [78].

³⁴ Herb Stovel, 'Effective Use of Authenticity and Integrity as World Heritage Qualifying Conditions' (2007) 2(3) *City and Time* 21, 21.

is a measure of the wholeness and intactness of the natural and/or cultural heritage and its attributes'³⁵ which, while going some way to provide a definition, still leaves the meaning of this criterion rather opaque. How to assess 'wholeness' is translated into three further 'sub-criteria' outlined in para 88 of the *Operational Guidelines*:

Examining the conditions of integrity, therefore requires assessing the extent to which the property:

- a) includes all elements necessary to express its Outstanding Universal Value;
- b) is of adequate size to ensure the complete representation of the features and processes which convey the property's significance;
- c) suffers from adverse effects of development and/or neglect.

This effectively translates to (a) assessing the preservation of a property's original form and (b) verifying the property's boundary area sufficiently includes all areas of significance associated with the property (c) while accounting for any negative impacts caused by development and/or neglect to that area.³⁶ The Roşia Montană Mining Landscape, as a mine, has easily delineated boundaries and can demonstrate para 88(a) and (b) fairly straightforwardly. However, it is easy to fathom how this may not always be the case. Take Slovakia and Ukraine's joint nomination of the 'Primeval Beech Forests of the Carpathians', inscribed in 2007, for example.³⁷ In 2016, 11 states party requested an extension of the property boundaries, nominating 67 additional component parts. The decision to approve the extension resulted 'in the new property spanning 12 countries and comprising 78 component parts in total' and '[t]he name of the new transitional serial property was adapted to "Ancient and Primeval Beech Forests of the Carpathians and Other Regions of Europe"'.³⁸ The recent inscriptions of the Ancient and Primeval Beech Forests of the Carpathians and Other Regions of Europe, which now comprises of 94 component parts in 18 countries, demonstrates the difficulty of determining the 'appropriate boundary' in which to attribute OUV wholly.

The third sub-criterion of integrity (para 88(c)) is riddled with even more complexity. Issues pertaining to development and neglect have been historically conceived as the duty of the jurisdictionally-responsible state party: ICOMOS's assessment of the Roşia Montană Mining Landscape points out that while opencast mining activities in 1971 and 2004 caused some loss to structures contained within the site, the activities nevertheless have not irreversibly or significantly damaged the property's original form and overall integrity.

³⁵ *Operational Guidelines*, UNESCO Doc WHC.21/01 (n 27) [88].

³⁶ See *ibid.*

³⁷ World Heritage Committee, *Nomination of Natural, Mixed and Cultural Properties to the World Heritage List: Primeval Beech Forests of the Carpathians*, UNESCO Decision 31 COM 8B.16.

³⁸ IUCN, *IUCN World Heritage Nominations 2021*, 44th sess, UNESCO Doc WHC/21/44.COM/INF.8B2.ADD (2021) 5 <<https://whc.unesco.org/archive/2021/whc21-44com-inf8B2.Add-en.pdf>>, archived at <<https://perma.cc/YN6C-964R>>. See also World Heritage Committee, *Ancient and Primeval Beech Forests of the Carpathians and Other Regions of Europe (Albania, Austria, Belgium, Bulgaria, Croatia, Italy, Germany, Romania, Slovenia, Slovakia, Spain, Ukraine)*, UNESCO Decision 41 COM 8B.7.

The lack of agreement of what is meant by ‘development’ puts World Heritage matters in a particularly precarious position. The Sustainable Development Goals (‘SDGs’)³⁹ have not yet been translated effectively into World Heritage dogma. This risks causing priorities of states party to conflict. Infrastructural projects and industrialisation (SDG 9) for example,⁴⁰ is necessary for economic growth in many countries, particularly developing ones. The process of building new roads or public transport systems in close proximity to heritage properties however can be damaging and threaten OUV. ‘Development’ priorities can therefore clash with the principles that lie at the core of heritage protection. In the absence of clarifying the meaning of ‘development’ in the *Operational Guidelines* or in a policy document, states party will be increasingly forced to choose between protecting heritage places or pursuing other developmental needs which need not be incompatible.

Romania battled with this very issue, arguing small-scale mining activities at Roşia Montană could be interpreted in line with UNESCO’s policy on sustainable development (by delivering benefits for jobs and tourism). Yet, UNESCO has long vied for the abstinence from exploitative activities in World Heritage properties, which are axiomatically considered to jeopardise conservation. In 2003, the International Council on Mining and Metals (‘ICMM’) went so far as to agree to ban explorative or extractive activities in or close by World Heritage properties, with the Committee aligning itself explicitly with this commitment in 2013. The Committee is urging

all States Parties to the Convention and leading industry stakeholders, to respect the [ICMM] ‘No-go’ commitment by not permitting extractives activities within World Heritage properties, and by making every effort to ensure that extractives companies located in their territory cause no damage to World Heritage properties, in line with Article 6 of the Convention ...⁴¹

It is difficult to understand how small-scale mining is compatible with the protection of a property’s OUV;⁴² however this demonstrates the real and important need to clarify ‘development’ through codification and updated policy guidance.

