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REINTERPRETING THE AUTHENTICITY OF RECONSTRUCTED WORLD HERITAGE PROPERTIES FOR THE TWENTY-FIRST CENTURY

Joy Naifeh

I. INTRODUCTION

The word "authentic" traces its origins to Greek and Latin.¹ It means "not false or copied; genuine; real[,"]²: in other words, "original." In the field of architectural conservation, the authenticity of historic monuments has historically been paramount, and the importance of the concept may best be illustrated through Theseus’ paradox, as presented by the ancient Greek philosopher Plutarch:

Now the thirty-oared ship, in which Theseus sailed with the youths, and came back safe, was kept by the Athenians up to the time of Demetrius Phalereus. They constantly removed the decayed part of her timbers, and renewed them with sound wood, so that the ship became an illustration to philosophers of the doctrine of growth and change, as some argued that it remained the same, and others, that it did not remain the same.³

² Id.
³ 1 PLUTARCH, PLUTARCH’S LIVES, Life of Theseus: XXIII (Aubrey Stewart & George Long trans., London, Bell & Sons 1894).
Thus, is a ship—or a building—replaced piece by piece the original? Much later, Thomas Hobbes elaborated on this puzzle, asking if the planks removed from Theseus' ship over the years were saved and then used to build a second vessel like the first, which would be considered the original? Is this "new" ship "authentic" or is it merely a replica, a copy, an identical reproduction, or at the most, a reconstruction?

The purpose of this article is to examine the evolving concept of authenticity as it pertains to World Heritage reconstructions. To do so, this article will first trace the genesis and early development of the concept of authenticity and its importance to architectural conservation theory. It will next explain the establishment of the World Heritage Convention and its World Heritage List, including the concept of "outstanding universal value" and the "test of authenticity," both of which became criteria used to evaluate historic buildings for inscription on the List. This article will then recount how the test of authenticity was subsequently challenged by the nomination of reconstructed properties. These situations, followed by a theoretical shift, and repeated intentional and systematic World Heritage site destructions by armed militants, triggered the reinterpretation of authenticity in the World Heritage context. By exploring this theoretical shift and the World Heritage community's response to these and other destructions, this article explains the transition to a new understanding of authenticity that supports World Heritage reconstructions under certain circumstances and as part of a larger strategy. This article concludes

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by summarizing where the theory of authenticity for World Heritage properties and its attendant strategy now stand.

II. BACKGROUND OF THE CONCEPT OF AUTHENTICITY IN ARCHITECTURAL CONSERVATION

As the profession of architectural conservation took form over the nineteenth and twentieth centuries, debate swirled around what aspects of monumental architecture were worth saving and how it should be done. In the nineteenth century, there was contention between the “stylistic restoration” of practitioners such as Eugène-Emmanuel Viollet-le-Duc in France and Sir George Gilbert Scott in England, and their critics, namely Englishmen John Ruskin and William Morris, who advocated for what came to be known as “conservation.” Stylistic restoration removed historic material, recreated elements, and often added other components as needed to “achieve an ideal form that may—or may not—have ever existed.” Conservation, on the other hand, respected historical materials, including all alterations and additions made over time. By respecting these changes, proponents argued, buildings are truly able to represent specific historic periods to later generations.

7 Id. at 174-212 (providing a thorough discussion of conservation, its champions, and their influences).
8 JOHN H. STUBBS, TIME HONOURED: A GLOBAL VIEW OF ARCHITECTURAL CONSERVATION 205 (2009). Indeed, Viollet-le-Duc referred to “restoration” as follows: “To restore a building is not to preserve it, to repair, or to rebuild it; it is to reinstate it in a condition of completeness which may never have existed at any given time.” JOKILEHTO, HISTORY, supra note 6, at 151 (quoting 8 EUGÈNE-EMMANUEL VIOLLET-LE-DUC, DICTIOINNAIRE RAISONNÉ DE L’ARCHITECTURE FRANÇAISE DU XIÈ AU XVIÈ SIÈCLE 14 (1875)).
because their authentic materials are undisturbed and preserved.\textsuperscript{9} Restoration, even copying historic elements for repairs, resulted “in the loss of authenticity and the creation of a fake.”\textsuperscript{10} Therefore, only maintenance, “stay[ing] off decay by daily care,” was appropriate.\textsuperscript{11}

Although both stylistic restoration and conservation spread across Europe, conservation eventually became the predominant theory of care for historic buildings. Still nascent as the nineteenth century bled into the twentieth, the principles giving the theory effect were necessarily in flux.\textsuperscript{12} \textit{The Preservation and Restoration of Architectural Monuments}, drafted at the Sixth International Council of Architects in Madrid in 1904, can be seen as an initial attempt at establishing international principles of architectural conservation practice.\textsuperscript{13} But it was not until after World War I that an international gathering addressed architectural conservation in a systematic fashion.\textsuperscript{14}

\textsuperscript{9} JOKILEHTO, HISTORY, supra note 6, at 185.
\textsuperscript{10} Id.
\textsuperscript{11} Id. (quoting William Morris, \textit{Manifesto of the Society for the Protection of Ancient Buildings}, SOC'Y PROT. ANCIENT BLDGS., https://www.spab.org.uk/about-us/spab-manifesto (last visited Nov. 9, 2018)).
\textsuperscript{12} See generally JOKILEHTO, HISTORY, supra note 6, at 187-91, 194-97, 200-09, 215-20 (excerpts discussing conservation theory and practice in England and Europe between the late nineteenth and early twentieth centuries); STUBBS, supra note 8, at 208-10, 217-18, 224-25, 231-33 (same).
\textsuperscript{13} STUBBS, supra note 8, at 135; see W.J. Locke, \textit{The Sixth International Congress of Architects, 1904, Madrid: Report of the Secretary of the Institute}, 11 J. ROYAL INST. BRIT. ARCHITECTS 343, 344 (1904).
\textsuperscript{14} The above is an extremely simplified capsule summary of the theoretical arguments underpinning architectural conservation’s nineteenth and twentieth century development. It was truly the result of the exchange of theories and methodologies among England, France, Germany, Italy, and other nations in Continental Europe over a much longer period. The masterwork on the subject of architectural conservation, tracing its historical development from the earliest times to the beginning of the twenty-first century, is JOKILEHTO, HISTORY, supra note 6. For a condensed version of architectural conservation’s development
A. 1931 Athens Charter

The physical destruction of Europe’s historic built environment during World War I was like nothing seen to that point. Notable casualties in Belgium include the University of Louvain Library and the Ypres Cloth Hall as well as Reims Cathedral in France. Afterward, survivors had a choice: Retain the ruins of historic buildings as memorials, remove the remains and build anew using modern forms, or rebuild exactly as had existed as both commemoration and revival. Understandably, post-war reconstruction necessitated a divergence from strict architectural conservation theory which frowned upon recreating building parts. This, in combination with the use of modern technologies like reinforced concrete in the years after the Great War, led to a reconsideration of accepted architectural conservation principles and techniques under the auspices of a conference organized by the International Museums Office (“IMO”).

history from the late eighteenth to early twentieth centuries, see STUBBS, supra note 8, at 203-38.

15 JOKILEHTO, HISTORY, supra note 6, at 282; Robert Garland Thomson, Authenticity and the Post-Conflict Reconstruction of Historic Sites, CRM: J. HERITAGE STEWARDSHIP, Winter 2008, at 64, 68. The choices enumerated here face all communities after war or natural disasters destroy the built environment, and as will be seen, choosing to rebuild in kind raises thorny issues in the case of World Heritage sites.

16 JOKILEHTO, HISTORY, supra note 6, at 283-84. The League of Nations was created after World War I to maintain world peace, which included the establishment of auxiliary institutions to foster international cooperation in economic or social affairs. League of Nations, ENCYC. BRITANNICA, https://www.britannica.com/topic/League-of-Nations (last visited Nov. 9, 2018). One of these auxiliary entities was the International Committee on Intellectual Co-operation, and it created the International Museums Office in 1926. JOKILEHTO, HISTORY, supra note 6, at 284; International Institute of Intellectual Co-operation, UNESCO ARCHIVES, https://atom.archives.unesco.org/international-institute-of-intellectual-co-operation (last visited Nov. 9, 2018); International Museums
The IMO promoted museum activities and the conservation of art and buildings, arranging international conferences in support of these subjects. In 1931, the IMO organized the International Conference of Experts for the Protection and Conservation of Artistic and Historical Monuments in Athens, Greece, to discuss problems associated with conserving architectural monuments. One hundred twenty representatives from twenty-three mostly European countries attended this conference, presenting papers on the following topics: doctrines and general principles, administrative and legislative measures regarding historical monuments, aesthetic enhancement of ancient monuments, restoration materials, the deterioration of ancient monuments, the technique of conservation, and the conservation of monuments and international collaboration.