Neglect is an even more tenuous basis on which to assess integrity — and one that states party take personally and use politically. By definition, neglect points to a deliberate refusal or failure to manage heritage places well. Typically, this would be most evident in states party’s *conscious decision* to allow properties to deteriorate, either through deliberate inaction or wilful ignorance. However, in light of the increasingly severe threats from climate change, particularly to natural heritage properties, would ‘neglect’ reasonably extend to states party who do not set ‘ambitious’ limits and targets on greenhouse gas emissions, or states party who do not invest ‘enough’ into their mitigation and adaptation efforts?

³⁹ *Transforming Our World: The 2030 Agenda for Sustainable Development*, GA Res 70/1, UN GAOR, 70th sess, 4th plen mtg, Agenda Items 15 and 116, UN Doc A/RES/70/1 (21 October 2015).

⁴⁰ *Ibid* 14.

⁴¹ World Heritage Committee, United Nations Educational, Scientific and Cultural Organization, *Decisions Adopted by the World Heritage Committee at Its 37th Session*, 37th sess, UNESCO Doc WHC-13/37.COM/20 (5 July 2013) Decision 37 COM 7 para 8.

⁴² *Advisory Body Evaluation*, UNESCO Doc WHC-21/44.COM/INF.8B1 (n 4) 270.

States party have always been, and continue to be, conceived as holding the exclusive power to manage threats to their properties, but in the face of global challenges like climate change — which must be addressed collectively — what should be considered ‘sufficient’ action by the state party under whose jurisdiction a property falls? Like development, clarifying the scope of neglect is therefore essential for modern heritage protection.

Until these uncertainties are expounded, the onus of responsibility to protect properties will continue to fall entirely on individual states party. For some properties, like the Roşia Montană Mining Landscape, development and neglect may not be considered as having impacted the values to such an extent that integrity has been severely compromised, but this will likely become an increasingly common and difficult conundrum for other properties if left unaddressed.

B Authenticity

All properties must have integrity, but only cultural property (or mixed property) nominations must satisfy ‘authenticity’ requirements (explaining the ‘and/or’ language at para 78).⁴³ Like integrity, the concept of authenticity is plagued with ambiguity and rooted in a deep philosophical dilemma that seems to disproportionately value the preservation of original form. Academics and heritage experts routinely liken this problem to Theseus’s Paradox. Theseus, a hero in Greek mythology, was revered by the Athenians and as a testament to his legacy, they sought to memorialise his ship.

[I]n order to preserve the ship, any wood that wore out or rotted was replaced. Over time it became unclear just how much of the original ship actually remained, giving rise to a philosophical question on whether it should be considered the same ship or not.⁴⁴

Replacing one plank of wood in Theseus’s ship with new wood that honours the ship’s originality could be considered so minor to the overall form that it would almost guarantee to attract no attention, but this could quickly change if all wood needed replacement. Thus, at what point does the ship ‘lose’ its authenticity? IUCN and ICOMOS take a pragmatic approach to this dilemma, accepting that some level of restoration is inevitable for preservation over time. The *Operational Guidelines* are clear that reconstructions are ‘justifiable only in exceptional circumstances’ which indicates that if a major portion of the property requires a restorative operation, then ‘original form’ and authenticity would likely be considered lost.⁴⁵ Yet, this is far from panacea: how much restoration needs to occur in order to trigger the ‘loss’ of authenticity remains ambiguous. The International Center for the Study of the Preservation and Restoration of Cultural Property has noted that ‘authenticity is perhaps the conservation

⁴³ *Operational Guidelines*, UNESCO Doc WHC.21/01 (n 27) [79].

⁴⁴ Stefano De Caro, ‘Tracing the Roots of Authenticity: Considerations on the Ship of Theseus Paradox’ in Gamini Wijesuriya and Jonathan Sweet (eds), *Revisiting Authenticity in the Asian Context* (ICCROM, 2018) 25, 27.

⁴⁵ *Operational Guidelines*, UNESCO Doc WHC.21/01 (n 27) [86].

profession's most nebulous term' due to the difficulties in interpretation,⁴⁶ and explains the inconsistent, variable nature of assessing 'authenticity'.⁴⁷ It is no wonder that this criterion has attracted a particular criticism, with some researchers even calling for the abandonment of authenticity as a requirement altogether.⁴⁸

Perhaps unsurprisingly due to its philosophical opacity, authenticity is barely discussed by ICOMOS in its assessment of the Roşia Montană Mining Landscape. While ICOMOS has assessed that the historical details of mining activities are well preserved and there remains considerable potential to uncover even more information at the site, which would further enhance historical and archaeological knowledge of Roman mining throughout the ages,⁴⁹ the threat of mining cannot be divorced from the analysis of heritage values. Further, 'ICOMOS considers that any proposal to restart large scale mining at Roşia Montană would have a severe impact on the authenticity of the property. Authenticity is considered to be highly vulnerable to new mining proposals.'⁵⁰

ICOMOS concludes that both '[t]he conditions of authenticity and integrity have been met but are highly vulnerable' as the mere existence of these values *at the time* of inscription is enough to demonstrate OUV.⁵¹ However, the Advisory Bodies and Committee must also consider the *longevity* and likelihood of these values being lost in the future, which is where the secondary — and absolutely vital — criteria for determining OUV comes into play.

C Adequate Management and Protection

After assessing Romania's property information, ICOMOS concluded that RMGC's plans to develop four open cast mines and two waste dumps 'would result in the destruction of a major part of the nominated property'.⁵² While there is no valid permit in place to green-light mining activities, Romania has claimed that there is no legislative authority to prevent the granting of licences,⁵³ and the company, whose licence was set to expire in 2019, has had their licence extended to 2024. As states party are responsible for the conservation of properties, they are entrusted to exercise their executive powers to protect heritage places. It is noted that '[a]ll properties inscribed on the World Heritage List must have adequate long-term legislative, regulatory, institutional and/or traditional protection and management to ensure their safeguarding.'⁵⁴

The Romanian government's inability to refuse an extraction licence is the clearest demonstration of legislative, regulatory and institutional inadequacy. Romania has acknowledged that RMGC may even meet the requirements under

⁴⁶ Roha W Khalaf, 'World Heritage on the Move: Abandoning the Assessment of Authenticity to Meet the Challenges of the Twenty-First Century' (2021) 4(1) *Heritage* 371, 372, quoting Gamini Wijesuriya and Jonathan Sweet, 'Introduction' in Gamini Wijesuriya and Jonathan Sweet (eds), *Revisiting Authenticity in the Asian Context* (ICCRUM, 2018) 11, 12.

⁴⁷ Khalaf (n 46) 372.

⁴⁸ *Ibid.*

⁴⁹ *Advisory Body Evaluation*, UNESCO Doc WHC-21/44.COM/INF.8B1 (n 4) 268.

⁵⁰ *Ibid.*

⁵¹ *Ibid.*

⁵² *Ibid.* 269.

⁵³ *Ibid.* 269–70.

⁵⁴ *Operational Guidelines*, UNESCO Doc WHC.21/01 (n 27) [97].

Romanian law to obtain the necessary licence to commence mining activities and cannot be refused 'if the mining project complies with Romanian legislation in all concerned fields'.⁵⁵ This unequivocally undermines the very responsibility to 'assure the full and effective implementation of such measures' to protect properties.⁵⁶ It is baffling that ICOMOS considered Romania's toothless legislative power, which blatantly contravenes UNESCO's position on extractive activities, an adequate safeguard.

While para 77 does not mandate that an adequate protection system must be in effect at the time of inscription, there is difficulty fathoming how a property can be deemed as possessing an 'adequate' protective system when that system exists only in the abstract. Even if a literal reading of the *Operational Guidelines* were to apply, the Roşia Montană Mining Landscape would still fail this test: ICOMOS's analysis judges the property's management plan as ineffective and incomplete.⁵⁷ When the nomination dossier was originally submitted to UNESCO, no management plan existed. In their most recent analysis, ICOMOS highlighted that the new, scantily developed draft plan had not gone through community consultations, no timeframes were provided to indicate when the management plan would be finalised and crucial administrative details were lacking, including resourcing information, budgetary data and the identification of responsible management plan administrators.⁵⁸ It is impossible to conclude, on any reasonable interpretation, that the property has an adequate protection and management system.

By virtue of being a mine, the very existence of the property raises ongoing environmental concerns. Iron oxide leaks into the Roşia River and the water treatment plant 'appears to be inoperative'.⁵⁹ The cyanidation process used in gold extraction is a severe environmental threat that causes water and river contamination that can lead to loss of biodiversity, degradation of ecosystems and impacts to human health. The United Nations has even called acid drainage the second biggest problem facing the world, after global warming,⁶⁰ with gold

⁵⁵ *Roşia Montană Mining Landscape (Romania): Response to the ICOMOS Additional Information Request* (Report No GB/AS/1552rev-Add.Inf_1, 6 February 2020) pt 1(a) ('*Supplementary Information*').