Distilled from these papers were “General Conclusions,”
which collectively became known as the Athens Charter. The first Conclusion recognized the apparent tendency of all countries represented to avoid stylistic restoration, which the conference supported, writing:

Whatever may be the variety of concrete cases, each of which are open to a different solution, the Conference noted that there predominates in the different countries represented a general tendency to abandon restorations in toto and to avoid the attendant dangers by initiating a system of regular and permanent maintenance calculated to ensure the preservation of the buildings.

When, as the result of decay or destruction, restoration appears to be indispensable, it recommends that the historic and artistic works of the past should be respected, without excluding the style of any given period.

The Charter does not explicitly define what “monuments” are worthy of preservation other than referencing “monuments of artistic, historic or scientific interest” and the “protection of works of art in which civilisation has been expressed to the highest degree and which would seem to be threatened with destruction.”

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21 Athens Charter, supra note 20; Jokilehto, History, supra note 6, at 284. Note that the 1931 Athens Charter is not the same as the 1933 Athens Charter. The latter was the product of a meeting of the Congrès internationaux d’Architecture moderne (CIAM) and dealt with modern principles of city planning. Its recommendations were edited and published by Le Corbusier. Jokilehto, History, supra note 6, at 284-85. For a comparison of both Athens Charters, see Iamandi, supra note 18, at 17-28.

22 Athens Charter, supra note 20, at 18.

23 Id.

24 Id. at 21. “Works of art” here must refer to monuments because this “Conclusion” is under the heading “The Conservation of Monuments and International Collaboration.” Id. at 20. See Robert Russell, Abstraction,
Considering the conference attendees were mostly European, these descriptions can be understood to allude to singular structures, such as public buildings, churches, castles, palaces, and the like, not cityscapes or lesser forms of architecture.25

Other notable conference Conclusions included advocating for the continued use of monuments, but for a purpose respecting the artistic or historic character of the building; recognizing a "certain right" of communities to protect privately owned monuments; and supporting the power of public authorities to protect monuments in cases of emergency.26 When repairing monuments, modern techniques, including reinforced concrete, could be used, but should be concealed whenever possible to preserve the monument’s character and appearance.27 If a monument is in ruins, it could be reconstructed in situ via the reassembly of recoverable original fragments—a technique known as “anastylosis”—and any new materials used in this process should be distinguishable from the original.28 The conference expressed a hope for international cooperation furthering the preservation of monuments, including the ability of “qualified institutions and associations” from beyond a nation’s borders to “manifest[ing] their interest in... protect[ing]” those monuments exhibiting the highest...
degree of civilization when threatened with destruction.\footnote{ATHENS CHARTER, supra note 20, at 21. This language foreshadows the establishment of the World Heritage Convention and the World Heritage List. See discussion infra Sections III.A.-B.} Countries were implored to also educate their citizens to facilitate monument preservation and create inventories of their monuments for deposit with the IMO.\footnote{ATHENS CHARTER, supra note 20, at 21-22.}

The International Committee of Intellectual Co-operation\footnote{See supra note 16.} adopted the Athens Charter in 1932, and requested the League of Nations communicate the Charter to its Member States, to which the League agreed later that year.\footnote{ATHENS CHARTER, supra note 20, at 24.} Jukka Jokilehto, preeminent historian of architectural conservation, summarized the importance of the Athens Charter as follows:

The [Athens] Charter marked the end of a phase in the development of the concepts of conservation, abandoning stylistic restoration and emphasizing the conservation of authentic historic monuments and works of art, and providing guidelines for their respectful restoration. It was the first policy document accepted at an intergovernmental level, and thus marked the beginning of the formulation of international guidelines and recommendations aiming at the preservation of cultural heritage.\footnote{Jokilehto, Thesis, supra note 18, at 401 (emphasis added). As Jokilehto's quote implies, there exists a larger body of cultural heritage guidance documents. See generally Arlene K. Fleming, International and Regional Conventions, Charters, and Recommendations, in STUBBS, supra note 8, app. C, at 401-04 (selection of key cultural heritage documents including those dealing with architectural conservation); Charters Adopted by the General Assembly of ICOMOS, ICOMOS (Oct. 12, 2011), https://www.icomos.org/en/charters-and-other-doctrinal-texts (doctrinal texts of ICOMOS, an architectural conservation organization introduced infra Section II.B). The charters covered in this Part II}
Charters are theoretical documents that provide professionals with operating guidelines and do not have the force of law unless a governmental entity enacts a charter’s provisions. Italy, Spain, and to a lesser degree Greece, all enacted the Charter’s Conclusions in one form or another. The Athens Charter’s lasting impact, however, was the groundwork it laid for another charter penned thirty-three years later.

B. 1964 Venice Charter

The destruction of the built environment during World War I paled in comparison to that of World War II. Immediately and the Nara Document on Authenticity, discussed infra Part IV, are part of this corpus. Although not the only guidance documents to deal with authenticity, they are the most pertinent to this essay.


Jokilehto, History, supra note 6, at 285; Stubbs, supra note 8, at 249. Just in France, around 460,000 buildings were destroyed, and of these, fifteen percent
following the Second World War, the United Nations Economic, Scientific and Cultural Organization ("UNESCO") was established, in part to assure "the conservation and protection of the world’s inheritance of books, works of art and monuments of history and science, and recommending to the nations concerned the necessary international conventions." As Europe began to rebuild, it became apparent that the preservation and restoration of historic buildings was not to the standards espoused by professionals. Consequently, in 1957, UNESCO collaborated with the French to organize the First International Congress of Architects and Specialists of Historic Buildings in Paris to address the need for trained specialists and multidisciplinary collaboration in conserving architectural heritage. From this meeting another was planned in Venice in 1964. It was from this Second International Congress of Architects and Specialists of Historic Buildings that the Venice Charter was born.

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Officially titled the *International Charter for the Conservation and Restoration of Monuments and Sites*, the *Venice Charter* was an attempt to update the *Athens Charter* by creating a "reference document" to "correct recurrent mistakes in restoration practice" witnessed since World War II. A twenty-three-person committee composed mostly of Europeans drafted the Charter and presented it to the Second Congress, which was attended by around 600 people from sixty-one countries, though again, the majority of participants were European. Comprised of sixteen articles, the Congress adopted it nearly unanimously.

The preamble notes "the historic monuments of generations of people remain to the present day as living witnesses of their age-old traditions. . . . The common responsibility to safeguard them for future generations is recognized. It is our duty to hand them on in the full richness of their authenticity." The Charter is then broken into seven parts: Definitions, Aim, Conservation, Restoration, Historic Sites, Excavations, and Publication. Of these, particularly

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conference as the “Second International Congress of Architects and Technicians of Historic Monuments,” *see* sources cited *supra* note 42.

44 ICOMOS, *INTERNATIONAL CHARTER FOR THE CONSERVATION AND RESTORATION OF MONUMENTS AND SITES* (1964) [hereinafter VENICE CHARTER].


50 VENICE CHARTER, *supra* note 44, pmbl. (emphasis added).

51 *Id.* arts. 1-16. Note that the ICOMOS versions of the *Venice Charter* do not have the “Aim” heading, whereas commentators reproducing the *Charter* in their essays include it. *Compare id.* art. 3, and ICOMOS CHARTERS, *supra* note 18, at 37, *with* Cevat Erder, *The Venice Charter Under Review*, ICOMOS SCI. J.: THE
important provisions are found under the Definitions, Aim, Conservation, Restoration, and Excavations sections. Whereas the Athens Charter considered a monument a singular building of high artistic worth, the Venice Charter considers historic monuments not only the single architectural work but also the urban or rural setting in which is found the evidence of a particular civilization, a significant development or a historic event. This applies not only to great works of art but also to more modest works of the past which have acquired cultural significance with the passing of time.\(^{52}\)

Thus, the Aim of the Venice Charter is to promote conservation and restoration of historic monuments as historical evidence, not just works of art.\(^{53}\) To this end, the Conservation heading contains five articles giving conceptual principles for decision-making.\(^{54}\) Notable under Conservation is the Venice Charter's affirmation of the principle of using monuments in ways that respect the building's character found in the Athens Charter; however, the Venice Charter expands upon this by proscribing changes in the structure's decoration or layout.\(^{55}\)

Following Conservation are Restoration's five articles addressing the technical methodology of conservation.\(^{56}\) Here, the Venice Charter continues the Athens Charter's respect for the changes made to structures over time, rejecting stylistic

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\(^{53}\) Venice Charter, supra note 44, art. 1; see supra text accompanying notes 23-25.