⁵⁶ *Operational Guidelines*, UNESCO Doc WHC.21/01 (n 27) [98].

⁵⁷ *Advisory Body Evaluation*, UNESCO Doc WHC-21/44.COM/INF.8B1 (n 4) 272.

⁵⁸ *Ibid.*

⁵⁹ *Ibid.* 270.

⁶⁰ Jackie Marchildon, 'The UN Has Called This the Second Biggest Environmental Problem Facing Our World', *Global Citizen* (Blog Post, 15 September 2017) <<https://www.globalcitizen.org/en/content/acid-drainage/>>, archived at <<https://perma.cc/H45X-VYWT>>.

mining and acid mine drainage listed as specific threats to several properties in State of Conservation reports and in Committee decisions.⁶¹

In no way can the Roşia Montană Mining Landscape be considered to possess a defensible ‘statement on the protection and management in force and the requirements for protection and management for the future’.⁶² On one hand, this should have prevented the inscription of the property on the World Heritage List, but on the other, this has rendered the property a very worthy candidate for consideration on the In Danger List.

IV INSCRIPTION ON THE IN DANGER LIST

Despite the *Operational Guidelines* unambiguously stating that management and protective safeguards *are* integral in establishing OUV, this component is increasingly viewed as preferential rather than mandatory. Indeed, it would have been deeply negligible to inscribe the Roşia Montană Mining Landscape on the World Heritage List without addressing the severe threats to its preservation. Thus, ICOMOS made a decision that sought to elegantly resolve this problem: recommending dual inscription on both the World Heritage List and In Danger List.

The In Danger List operates in tandem with the World Heritage List, and a property cannot be In Danger Listed if it is not already World Heritage Listed. Much like World Heritage inscriptions, the Committee ultimately decides if a property has met the requirements for In Danger Listing, which comes with its own set of unique criteria for inscription, under para 177 of the *Operational Guidelines*:

- a) the property under consideration is on the World Heritage List;
- b) the property is threatened by serious and specific danger;
- c) major operations are necessary for the conservation of the property;
- d) assistance under the *Convention* has been requested for the property; the Committee is of the view that its assistance in certain cases may most effectively be limited to messages of its concern, including the message sent by inscription of a property on the List of World Heritage in Danger and that such assistance may be requested by any Committee member or the Secretariat.⁶³

⁶¹ See, eg, the discussion of the Banc d’Arguin National Park (Mauritania) in World Heritage Committee, United Nations Educational, Scientific and Cultural Organization, *Item 7B on the Provisional Agenda: State of Conservation of Properties Inscribed on the World Heritage List*, 40th sess, UNESCO Doc WHC/16/40.COM/7B (27 May 2016) 159–62 <<https://whc.unesco.org/archive/2016/whc16-40com-7B-en.pdf>>, archived at <<https://perma.cc/VC87-VMWX>>; the discussion of the Virgin Komi Forest (Russian Federation) in World Heritage Committee, United Nations Educational, Scientific and Cultural Organization, *Item 7B of the Provisional Agenda: State of Conservation of Properties Inscribed on the World Heritage List*, 44th sess, UNESCO Doc WHC/21/44.COM/7B (4 June 2021) 296–8 <<https://whc.unesco.org/archive/2021/whc21-44com-7B-en.pdf>>, archived at <<https://perma.cc/49D8-9CLJ>>; and the discussion of Fossil Hominid Sites (South Africa) at 322–5.

⁶² *Operational Guidelines*, UNESCO Doc WHC.21/01 (n 27) [155].

⁶³ *Ibid* [177].

Although used sparingly, there is a long precedent of dual inscriptions, stretching as far back as the 1970s and is almost as old as the *Convention for the Protection of the World Cultural and Nature Heritage Protection* ('*World Heritage Convention*') itself. Yet, this precedent is highly problematic at a technical level. The wording of para 177(a) assumes a property exists on the World Heritage List because a property cannot be 'under consideration' for the In Danger List if it is not *already* a World Heritage property. The reason for this is rather simple: OUV should exist, meaning that integrity and/or authenticity as well as an adequate management plan, are already in effect. For ICOMOS to conclude that the requirements for inscription have been met, which includes having adequate safeguarding mechanisms, while conceding that 'that the property is faced with specific and proven imminent danger'⁶⁴ because the state party has weak heritage protection mechanisms and the property lacks an adequate management plan is a glaring contradiction. When read closely and in the spirit of the *World Heritage Convention*, dual inscriptions are a paradox and should be made null and void.

Setting aside the normative debate on para 177(a), the Roşia Montană Mining Landscape clearly meets the requirements of para 177(b). The property *is* threatened by many serious and specific dangers. Properties may qualify for In Danger Listing when facing the 'potential danger' rating, or the more severe, 'ascertained danger' category.⁶⁵ While both are considered equally valid for the In Danger List, 'ascertained danger' possesses greater potency when advocating for inscription, as these are *specific, imminent* and *proven* threats. The multiple risks facing the Roşia Montană Mining Landscape have been clearly established, widely accepted and are immediately on the horizon. The risk of mining will cause serious deterioration of the property and its OUV but even if the risk of future mining activities were to be considered potential dangers (ie severe damage has not yet actually materialised), the other existing threats to the property — iron oxide leakages, the flooding to some of the underground Roman mining works and the destruction of homesteads in and around the property — would certainly constitute a grave level of danger.

Paragraph 177(c) hinges on para 177(b) in that the damage to the property must necessitate major operations for its conservation. 'Major operations' however, is a vague term that is not mentioned at any other part of the *Operational Guidelines* and seldom discussed academically. What constitutes 'major' is ambiguous at best, and the *World Heritage Convention* only provides dim illumination, explaining that damage should be identified and cost estimates for repairs should be provided to UNESCO.⁶⁶ In its assessment of the Roşia Montană Mining Landscape, ICOMOS concludes that '[t]he majority of the Roman remains ... would be destroyed'⁶⁷ if the RMGC project were to go ahead and 'serious conservation challenges' already exist.⁶⁸ In spite of this, there is no ability to make a conclusive determination on the extent of the required operations, as Romania does not have a management plan or a long-term action

⁶⁴ *Advisory Body Evaluation*, UNESCO Doc WHC-21/44.COM/INF.8B1 (n 4) 273.

⁶⁵ *Operational Guidelines*, UNESCO Doc WHC.21/01 (n 27) [179].

⁶⁶ *World Heritage Convention* (n 26) art 11(4).

⁶⁷ *Advisory Body Evaluation*, UNESCO Doc WHC-21/44.COM/INF.8B1 (n 4) 269.

⁶⁸ *Ibid* 272.

plan for conservation works in place which would detail the financial and resourcing impost to protect the property.⁶⁹ In the absence of such information, it cannot be said with certainty that the Roşia Montană Mining Landscape requires (although it is likely) ‘major operations’.

The final criterion for In Danger Listing is rather interesting because prima facie, requesting assistance under the *World Heritage Convention* would seem to imply that the state party responsible for the property would need to make such a request. At no point however, does the *World Heritage Convention* or the *Operational Guidelines* state that this must be the case. From whom assistance must be requested is completely open-ended. This makes sense because the efficacy of the entire In Danger List would be undermined if individual states party were required to officially seek assistance, with power unilaterally held by individual states. Unsurprisingly, governments are often resistant to In Danger Listings, as there is a perception that this symbolises a failure of government to protect places of heritage significance.⁷⁰ Foreseeably then, responsible states party hesitate in seeking assistance.

The Roşia Montană Mining Landscape’s resubmission for inscription suggests that Romania sought assistance from the Committee and UNESCO, as ‘[t]he referred back nomination contemplates a potential outcome of the arbitration proceedings, pursuant to which RMGC’s rights under the license would no longer be enforceable’.⁷¹ This is a curious reversal of the argument put forth by Romania only three years earlier in 2018, where Romania requested that the property not be inscribed on the World Heritage List for the very opposite reason: international arbitration was ongoing and unresolved.⁷² Considering that ‘Romania’s decision to resubmit the file for consideration is not based on new circumstances’,⁷³ there is strong evidence indicating that the motivation behind pursuing the inscription was to use the status of World Heritage to influence the outcomes of the case. It is noted that ‘ICOMOS considers that inscription on the World Heritage List in Danger should be the opportunity to gain the attention and support of the international community for the protection of the property and for its conservation.’⁷⁴

The decision to inscribe the Roşia Montană Mining Landscape on both the World Heritage List and In Danger List shows a strong political motivation that dangerously undermines heritage protection concerns. Yet, this is only one recent example in a string of decisions that have been following this trend.

V IMPLICATIONS ON FUTURE COMMITTEE DECISIONS

The unchecked permissibility of dual inscriptions reveals that there is a rupture in the fabric of the *World Heritage Convention* and *Operational Guidelines* as the 10 criteria at para 77 have come to overshadow the other

⁶⁹ See above n 57 and accompanying text.

⁷⁰ See generally Herdis Hølleland, Evan Hamman and Jessica Phelps, ‘Naming, Shaming and Fire Alarms: The Compilation, Development and Use of the List of World Heritage in Danger’ (2019) 8(1) *Transnational Environmental Law* 35.

⁷¹ *Supplementary Information* (n 55) pt 1(a).