\(^{54}\) Erder, supra note 51, at 26.

\(^{55}\) Venice Charter, supra note 44, art. 5; see supra text accompanying note 26.

\(^{56}\) Erder, supra note 51, at 26.
restorations. Handing the next generations historic monuments “in the full richness of their authenticity” thus entails restorations—that is, repairs, including the replacement of missing parts—“based on respect for original material and authentic documents. [Restorations] must stop at the point where conjecture begins.”

Like the Athens Charter, the Venice Charter also approves of modern conservation techniques; however, these should only be used “where traditional techniques prove inadequate.” And, where the Athens Charter had advocated for concealing repairs, the Venice Charter calls for repairs to “integrate harmoniously” yet be “distinguishable from the original” and bear a “contemporary stamp” so as not to “falsify the artistic or historic evidence.” Lastly, the Excavations section rules out the reconstruction of historical monuments a priori unless, as allowed by the Athens Charter, anastylosis is used.

In sum, like the Athens Charter, the Venice Charter places value on the conservation of what is historically true and genuine—in other words, what is authentic. At its creation in 1965, the International Council on Monuments and Sites (“ICOMOS”), a

57 Venice Charter, supra note 44, arts. 9, 11; see supra text accompanying note 22.
58 Venice Charter, supra note 44, art. 9. As part of restorations, the Venice Charter allows for removing the work of different periods to return a building to an earlier appearance, but only in “exceptional circumstances . . . when what is removed is of little interest and the exposed material is of great historical, archaeological or aesthetic value, and its state of preservation [is] good enough to justify the action.” Id. art. 11; see also Stubbs, supra note 8, at 388 (compiling definitions of “restoration” from select dictionaries and architectural conservation declarations and charters).
59 Venice Charter, supra note 44, art. 10; see supra text accompanying note 27.
60 Venice Charter, supra note 44, art. 12.
61 Id. art. 9.
62 Id. art. 12; see supra text accompanying note 27.
63 Venice Charter, supra note 44, art. 15; see supra text accompanying note 28.
global non-governmental organization committed to promoting the application of theory, method, and scientific techniques to the conservation of archaeological and architectural heritage, adopted the *Venice Charter* as the guideline for its work.\(^6^4\) The International Centre for the Study of the Preservation and the Restoration of Cultural Property ("ICCCROM"), an organization created in 1956 devoted to the conservation of all forms of cultural heritage, helped to draft the *Charter* and refers to the document in its trainings.\(^6^5\) This has led to the *Venice Charter*’s translation into a number of languages and its adoption either outright or through other guidelines, charters, and recommendations in many countries.\(^6^6\) The *Venice Charter* was even eventually used to assess cultural heritage sites for inclusion on the UNESCO World Heritage List.\(^6^7\)


\(^{65}\) Jokilehto, *Thesis*, supra note 18, at 421; see also *What is ICCROM?*, ICCROM, https://www.iccrom.org/about/overview/what-iccrom (last visited Nov. 9, 2018) (giving an overview of ICCROM); *History*, ICCROM, https://www.iccrom.org/about/overview/history (last visited Nov. 9, 2018) (giving the history of ICCROM).


III. THE WORLD HERITAGE CONVENTION, THE WORLD HERITAGE LIST CRITERIA FOR OUTSTANDING UNIVERSAL VALUE, AND THE PROBLEM OF AUTHENTICITY

A. Overview of the World Heritage Convention

The Convention Concerning the Protection of the World Cultural and Natural Heritage, often called the World Heritage Convention ("WHC"), emerged from the merger of the movement focused on preserving cultural sites with that centered on conserving nature. As a result of the UNESCO-led international response mitigating the loss of important archaeological sites and monuments from the damming of the Nile River in the late 1950s, UNESCO and ICOMOS developed a draft convention for protecting cultural heritage. Then, in 1965, a conference in Washington, D.C., called for creating a "World Heritage Trust" to spur international cooperation for protecting "the world’s superb natural and scenic areas and historic sites for the present and future of the entire world citizenry." Three years later, the International Union for Conservation of Nature ("IUCN") developed a proposal similar to

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68 Convention Concerning the Protection of the World Cultural and Natural Heritage, Nov. 16, 1972, 27 U.S.T. 37, 1037 U.N.T.S 152 [hereinafter WHC].
69 UNESCO WORLD HERITAGE CTR., WORLD HERITAGE INFORMATION KIT 7 (2008) [hereinafter WHC INFO. KIT].
70 Id. The Aswan High Dam is a joint Egyptian and Sudanese project meant to control the Nile for better irrigation. These governments petitioned UNESCO for help, and the ensuing international campaign saved more than twenty-four structures. The most famous was Pharaoh Rameses II’s temple, Abu Simbel, which was completely dismantled and moved to higher ground. STUBBS, supra note 8, at 243-44; Monuments of Nubia-International Campaign to Save the Monuments of Nubia, UNESCO WORLD HERITAGE CTR., https://whc.unesco.org/en/activities/172/ (last visited Nov. 9, 2018).
71 WHC INFO. KIT, supra note 69, at 7 (internal quotation marks omitted).
the “World Heritage Trust” for its members. Finally, in 1972, UNESCO, ICOMOS, and IUCN worked together to meld their ideas into the WHC, which UNESCO adopted on November 16, 1972. The WHC entered into force in December 1975, and now has 193 State Parties.

In keeping with the idea of a World Heritage Trust, the WHC calls for its State Parties to “identify and delineate” cultural and natural heritage of “outstanding universal value” within their borders for inclusion on the “World Heritage List” (“WHL”). Because this study is focused on the authenticity of the built environment, natural heritage will not be addressed.

The WHC defines built cultural heritage as monuments or groups of buildings which, “from the point of view of history, art, or science,” are of outstanding universal value, or sites “from the historical, aesthetic, ethnological or anthropological point of view” are of outstanding universal value. State Parties submit their applications to the World Heritage Committee (“Committee”) and ICOMOS and IUCN, as Advisory Bodies to the Committee,
evaluate these properties\textsuperscript{79} for inclusion on the WHL, forwarding their recommendations to the Committee for a vote.\textsuperscript{80} State Parties have the duty to protect and conserve WHL properties in their territories, and the WHC charges Parties to implement, "so far as possible," specific measures to this end.\textsuperscript{81} State Parties may request monetary and expert assistance from the Committee to identify, preserve, and conserve properties on the WHL or properties suitable for listing.\textsuperscript{82} Furthermore, State Parties are charged with cooperating to support fellow State Parties in their efforts to identify and conserve their heritage.\textsuperscript{83} Through the Committee, UNESCO monitors properties on the WHL via reports required of State Parties\textsuperscript{84} and a State Party’s failure to maintain a WHL property can

\textsuperscript{79} Because this essay is focused on the authenticity of the built environment, the words “property” and “site” are used interchangeably throughout to refer to architectural cultural heritage on the WHL, whether monuments, groups of buildings, or sites. See supra notes 76-77 and accompanying text.


\textsuperscript{81} WHC, supra note 68, arts. 4-5.

\textsuperscript{82} Id. arts. 13, 15-16.

\textsuperscript{83} Id. arts. 6-7.

\textsuperscript{84} Id. art. 29; WHComm., \textit{Rules of Procedure}, Rule 49, WHC-2015/5 (July 2015); see infra note 255.
lead to its de-listing. In sum, because UNESCO monitors WHL properties, these are "symbolically placed under the general protection of the international community as humanity's common heritage."*86

B. World Heritage List Criteria for Outstanding Universal Value

Missing from the above overview are the criteria that properties must meet to be considered of "outstanding universal value" ("OUV") and thus potentially eligible for the WHL. This is due to the WHC not defining the term. Instead, the WHC required that the Committee define the criteria via another document, which came to be called the Operational Guidelines.87

85 Before de-listing, properties are first placed on the List of World Heritage in Danger due to being threatened with serious and specific dangers, such as the threat of disappearance caused by accelerated deterioration, large-scale public or private projects or rapid urban or tourist development projects; destruction caused by changes in the use or ownership of the land; major alterations due to unknown causes; abandonment for any reason whatsoever; the outbreak or the threat of an armed conflict; calamities and cataclysms; serious fires, earthquakes, landslides; volcanic eruptions; changes in water level, floods and tidal waves.