⁷² See above n 24 and accompanying text.

⁷³ *Supplementary Information* (n 55) pt 1(a).

⁷⁴ *Advisory Body Evaluation*, UNESCO Doc WHC-21/44.COM/INF.8B1 (n 4) 274.

requirements for inscription at para 78. One could argue that a ‘weighting’ of the multiple requirements can legitimately apply, as there is nothing that suggests the various components of determining OUV must be treated equally. However, there are a number of very good reasons as to why this would undermine the credibility of the World Heritage system. The World Heritage List implicitly acknowledges that while a property’s OUV is present, risks may exist that threaten to corrode its values. A risk-based approach is applied, and this is why properties do not necessarily need to be in perfect, original condition to be World Heritage Listed (which would be an absurd and impossible standard to meet anyway). However, there does come a point at which properties face significant risks that render them ineligible for World Heritage Listing. If we consider OUV as heritage theory and protective management as heritage practice, we can easily see how divorcing the identification of heritage values from the mechanisms that serve to protect them would be disastrous. The World Heritage system holds states party to account for conservation efforts and removing or diluting this requirement would open the floodgates for the nomination and inscription of properties whose OUV may cease to exist in the near future. It would remove any real incentive for states party to take meaningful conservation action and obliterate the credibility of the In Danger List, which would become plagued with new inscriptions. Aside from the restorative powers of the In Danger List, including through Reactive Monitoring Missions, the In Danger List is increasingly seen by states party as a punitive measure for non-compliance with Convention obligations,⁷⁵ and deters states party from nefarious, OUV-threatening activities and absolving themselves of their conservation responsibilities. Ignoring or devaluing the requirement to have an adequate protective system would rapidly increase the financial strain on UNESCO, haemorrhaging already finite resources, and lead to inflated attention and an unsustainable amount of capital being funnelled into protecting properties that should not have been inscribed in the first place. Yet, dual inscriptions do just that. By allowing the inscription of a property onto the World Heritage List that is riddled with a myriad of ascertained and proven threats, the World Heritage system accepts that properties may become part of World Heritage even when they cannot demonstrate a sufficient protective mechanism — despite this being a fundamental, technical requirement for inscription.

There is no doubt that the Advisory Bodies are complicit in reshaping the contours of the World Heritage system. The technical analysis provided to the Committee for consideration sufficiently detailed the deficiencies of the Roşia Montană Mining Landscape and while ICOMOS purports to restrict property assessments to the merits of a nomination in accordance with the *World Heritage Convention* and *Operational Guidelines*, this did not deter their recommendation for dual inscription. While ICOMOS may believe that their recommendations here were based purely on technical merits by recommending inscription as a method for increasing international awareness to the threats facing the property, recommending a World Heritage Listing for a property perforated with conservation concerns and embroiled in an unresolved international arbitration

⁷⁵ See above n 70 and accompanying text.

ignores the fact that the recommendation, no matter how ostensibly objective, is deeply entrenched in politics.

Increasing politicisation of World Heritage decisions is not a new phenomenon and has been widely scrutinised.⁷⁶ However, the first ever inscription of a property recommended as ‘Do Not Inscribe’ by the Advisory Bodies occurred in 2018 (Saudi Arabia’s Al-Hasa Oasis) and marked a turning point in Committee decisions that bluntly disregarded and actively worked against technical expert recommendations.⁷⁷ At the most recent 44th Session held in July 2021, all properties recommended for ‘Inscribe’, ‘Refer’ and ‘Defer’ were inscribed on the World Heritage List (with exception of Mongolia’s Deer Stone Monuments and Related Sites, the Heart of Bronze Age Culture — and likely only because Mongolia did not appear to lobby or advocate for inscription).⁷⁸ Even Poland’s Gdańsk Shipyard, which was recommended as ‘Do Not Inscribe’ by ICOMOS, was postponed for the next session in 2022⁷⁹ — and marks the furthest departure from technical advice that the Committee has ever allowed.

The openness with which Committee members overturn heritage expertise is alarming. States party’s representatives to UNESCO and at Committee meetings are often officials from foreign ministries rather than heritage specialists, with diplomats holding ‘a sense that it is they, rather than the bureaucrats or technical experts, that are in command’.⁸⁰ Although World Heritage is a part of the international system that cannot be detached from states party’s other foreign policy interests, heritage expertise has decidedly waned in recent years, and the ascendancy of diplomatic power has come to the fore, with diplomats empowered to take advantage of the system to exercise broader national interests and exert their own ideations of cosmopolitanism.⁸¹ The Roşia Montană Mining Landscape’s dual inscription fits beautifully with typical diplomatic aspirations: the newly gained status of World Heritage enabled states party to reap the benefits of peace-building and improving relations with Romania, while appearing not to undermine heritage values, offset through In Danger Listing.