WHC, supra note 68, art. 11(4). If these issues are not corrected, the Committee then confers with the State Party in question prior to deleting the property. 2017 Operational Guidelines, supra note 80, ¶¶ 176(d), 191(c); see also id. ¶¶ 192-198 (providing the procedure for deleting properties from the WHL).

86 STUBBS, supra note 8, at 254.

87 WHC, supra note 68, art. 11(5). The Operational Guidelines are revised as necessary "to reflect new concepts, knowledge or experiences." The Operational Guidelines for the Implementation of the World Heritage Convention, UNESCO WORLD HERITAGE CTR., [hereinafter Operational Guidelines Website] http://whc.unesco.org/en/guidelines/ (last visited Nov. 9, 2018). The Operational Guidelines is not simply a guidance document, but contains the rules State Parties

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The first version of the *Operational Guidelines*, published in 1977, required built cultural heritage to meet one or more of the following criteria to be of OUV:

(i) Represent a unique artistic or aesthetic achievement, a masterpiece of the creative genius; or

(ii) Have exerted considerable influence, over a span of time or within a cultural area of the world, on subsequent developments in architecture, monumental sculpture, garden and landscape design, related arts, or human settlements; or

(iii) Be unique, extremely rare, or of great antiquity; or

(iv) Be among the most characteristic examples of a type of structure, the type representing an important cultural, social, artistic, scientific, technological or industrial development; or

(v) Be a characteristic example of a significant, traditional style of architecture, method of construction, or human settlement, that is fragile by nature or has become vulnerable under the impact of irreversible socio-cultural or economic change; or

(vi) Be most importantly associated with ideas or beliefs, with events or with persons, of outstanding historical importance or

must follow and the standards to which they and their World Heritage sites must adhere. *2017 Operational Guidelines, supra* note 80, ¶¶ 1-3.
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significance.\textsuperscript{88}

Additionally, properties were to meet the "test of authenticity," meaning "authenticity in design, materials, workmanship and\textsuperscript{89} setting; authenticity does not limit consideration to original form and structure but includes all subsequent modifications and additions over the course of time, which in themselves possess artistic or historical values."\textsuperscript{90, 91} In

\begin{footnotesize}

\textsuperscript{89} Note this "and" was changed to "or" in the 1980 Operational Guidelines. WHComm., Operational Guidelines for the Implementation of the World Heritage Convention, ¶ 18(b), WHC/2 Revised (Oct. 1980) [hereinafter 1980 Operational Guidelines].

\textsuperscript{90} 1977 Operational Guidelines, supra note 88, ¶ 9. At the meetings leading up to the adoption of the first Operational Guidelines, it was proposed that properties submitted for inclusion on the WHL meet the criteria of unity and integrity of quality. Judith Herrmann, The Influence of the Intangible Heritage Discourse on World Heritage Attitudes to Reconstruction, in FROM CONSERVATION TO RECONSTRUCTION: HOW WORLD HERITAGE IS CHANGING THEORY AND PRACTICE: PROCEEDINGS 111, 113 (Christina Cameron & Mallory Wilson eds., 2016); UNESCO, Final Report on the Informal Consultation of Intergovernmental and Non-governmental Organizations on the Implementation of the Convention Concerning the Protection of the World Cultural and Natural Heritage, at 2, CC-76/WS/25, annex III, at 3 (May 19-20, 1976). The idea of "integrity" came from then-ICOMOS Secretary General Ernest Allan Connally and Deputy to the Secretary General Ann Webster Smith, Americans familiar with the National Park Service’s use of integrity (of location, design, setting, materials, workmanship, feeling, and association) for inclusion of properties on the National Register of Historic Places. Herb Stovel, Considerations in Framing the Authenticity Question for Conservation, in NARA CONF. PROC., supra note 5, at 393, 395-96; NAT’L PARK SERV., HOW TO APPLY THE NATIONAL REGISTER CRITERIA FOR EVALUATION 2, 44-49 (1995). After discussions, “integrity” was changed to “authenticity,” for fear the concept of integrity “might limit analysis to concern for original form or design,” and the seven integrities reduced to the four authenticities. Stovel, supra, at 396. For more information on Ernest Allan Connally, see Ann Webster Smith, Leading at the Beginning—Ernest Allen Connally, 24 CULTURAL RES. MGMT., no. 7, 2001, at 8, 8-10. The United States National Committee of ICOMOS has an award named in the honor of Ann Webster Smith. Ann Webster Smith Award, U.S. ICOMOS, http://www.usicomos.org/about/ann-webster-smith-award/ (last visited Nov. 9, 2018). See also infra note 91.

\textsuperscript{91} From 1977 until 2004, the Operational Guidelines used the term “integrity” to gauge the outstanding universal value of natural heritage sites, and the term “centered on the need
other words, the test of authenticity continues both the *Athens* and *Venice Charters*’ respect for the changes made to structures over time,\(^{92}\) and in keeping with the philosophies of these documents, an authentic property is genuine, true: that is, original.\(^{93}\) After the *Operational Guidelines* were published and the WHC began receiving WHL nominations, as might be expected with such a new and untested scheme, issues began to pop up. A major one concerned the authenticity of Warsaw, Poland.

C. The Problem of Authenticity: Warsaw

The Nazis systematically destroyed Warsaw, Poland, during World War II.\(^{94}\) From the beginning of their invasion, the Nazis were determined to subjugate the Polish people.\(^ {95}\) But after the Warsaw Uprising of August 1, 1944, in which the remaining populace tried but failed to liberate themselves, Hitler ordered the city obliterated.\(^{96}\) Seven hundred eighty-two of 957 listed historic
monuments were demolished, with another 141 partially destroyed.\textsuperscript{97} The thirty-four that survived did so only because the Nazis fled the advancing Russians before the explosive charges could be detonated.\textsuperscript{98} In sum, eighty-five percent of the city was destroyed.\textsuperscript{99}

Even during the Nazi occupation, Poles planned to rebuild. Architects and art historians recorded what they could.\textsuperscript{100} Fragments of buildings were hidden away, as were already-existing building records.\textsuperscript{101} Despite the fact that some of this recordation was lost after the Uprising, once Warsaw was liberated from Nazi rule, rebuilding began with the city’s historic core, the Stare Miasto or “Old Town.”\textsuperscript{102} Poland justified the reconstruction for its “national significance for the identity for the Polish people.”\textsuperscript{103} Work began in 1945 with the majority finished by 1965, though the process was not officially complete until 1984 when the Royal Castle opened to visitors.\textsuperscript{104} In addition to the more conventional forms of recordation that survived—such as measured drawings—prints and

\textsuperscript{97} BEVAN, \textit{supra} note 94, at 97.
\textsuperscript{98} Id.
\textsuperscript{99} Id. at 181.
\textsuperscript{100} Id. At the beginning of World War II, there already existed an exhaustive inventory of Polish synagogues with photos, measured drawings, and descriptions, the result of Polish scholars reacting to the destruction of Jewish monuments during World War I. However, much of this information was lost because of the Second World War. RUTH ELLEN GRUBER, \textit{VIRTUALLY JEWISH: REINVENTING JEWISH CULTURE IN EUROPE} 88 (2002); BEVAN, \textit{supra} note 94, at 50.
\textsuperscript{101} BEVAN, \textit{supra} note 94, at 181.
\textsuperscript{102} Id.; STUBBS, \textit{supra} note 8, at 57.
\textsuperscript{103} JOKILEHTO, \textit{HISTORY}, \textit{supra} note 6, at 285.
\textsuperscript{104} STUBBS, \textit{supra} note 8, at 57; \textit{Historic Center of Warsaw}, UNESCO WORLD HERITAGE CTR., http://whc.unesco.org/en/list/30 (last visited Nov. 9, 2018). According to Bevan, after the War the German population of the Polish town of Wroclaw was exiled and its Germanic monuments dismantled to provide Warsaw’s Old Town with rebuilding material. BEVAN, \textit{supra} note 94, at 183.
paintings were also used to guide the reconstruction.\textsuperscript{105} Not all structures were rebuilt.\textsuperscript{106} Of those that were, the facades and interior public spaces were recreated faithfully, but the interiors of private spaces were altered to meet modern building regulations.\textsuperscript{107} In 1949, Poland's Director General of Museums and Protection of Historic Monuments said, "by reconstructing historic buildings we at least save the authentic remains of the original edifices."\textsuperscript{108} Thirty years later, the Committee did not agree.

Poland submitted Warsaw's Old Town for inscription to the World Heritage List in 1978.\textsuperscript{109} Before each full Committee meeting where applications are considered, an elected executive group of Committee members, called the Bureau of the Committee, holds a preparatory meeting.\textsuperscript{110} ICOMOS in its advisory capacity expressed concern to the Bureau that Old Town did not meet the test of authenticity and advised the nomination be deferred for "further expert study to see if it met the criterion of authenticity."\textsuperscript{111} The Bureau agreed.\textsuperscript{112}

When the Bureau again considered the nomination in May

\textsuperscript{105} \textsc{Jokilehto, History}, 	extit{supra} note 6, at 285 (paintings by Bernardo Bellotto); Jean-François Lejeune, \textit{The Intellectual Pleasure of Ambiguity: The Reconstruction of Spain in the Years of Autarky (1939-1956)}, in \textsc{Venice Charter Revisited}, \textit{supra} note 24, at 207, 212 (paintings by Canaletto).

\textsuperscript{106} \textit{Historic Center of Warsaw}, \textit{supra} note 104.

\textsuperscript{107} \textit{Id.}

\textsuperscript{108} \textsc{Jokilehto, History}, \textit{supra} note 6, at 285 (internal quotation marks omitted).

\textsuperscript{109} Christina Cameron, \textit{From Warsaw to Mostar: The World Heritage Committee and Authenticity}, 39 \textsc{Apt Bull.}, No. 2/3, 2008, at 19, 20.

\textsuperscript{110} \textit{Id.} at 20.

\textsuperscript{111} Peter H. Bennett (Rapporteur), \textit{Report of Rapporteur on First Meeting of Bureau of Intergovernmental Committee for the Protection of the World Cultural and Natural Heritage}, ¶ 14, CC-78/CONF.10/3 (June 10, 1978) [hereinafter \textit{First Bureau Report}].

\textsuperscript{112} \textit{Id.} ¶ 22; see also \textsc{Cameron & Rössler, supra} note 73, at 40 (quoting the \textit{First Bureau Report}).
1979, ICOMOS recommended Old Town's inscription as an “exceptional example of reconstruction” due to the “excellent” documentation and its patriotic symbolism for the Polish people.\textsuperscript{113} The Bureau opinion, however, was divided, and the nomination was deferred once more to October for further study of the authenticity issue.\textsuperscript{114} At the October meeting, Old Town’s nomination was deferred a third time so that the full Committee could review a report by its Rapporteur Michel Parent.\textsuperscript{115}

The Committee commissioned Parent’s report in response to several issues stemming from the initial WHL nominations, including authenticity, so as to assist the Committee in fine tuning its fledgling criteria.\textsuperscript{116} Parent had this to say about Old Town:

The Committee having laid down that authenticity is a \textit{sine qua non} at first sight the WHList should not include a town or part of a town which has been entirely destroyed and reconstructed, whatever the quality of the reconstruction. . . . [T]he question is whether [Old Town] could nevertheless be placed on the List because of the exceptional historical circumstance surrounding its resurrection.\textsuperscript{117}

\begin{thebibliography}{9}
\bibitem{Bureau Second Meeting} Michel Parent (Rapporteur), \textit{Report of the Rapporteur on the Third Session of the Bureau of the World Heritage Committee}, \textit{ supra} note 113, at 5; Cameron, \textit{ supra} note 109, at 20.
\end{thebibliography}
He noted that the Committee supported the restoration of properties, because without restoration, many properties of outstanding universal value would be lost.118 But, when a “restoration, however well done, consists of a reconstruction of a property which has in fact completely disappeared” it is no longer authentic.119 This should disqualify a property for the WHL, as supported by the Venice Charter’s prohibition on reconstruction and support for the conservation of existing fabric without additions or subtractions.120 Nonetheless, Parent asked, “can a . . . systematic 20th Century reconstruction be justified for inclusion on grounds, not of Art but of History?”121 Parent’s query seemed to suggest Warsaw could be listed under criterion (vi) alone.122

In 1980, ICOMOS again called for Old Town’s inclusion on the WHL, repackaging its argument for OUV under criteria (vi) and (ii), with (vi) taking precedence.123 To ICOMOS, Old Town met criterion (vi) due to “being associated with events of considerable historic significance,” that is, “the will of the nation brought to life again a city of which 85% was destroyed” from targeted annihilation.124 Furthermore, Warsaw’s reconstruction was an “exemplary” illustration of twentieth century restoration techniques.125 ICOMOS cited criterion (ii) due to the strong influence Old Town’s reconstruction had on “the evolution of doctrines of urbanization and the preservation of old city quarters”

118 Id. at 20; see supra note 58 and accompanying text.
119 Parent, supra note 117, at 20.
120 Id.; see also VENICE CHARTER, supra note 44, arts. 9, 11, 15.
121 Parent, supra note 117, at 20. He promised to answer this question in his conclusion, but did not. Id. at 23-26.
122 Cameron, supra note 109, at 20; see supra text accompanying note 88.
124 Id. at 1.
125 Id.
By taking (ii) and (vi) together, ICOMOS argued, the criterion of authenticity did not need to be applied strictly. Instead, Old Town’s "authenticity [was] associated with this unique realisation of the years 1945-1966." The Bureau agreed, recommending the Committee inscribe Warsaw "as a symbol of the exceptionally successful and identical reconstruction of cultural property which is associated with events of considerable historical significance." However, the Bureau added the caveat that "[t]here can be no question of inscribing in the future other cultural properties that have been reconstructed."

The Committee subsequently listed Old Town on the WHL without comment. However, at the same time, the Committee revised the Operational Guidelines in two ways. First, the Committee emphasized that criterion (vi) justifies inclusion on the WHL "only in exceptional circumstances or in conjunction with other criteria." Second, the definition of the test of authenticity was altered. By removing the latter portion of the original definition and replacing it with the rule that reconstructions are only authentic

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126 Id. at 2. Criterion (ii) had changed slightly from the original 1977 Operational Guidelines. In the 1978 Guidelines in effect at this time, criterion (ii) read: "have exerted considerable influence, over a span of time or within a cultural area of the world, on developments in architecture, monumental sculpture, garden and landscape design, related arts, town-planning or human settlements." WHComm., Operational Guidelines for the Implementation of the World Heritage Convention, ¶ 7, WHC/2 (1978) (emphasis omitted).


128 Michel Parent (Rapporteur), Report of the Rapporteur on the Fourth Session of the Bureau of the World Heritage Committee, at 4, CC-80/CONF.017/4 (May 28, 1980); see also CAMERON & RÖSSLER, supra note 73, at 41-42; Cameron, supra note 109, at 21.

129 Parent, supra note 128, at 4; see also CAMERON & RÖSSLER, supra note 73, at 42; Cameron, supra note 109, at 21.


131 1980 WHComm. Report, supra note 130, ¶ 19(g); see 1980 Operational Guidelines, supra note 89, ¶ 18(a)(vi).
when "carried out on the basis of complete and detailed documentation on the original and to no extent on conjecture,"\(^\text{132}\) the *Venice Charter*'s Article 9 directives of restoration practice were given precedence over Article 11's respect for the contributions made by all periods in a building's history.\(^\text{133}\) As one commentator observed, meeting this revised test of authenticity based on Article 9 was "technically impossible."\(^\text{134}\)


As can probably be imagined, the problem of authenticity for potential World Heritage properties did not end with Old Town. In 1983, ICOMOS opposed the application of Rila Monastery in Bulgaria because it did not meet the test of authenticity, but supported its inclusion under criterion (vi).\(^\text{135}\) Originally built over the course of the eleventh to nineteenth centuries, the monastery was destroyed by fire at the beginning of the nineteenth century and

\(^{132}\) *1980 WHComm. Report*, supra note 130, ¶ 19(h). As recounted in Section III.B., the test's original language was "authenticity in design, materials, workmanship and setting; authenticity does not limit consideration to original form and structure but includes all subsequent modifications and additions over the course of time, which in themselves possess artistic or historical values." *1977 Operational Guidelines*, supra 88, ¶ 9 (emphasis omitted); see also note 89. The new language replaced that after the semi-colon. As incorporated into the *1980 Operational Guidelines*, the test's revised text read "authenticity in design, materials, workmanship or setting (the Committee stressed that reconstruction is only acceptable if it is carried out on the basis of complete and detailed documentation on the original and to no extent on conjecture)." *1980 Operational Guidelines*, supra 89, ¶ 18(b).

\(^{133}\) *VENICE CHARTER*, supra note 44, arts. 9, 11.