Diplomatic expertise certainly plays an important and legitimate role in World Heritage and recognising it as such ‘opens up a space for re-reading

⁷⁶ See, eg, Christoph Brumann, ‘Shifting Tides of World-Making in the UNESCO World Heritage Convention: Cosmopolitanisms Colliding’ (2014) 37(12) *Ethnic and Racial Studies* 2176; Bertacchini, Liuzza and Meskill (n 32); Thomas M Schmitt, ‘Global Cultural Governance: Decision-Making concerning World Heritage between Politics and Science’ (2009) 63(2) *Erdkunde* 103.

⁷⁷ ICOMOS, *Evaluations of Nominations of Cultural and Mixed Properties: ICOMOS Report for the World Natural Heritage Committee*, 42nd sess, UNESCO Doc WHC-18/42.COM/INF.8B1 (2018) 67; *42nd Session Decisions*, UNESCO Doc WHC/18/42.COM/18 (n 24) Decision 42 COM 8B.16 para 2.

⁷⁸ World Heritage Committee, United Nations Educational, Scientific and Cultural Organization, *Decisions Adopted during the Extended 44th Session of the World Heritage Committee*, 44th sess, UNESCO Doc WHC/21/44.COM/18 (31 July 2021) Decision 44 COM 8B.14.

⁷⁹ World Heritage Committee, United Nations Educational, Scientific and Cultural Organization, *Item 8 of the Provisional Agenda: Establishment of the World Heritage List and of the List of World Heritage in Danger*, 44th sess, UNESCO Doc WHC/21/44.COM/8B.Add (21 June 2021) Draft Decision 44 COM 8B.43.

⁸⁰ James and Winter (n 2) 42.

⁸¹ *Ibid* 47.

politicisation'.⁸² However, this blurs the lines between valuing conservation-oriented, humanist expertise over domestically driven, self-serving ambitions. The democratisation of expertise risks doing the exact opposite and de-democratising decision-making by generating cognitive dissonance that ignores the validated knowledge of architects, engineers, urban and regional planners, conservationists, marine biologists and that of the Advisory Bodies and civil society.⁸³

This is evidenced well by the Committee's behaviour in assessing Thailand's nomination of Kaeng Krachan Forest Complex. The World Heritage Centre noted that UNESCO had 'received a number of letters, petitions from associations, foundations and NGOs also conveying concerns concerning Karen communities within the Kaeng Krachan National Park'⁸⁴ and IUCN stated that the property had been already referred back to Thailand as the responsible state party three times due to ongoing human rights concerns (among other shortcomings).⁸⁵ Norway requested to hear from the United Nations Special Rapporteur on the Rights of Indigenous Peoples to guide the Committee's decision, which was supported by Brazil, Guatemala and Spain, and resisted by China, Egypt, Ethiopia, Oman, Saudi Arabia and South Africa.⁸⁶ The *Rules of Procedure* allow for the Chair (China) to make a determination to allow civil society to speak prior to deliberations but applied narrow interpretation of 'majority rule' to silence the intervention (which happened to align with his own state's position).⁸⁷ It is curious that many states (notably those with poor track records of human rights) expressed an eagerness to avoid hearing an expert opinion, which does not affect states party decision-making ability. Yet, the prospect of hearing from a technical expert would challenge these states' own positions and risked threatening to sway the Committee decision. The property was ultimately inscribed and the UN Special Rapporteur observed, following the decision, that the process had discarded Indigenous voices, violated the principle of free, prior and informed consent, and was more preoccupied with pursuing national interests than protecting the land rights and displacement concerns that had been raised by a number of human rights bodies. The Chair even insisted that the International Indigenous Peoples' Forum on World Heritage be 'very brief' in providing a comment, revealing the general disapproval of many states from engaging with non-diplomatic expertise, despite the legitimacy and centrality of their advice in making informed World Heritage decisions.⁸⁸

The inscription of the Kaeng Krachan Forest Complex is only one example of a wider trend: Meskell et al have observed that 'over the previous 10–15 years, an increasing politicisation has developed whereby policy has trumped technical

⁸² Ibid 49.

⁸³ See Hølleland and Skrede (n 2); Bertacchini, Liuzza and Meskell (n 32).

⁸⁴ UNESCO, 'Extended 44th Session of the World Heritage Committee' (YouTube, 26 July 2021) 1:07:01–1:07:13 <<https://www.youtube.com/watch?v=TAW9Ip0YUOU>>, archived at <<https://perma.cc/NNX7-TSHV>> ('44th Session: Recording').

⁸⁵ Ibid 1:07:31–1:07:55.