\(^{134}\) Cameron, supra note 109, at 21.

rebuilt between 1834 and 1862, thereby negating its authenticity. Nonetheless, ICOMOS saw this rebuilding as symbolic of the nineteenth century Bulgarian Renaissance, which in 1980 Operational Guidelines parlance qualified it for the WHL under criterion (vi) as “directly or tangibly associated with events or with ideas or beliefs of outstanding universal significance.” ICOMOS’ recommendations flew in the face of everything the Committee had hoped to avoid after Warsaw: a site proposed for the WHL that was a reconstruction and with its OUV based solely on criterion (vi). Yet, the Committee approved the application under criterion (vi) as ICOMOS suggested “as a symbol of the 19th Century Bulgarian Renaissance which imparted slavic [sic] cultural values upon Rila in trying to re-establish an uninterrupted historical continuity.” Authenticity was not mentioned.

Compare Rila to the historic French fortified City of Carcassonne. In 1985, its nomination was deferred because Viollet-le-Duc’s nineteenth century restoration work “impinge[d] upon [its] authenticity.” Three years later, in 1988, the medieval city of Rhodes, Greece, was accepted to the WHL with ICOMOS support. This was in spite of the fact ICOMOS was unhappy with the “hodgepodge of restorations and pastiches . . . and . . . heavy Mussolini-period architecture” resulting from Italy’s occupation of the city during the early twentieth century, all of which went against

137 Rila Evaluation I, supra note 135, at 2.
140 Cameron, supra note 109, at 21; M. Lucien Chabason (Rapporteur), Report of the Rapporteur on the Ninth Session of the Bureau of the World Heritage Committee, at 11, SC-85/CONF.007/9 (Aug. 12, 1985). The Committee left open an avenue for Carcassonne’s inscription focused on Viollet-le-Duc’s restorations, but this was not exploited until twelve years later under changed circumstances. Id.; see infra Section IV.B.
This “strong imprint” was nevertheless seen as integral to Rhodes’ urban history. These vacillations between “a rigorous materials-based interpretation of authenticity and a more flexible symbolic one,” despite the Operational Guidelines’ stated criteria, are fascinating.

Note that the above-discussed structures are of stone. What of buildings of wood, earth, thatch, and other perishable materials which must be periodically renewed for survival? Several were accepted to the WHL in the late 1970s through the early 1990s,

141 ICOMOS, Evaluation of the Medieval City of Rhodes, at 3 (Sept. 1988) [hereinafter Rhodes Evaluation]; Cameron, supra note 109, at 21.
142 Medieval City of Rhodes, UNESCO WORLD HERITAGE CTR., http://whc.unesco.org/en/list/493 (last visited Nov. 9, 2018); Rhodes Evaluation, supra note 141.
143 Cameron & Rössler, supra note 73, at 85-86.
yet these structures, more than stone, implicate Theseus’ paradox: With the continued replacement of components over time due to decomposition, is the resulting building still authentic? Or, what of the Japanese practice of ritual reconstruction, where shrines are dismantled and ritually reconstructed every so many years? Inscribing Japanese shrines to the WHL would mean condoning full reconstructions of listed properties and not just accepting the occasional inscription of sites that were rebuilt before being listed, whatever the rationale. Doing so would seemingly sanction a flexible, symbolic definition of authenticity and reject the Operational Guidelines’ materials-based test of authenticity derived from the Venice Charter.

Committee Rapporteur Michel Parent, in his 1979 report referenced earlier, had no issue with a flexible definition of authenticity in these contexts, writing

we have to stress that authenticity is relative and depends on the nature of the property involved.

A wooden temple in Kyoto which has been perfectly maintained, and whose timbers have been replaced regularly as and when they decayed—without any alteration of the architecture or of the look of the material over ten centuries—remains undeniably authentic.

The nature of a material, its finishing, its structural use, and its expressive use, the very nature of the civilization which built the building (whether or not it is the conductor of a genuine tradition) are all different factors according to which the idea of


145 STUBBS, supra note 8, at 267, 269.
But, the Committee did not debate this assertion until nearly twenty years later when the issue was brought to the fore by the Committee initiating an evaluation report of the WHC for its twentieth anniversary in 1992 and Japan’s ratification of the WHC that same year. These events, among others, led to the 1994 Nara Conference on Authenticity, where the understanding of authenticity in the World Heritage context changed fundamentally.

IV. NARA DOCUMENT ON AUTHENTICITY

A. The Nara Conference on Authenticity and Its Document: Recognizing Intangible Cultural Heritage

The Nara Conference on Authenticity was held in Nara, Japan, from November 1 to 6, 1994. In attendance were forty-five experts from twenty-six different countries, the majority of whom were not from Europe, in stark contrast to the conferences that produced the Athens and Venice Charters. At the beginning of the conference, participants were asked “to say what authenticity meant

146 Parent, supra note 117, at 19.
148 See Cameron & Inaba, supra note 147, at 30-36 (documenting many of the events precipitating the Nara Conference as well as highlighting important elements of the conference discussions).
149 Knut Einar Larsen, Preface, in NARA CONF. PROC., supra note 5, at xi, xi.
150 Id. at xi, xix-xx; see supra text accompanying notes 20, 48.
in their language and in their countries.”

According to one participant

[a] number of people said “we haven’t even got a word for it in our languages” and I thought that’s it, that’s it... [that] put [the] finger on it, the inability of us to identify an absolute authenticity. There’s no such thing. There’s no absolute... Authenticity is culturally dependent. It really is as simple as that.

The challenge of the Nara Conference was to capture this realization in a format acceptable not only to conference participants, but also to ICOMOS and the Committee. Accounts of the debates between participants document the difficulty some had in expanding their view that built cultural heritage of OUV could include not just the monumental, but also the modest or even the intangible.

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151 Cameron & Rosssler, supra note 73, at 88.
152 Id.
153 Cameron & Inaba, supra note 147, at 35. UNESCO defines intangible cultural heritage as follows:

the practices, representations, expressions, knowledge, skills— as well as the instruments, objects, artefacts 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. For the purposes of this Convention, consideration will be given solely to such intangible cultural heritage as is compatible with existing international human rights instruments, as well as with the requirements of mutual respect among communities, groups and individuals, and of sustainable development.
The intangible is extremely important in several non-Western cultures. For example, in Japan, integral to the ritual rebuilding of religious sites mentioned earlier is the preservation of the skills required for the buildings’ continued maintenance and repair. Maintaining the site’s *genius loci*, or sense of place, through the act of renewal and the intangible skills necessary for it provide the tangible buildings with significance and authenticity to the local community. The cultural construct that buildings are indefinite is shared by several other cultures, such as those in Africa, India, and Polynesia. The maintenance of tradition (i.e. ritual use, oral traditions, building methods, etc.) ensures the continuation of the building form over time. Here again, rebuilding is part of a site’s significance and authenticity, not counter to it. As one scholar phrased it, “[b]y focusing on processes and the living relationship between people and their environment or place, intangible heritage emphasizes the anthropological” aspect of built cultural heritage, not just architectural or aesthetic value. Consequently, many non-

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154 JOKILEHTO, HISTORY, *supra* note 6, at 280-81; see also *id*. at 278 (describing some traditional building practices).  
155 STUBBS, *supra* note 8, at 266-69.  
156 *Id*. at 264-66, 309; see also Navin Piplani, *Interpreting the Venice Charter: Taj Mahal and its Environs*, in VENICE CHARTER REVISITED, *supra* note 24, at 382, 384 (arguing that as a World Heritage site, work on the Taj Mahal is supposed to adhere to the *Venice Charter*, but that “in the indigenous Indian context *authenticity* is associated less with preserving historic monuments and their ‘original’ fabric alone, and more with perpetuating age-old traditions and practices that created these monuments in the first place.”).  
Western and Western conservation professionals viewed the World Heritage criterion of authenticity—and by extension, the *Athens* and *Venice Charters*—as Eurocentric and materials-based. These individuals saw the Nara Conference as the opportunity to press for recognition of an alternate understanding of significance and authenticity in the World Heritage context.

The fruit of the conference, the *Nara Document on Authenticity* ("Nara Document"), achieved these goals. The *Nara Document* "is conceived in the spirit" of the *Venice Charter*, but builds upon and extends it due to the "expanding scope of cultural heritage concerns and interests," including respect for both tangible and intangible heritage expressions. The *Nara Document* goes on to note cultural heritage conservation requires understanding the values societies and cultures attribute to their heritage, otherwise the authenticity of the heritage to the community cannot be assessed. Thus, the value and authenticity of cultural heritage must "be considered and judged within the cultural contexts to which they belong," not "fixed criteria." In other words, the methodology of preserving the authenticity of cultural heritage is culturally dependent.

To understand a culture's values and its expressions of authenticity, "information sources"—all the "material, written, oral and figurative sources which make it possible to know the nature, specifications, meaning and history of the cultural

dissertation, University of Montreal). Dr. Herrmann’s dissertation is an exhaustive study of the recognition of intangible heritage in the World Cultural Heritage context. She revisited this theme in Herrmann, supra note 90.

Bernd von Droste & Ulf Bertilsson, *Authenticity and World Heritage, in NARA CONF. PROC.*, supra note 5, at 3, 14. Recall that both Charters were written by European majorities and focus on the importance of the authentic building material. See *supra* Sections II.A.-B., III.C.-D.


*Id.* ¶ 3, 7; see also *id.* ¶ 4-6.

*Id.* ¶ 9.

*Id.* ¶ 11.

*Larsen, supra* note 149, at xiii; Herrmann, *supra* note 158, at 195.
heritage"—should be used to comprehend attributes such as "form and design, materials and substance, use and function, traditions and techniques, location and setting, and spirit and feeling, and other internal and external factors" which, in turn, elaborate on the specific scientific, social, historic, and artistic dimensions of the cultural heritage under examination. Summed up in a word, authenticity is relative.

B. The World Heritage Community’s Gradual Acceptance of the Nara Document’s Reformulation of Authenticity

Herb Stovel, one of two Rapporteurs of the Nara Conference, reports that ICOMOS and the Committee used the Nara Document informally after its release when analyzing WHL nominations. One instance was ICOMOS’ 1997 approval of accepting the historic French fortified City of Carcassonne to the WHL—the same Carcassonne which was deferred in 1985. Now Viollet-le-Duc’s restorations were not viewed detrimentally; in fact, these were a major reason for the inscription. ICOMOS acknowledged that Viollet-le-Duc’s work was contrary to the Venice Charter, yet, after devoting “much consideration” to the

165 NARA DOCUMENT, supra note 160, app. 2.
166 Id. ¶ 13.
167 The Nara Document was written in both French and English. Due to the death of one of the two rapporteurs, the texts were never harmonized, and the French version is apparently more strict than the English. CAMERON & RÖSSLER, supra note 73, at 89; Cameron & Inaba, supra note 147, at 35-36.
168 Herb Stovel, Origins and Influence of the Nara Document on Authenticity, 39 APT BULL., supra note 109, at 9, 15.
169 ICOMOS, Evaluation of the Historic Fortified Town of Carcassonne, at 30 (Sept. 1997) [hereinafter Carcassonne Evaluation]; Cameron, supra note 109, at 21; see supra Section III.D.
170 Carcassonne Evaluation, supra note 169, at 26, 28-30.
definition of authenticity, ICOMOS agreed with the Nara Document’s tenet that value and authenticity must be judged “within the cultural contexts to which it belongs.” ICOMOS now believed Viollet-le-Duc’s works did not impinge upon the substantive elements of the city left by previous cultures, such as the Romans. Viollet-le-Duc’s restorations were in good repair, were his master work, and had such a profound influence on subsequent developments in the field of architectural conservation that their authenticity under the Nara Document rationale was evident. The Committee accepted the inscription, but not without dissent evincing the continued open disagreement surrounding a reframed authenticity relative to cultural contexts and encompassing the intangible.

Despite referencing the Nara Document in its review of Carcassonne, ICOMOS did not formally accept the Nara Document as one of its “official doctrinal text[s]” until October 1999. After continued wrangling, the Committee added its formal endorsement in December of that year, but did not incorporate the Nara Document into the Operational Guidelines until February 2005, when the full Nara Document was annexed to the Guidelines, with sections specifically integrated into the Guidelines’ text. The

171 Id. at 28.
172 Id. at 29.
173 Id. at 28, 30.
176 Cameron, supra note 109, at 22.
177 Id.; 2005 Operational Guidelines, supra 91, ¶¶ 79-84; annex 4. The integrated sections are Nara Document ¶¶ 9, 11, 13 and appendix 2. See NARA DOCUMENT,
original test of authenticity’s four facets—design, material, workmanship, or setting—were replaced with the following:

- form and design;
- materials and substance;
- use and function;
- traditions, techniques and management systems;
- location and setting;
- language, and other forms of intangible heritage;
- spirit and feeling; and
- other internal and external factors.

A potential World Heritage property could meet the conditions of authenticity by “truthfully and credibly express[ing]” any of these attributes.

Finally, the paragraph on the authenticity of reconstructions was once again revised. The Committee still took the position that reconstructions were only acceptable if based on detailed and complete documentation and not on conjecture; however, the Committee now formally recognized that reconstructions could actually be justified, albeit “only in exceptional circumstances.”

supra note 160. The Operational Guidelines remain essentially the same today. 2017 Operational Guidelines, supra note 80, ¶¶ 79-84.

178 See supra text accompanying note 90.

179 2005 Operational Guidelines, supra 91, ¶ 82. The additions of management systems, language, and other intangible heritage forms came from a regional meeting of World Heritage experts. Stovel, supra note 168, at 14.

180 2005 Operational Guidelines, supra 91, ¶ 82.

181 See supra note 132 and accompanying text.

182 2005 Operational Guidelines, supra 91, ¶ 86. The new language reads as follows: “In relation to authenticity, the reconstruction of archaeological remains or historic buildings or districts is justifiable only in exceptional circumstances. Reconstruction is acceptable only on the basis of complete and detailed
Those who proposed the language hoped it would encourage more favorable consideration of such properties. The new test of authenticity and revised reconstruction guideline were immediately challenged by Stari Most, the "Old Bridge," in Mostar, Bosnia and Herzegovina.

C. The Authenticity of Reconstructions in Light of the Nara Document: Mostar's Old Bridge

Mostar, Bosnia and Herzegovina, lies in the Neretva River valley and developed as an Ottoman frontier town in the fifteenth and sixteenth centuries. In the nineteenth and early twentieth centuries it was part of the Austro-Hungarian Empire, eventually becoming part of the Communist-aligned Federative Socialist Republic of Yugoslavia after World War II. Mostar's long period of Ottoman rule resulted in Islamic-influenced architecture nearest the river, which over time spread up the left bank. During the later Austro-Hungarian period, more European-style architecture and Christian religious structures were built on the right side of the river. Despite these political transitions, Mostar remained a multi-ethnic community with Muslims, Christians, and Jews living side-

183 Cameron, supra 109, at 22.
186 Mostar Evaluation, supra note 184, at 178-79; see also Mostar Nomination, supra note 185, at 20-23 (describing the development in more detail).
187 Mostar Evaluation, supra note 184, at 179; see also Mostar Nomination, supra note 185, at 24-26 (describing the development in more detail).
by-side, and with Croats, Serbs, and Muslims intermarrying.\textsuperscript{188} In the center of Mostar was the Old Bridge connecting the two sides of the city.

The Old Bridge was designed by the famous Ottoman architect Kodja Mimar Sinan and constructed by his pupil Hayruddin in 1566.\textsuperscript{189} The name “Mostar” is derived from “mostari,” meaning the “bridge keepers.”\textsuperscript{190} The Old Bridge became a meeting point for Mostar’s citizens, where individuals had their first kiss, men participated in yearly diving competitions, and babies were brought to be inducted as bridge keepers.\textsuperscript{191}

With the fall of Communism in Eastern Europe and the dissolution of Yugoslavia, Bosnia and Herzegovina declared independence in March 1992.\textsuperscript{192} Afterwards, the region fell into what came to be known as the Bosnian War, a conflict consisting of ethno-religious fighting between Bosnian, Serbian, and Croatian Orthodox Christian, Catholic, and Muslim factions.\textsuperscript{193} Mostar was eventually caught in the crosshairs. The allied Croat-Bosnian force, originally joined against the Serbs, repelled the latter from Mostar, but later succumbed to infighting.\textsuperscript{194} Once disbanded, it was the Croats’ targeted shelling that finally brought the Old Bridge and its

\textsuperscript{188} BEVAN, supra note 94, at 25; Mostar Nomination, supra note 185, at 5, 17; Old Bridge Area of the Old City of Mostar, UNESCO WORLD HERITAGE CTR., http://whc.unesco.org/en/list/946 (last visited Nov. 9, 2018).
\textsuperscript{189} Mostar Nomination, supra note 185, at 9, 11.
\textsuperscript{190} Mostar Evaluation, supra note 184, at 178.
\textsuperscript{192} Mostar Nomination, supra note 185, at 19.
\textsuperscript{193} Id.; see also BEVAN, supra note 94, at 32-47 (describing the Bosnian conflict in more detail); Bing, supra note 191, at 240 n.5 (citing sources describing the Bosnian conflict in more detail).
\textsuperscript{194} Mostar Nomination, supra note 185, at 19.
flanking towers down on November 9, 1993. Yet many did not view the Old Bridge’s destruction as strategic military decision; instead, it was attacked as a symbol of Mostar’s peacefully coexisting, multi-ethnic community. Additionally, the destruction was not limited to the Old Bridge; over the course of the War much of the historic city center was ruined, including mosques, churches, and secular buildings.