⁸⁶ Ibid 1:15:39 – 1:16:42, 1:45:02–1:45:57.

⁸⁷ Ibid 1:45:57–1:46:49; Intergovernmental Committee for the Protection of the World Cultural and Natural Heritage, United Nations Educational, Scientific and Cultural Organisation, *Rules of Procedure*, UNESCO Doc WHC-2015/5 (July 2015) r 22.4.

⁸⁸ 44th Session: Recording (n 84) 2:14:32–2:14:39.

expertise'.⁸⁹ Diplomatic 'expertise' has become a proselytising force, whereby states party have come to value only their own episteme, resisting and even suppressing dissenting knowledge. Aside from diplomatic zeal to opportunistically advance wider national interests through the World Heritage system, the composition of IUCN and ICOMOS may also inadvertently contribute to the concerning trend in discarding technical expertise. Both organisations have historically and overwhelmingly comprised of Euro-American experts,⁹⁰ and while the implementation of the Global Strategy has sought to create more equal and inclusive participation at the Committee level, regimes that have experienced colonial rule are still largely suspicious of the West.⁹¹ Western hegemonic power that was once used to oppress developing states may now be seen as covertly exercised through institutions instead of the traditional state apparatus, and contribute to the increasing resistance of Committee members to follow the advice of the Advisory Bodies. Quantitative analysis shows the most vocal countries at Committee meetings include Brazil, China, Egypt, India, Mali and South Africa, indicating that the need to resist is strongest from states with negative experiences of European imperialism.⁹² Yet, hostility towards the Advisory Bodies is corroding the new brand of cosmopolitanism that UNESCO has been vying to implement, which actively seeks to veer away from its traditional Eurocentrism. Diplomats, as champions of universalism and inclusiveness, therefore risk prosecuting non-cosmopolitan goals that shaft heritage values and erode the integrity of the World Heritage system when driven by fervent self-determinism and historical memory.

VI CONCLUSION

There is no doubt that the Roşia Montană Mining Landscape is a unique and extraordinary representation of human civilisation. This is reflected in qualifying for inscription according to three of the six OUV criteria for cultural properties.

ICOMOS's view is that the property possesses integrity and authenticity, two essential components in establishing the existence of OUV. Although the Nara Document on Authenticity has made some progress in delivering greater cultural relativism,⁹³ the way in which *World Heritage Convention* is written in regards to integrity means that assessments are frozen in history and only need to consider the existence of these values *at the time* of nomination. This contributes to the problem of conceptualising heritage as a static 'thing' rather than a dynamic phenomenon that can and will evolve over time.⁹⁴ Yet, it would be remiss not to acknowledge the implications of inscribing properties whose OUV may disappear or become severely threatened in the *near* future. To inscribe a property on both the World Heritage List and In Danger List reinforces a crucial fault of the World Heritage system: that properties which are not adequately

⁸⁹ L Meskell et al, 'Multilateralism and UNESCO World Heritage: Decision-Making, States Parties and Political Processes' (2015) 21(5) *International Journal of Heritage Studies* 423, 425.

⁹⁰ Brumann (n 76) 2181.

⁹¹ Meskell et al (n 89) 431.

⁹² *Ibid* 426, 431.

⁹³ Brumann (n 76) 2181.

⁹⁴ Khalaf (n 46) 372.

protected may be inscribed, despite the imminent and immediate threats to their OUV.

The World Heritage system at its very core is about conservation. Heritage properties are the physical remains of abstract values. It is perhaps easy to overlook safeguards, which can be thought of as secondary considerations. After all, properties are not World Heritage Listed because they are preserved well, but because they are pillars of human creative genius, architectural masterpieces, places attached to cultures and traditions; they are biospheres of exceptional wonders and demonstrations of humankind's superlative accomplishments. Yet such places cease to exist and lose their value when they are not conserved and the *World Heritage Convention* is a practical mechanism that seeks to bridge the divide between the symbolic and the material. It is an international agreement that obligates states party to adhere to principles which stress the equal importance of property protection and management alongside the values to which heritage is esteemed.⁹⁵ The sense that heritage is an entitlement, rather than a privilege, and the resistance to Euro-American influences, permeates throughout Committee decision-making and has led to proliferation of inscriptions — to date there are 1,154 World Heritage sites, all of which qualify as possessing 'outstanding' qualities. This in part may help explain the desire for the Committee to inscribe properties en masse, despite the conservation criticisms often observed by the Advisory Bodies. However, the willingness of the Committee to selectively engage with conservation requirements and continue to support dual inscriptions is leading to deleterious effects on the World Heritage List and threatens to severely corrode the entire World Heritage system.

⁹⁵ See *Operational Guidelines*, UNESCO Doc WHC.21/01 (n 27) [49], [53], [77].