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195 Id.
197 *Mostar Nomination*, supra note 185, at 10-16, 19, 29-30. In 1993, the U.N. Security Council created the International Criminal Tribunal for the former Yugoslavia (“ICTY”) in response to ethnic cleansing and violations of the laws and customs of war committed during the Bosnian War. Statute of the International Tribunal for the Prosecution of Persons Responsible for Serious Violations of International Humanitarian Law Committed in the Territory of the Former Yugoslavia Since 1991, S.C. Res. 827, U.N. SCOR, 48th Sess., 3217th mtg. Annex, U.N. Doc. S/827 (1993). The latter violations include “wanton destruction of cities, towns or villages, or devastation not justified by military necessity.” Id. art. 3(b). At trial, the court held the Old Bridge was a military target, but that because its destruction was disproportionate to the expected military advantage, the commanders of the Croat forces in Mostar who ordered the Old Bridge destroyed violated Article 3(b) of the ICTY Statute. Prosecutor v. Prlić et al., Case No. IT-04-74-T, Judgement Vol. 3, ¶¶ 1581-1587 (Int’l Crim. Trib. for the Former Yugoslavia May 29, 2013). On appeal, the Appeals Chamber overruled the Trial Chamber, finding that because the Old Bridge was a military target when attacked, its destruction could not be considered wanton and unjustified. Prosecutor v. Prlić et al., Case No. IT-04-74-A, Judgement Vol. I, ¶¶ 411-412 (Int’l Crim. Trib. for the Former Yugoslavia Nov. 29, 2017). One judge, however, dissented, arguing, *inter alia*, that the majority conflated a military target with military necessity, the attack was disproportionate as the Trial Chamber had found, and that the Prosecutor missed the opportunity to specifically charge the Croat commanders with violating another law or custom of war under the ICTY Statute, that of Article 3(d), the “destruction or wilful [sic] damage done to institutions dedicated to religion, charity, education, the arts and sciences, historic monuments and works of art and science.” Prosecutor v. Prlić et al., Case No. IT-04-74-A, Judgement Vol. III, ¶¶ 8-12 (Int’l Crim. Trib. for the Former Yugoslavia Nov. 29, 2017) (Pocar, J., dissenting) (internal quotation marks
After the Old Bridge was destroyed, the people of Mostar vowed to rebuild it, and in March 1994, UNESCO launched the first international appeal to this end.\(^1\) Four years later, in concert with the World Bank and local authorities, UNESCO issued another appeal.\(^2\) This latter plea secured the necessary financial support for the project, and UNESCO subsequently created an “international committee of experts” to provide technical guidance to the

omitted); see also id. \(\footnotesize{\text{pp.}}\) 13-17 (discussing the enhanced protection cultural property receives under international humanitarian law). Interestingly, General Slobodan Praljak, one of the Croat military commanders whose conviction for other war crimes the Appeals Chamber upheld, committed suicide by drinking poison in the courtroom as his sentence was read aloud. Laura Smith-Spark & Melina Borcak, Dutch Authorities Probe Bosnian War Criminal’s Courtroom Suicide, CNN (Nov. 30, 2017, 11:19 AM), http://www.cnn.com/2017/11/30/europe/slobodan-praljak-hague-death/index.html.

\(^{198}\) Maha Armaly, Carlo Blasi & Lawrence Hannah, Stari Most: Rebuilding More Than a Historic Bridge in Mostar, MUSEUM INT’L, Dec. 2004, at 6, 7; Bing, supra note 191, at 241-42; Colin Kaiser, Crimes Against Culture, UNESCO COURIER, Sept. 2000, at 41, 42; Kuntz, supra 191, at 16; Inauguration of the Mostar Bridge, UNESCO,http://portal.unesco.org/en/ev.php URL_ID=21743&URL_DO=DO_TOPIC&URL_SECTION=201.html (last visited Nov. 9, 2018). Not all supported reconstruction. Conservation architect Andrea Bruno proposed keeping the ruins and the temporary bridge built immediately after the destruction, while also adding a new metal bridge following Stari Most’s original shape. Interview with Andrea Bruno, November 10th, 2014, RLICC NEWSLETTER (Raymond Lemaire Int’l Ctr. for Conservation, Leuven, Belg.), Spring 2015, at 39, 40. This plan, he argued, would highlight the three phases associated with rebuilding the bridge (destruction, interim crossing, final product), providing visual testimony that heritage should not be destroyed. Id.; see also Armaly et al., supra, at 13 (discussing other bridge design options generally).

\(^{199}\) Inauguration of the Mostar Bridge, supra note 198; Mostar Nomination, supra note 185, at 35.
Over the course of eight years, the Old Bridge was reconstructed based on extensive documentation from both before and after its destruction, using traditional techniques and new stone thought to be from the original quarry, though salvaged original material was incorporated on the surface. In addition to the Old Bridge, there were over 100 other rehabilitation projects undertaken during this period. All projects were locally managed and focused on inter-ethnic cooperation between local professionals and residents composing most of the workforce. Of the more than fifty companies involved in all the projects, only seven were from outside Mostar, and of these seven, four were not native to Bosnia and Herzegovina. Rebuilding the community was the point of all the rehabilitation and reconstruction projects, but of the Old Bridge in particular.

In 2005, with the Old Bridge’s reconstruction completed the previous summer, Bosnia and Herzegovina applied for inscribing an area including the Old Bridge and other structures, both...
reconstructed and original, to the World Heritage List. Naturally, the sticking point for the nomination was authenticity. However well documented the reconstructions were, they were still just that—reconstructions. To Bosnia and Herzegovina, however, the importance of the site, particularly the Old Bridge, lay in “re-appropriating” the destruction:

If tearing down of the Old Bridge is a symbol of the destruction of Bosnia and Herzegovina, then its rebuilding will symbolize the restoration of this country and the reconciliation of its people who will come together to rebuild the Old Bridge, and all of Mostar’s bridges, linking them as a people once again. We wish the Old Bridge to become a symbol of the restoration of the multi-ethnic society of Bosnia and Herzegovina.

In its review of the application, ICOMOS noted its reservations based on the historical test of authenticity, but that the

207 Mostar Evaluation, supra note 184, at 180; Mostar Nomination, supra note 185, at Title Page, 4, 9-16; see also Old Bridge Area of the Old City of Mostar—Maps, UNESCO World Heritage Ctr., http://whc.unesco.org/en/list/946/multiple=1&unique_number=1107 (last visited Nov. 9, 2018) (displaying map of the inscribed property). Bosnia and Herzegovina had previously submitted applications for Mostar’s inscription to the WHL beginning in 1999, but these were deferred for several reasons. Mostar Evaluation, supra note 184, at 180; Cameron, supra note 109, at 22. One of the reasons ICOMOS originally opposed the nomination was that the reconstructions recalled the situation of Warsaw, and that Warsaw’s inscription was supposed to be an exception, not precedent. Id.; see also WHComm., Nominations of Properties to the World Heritage List for the Twenty-Seventh Session of the World Heritage Committee, at 24, WHC-03/27.COM/8C (June 26, 2003); supra Section III.C.

208 Mostar Nomination, supra note 185, at 35; see also id. at 7.
revised test of authenticity grounded in the *Nara Document* allowed the organization to take a more wholistic view of the site.\(^{209}\)

ICOMOS wrote:

> Looking as an example at the reconstruction of the Old Bridge [in light of the revised test of authenticity], [the reconstruction] is based on in-depth and detailed, multi-facetted analyses, relying on high quality documentation, and almost every required condition has been fulfilled. The authenticity of form, use of authentic materials and techniques are fully recognisable. The result is not a kind of invented or manipulated presentation of an architectural feature which never before existed in that form, rather the reconstructed bridge has a kind of truthfulness, even though in strictly material terms a considerable portion is not of identical or original pieces.

> Furthermore, evaluating this reconstruction on a larger scale, namely as a key element of urban and natural landscape there is no doubt of a special kind of “overall” authenticity. . . .

> It must be stressed that this *reconstruction* of fabric should be seen as being in the background compared with *restoration* of the intangible dimensions of this property, which are certainly the main issue concerning the Outstanding Universal Value of this site.\(^{210}\)

ICOMOS went on to recommend the Mostar site be inscribed under criteria (iv) and (vi) in addition to changing the name of the site from “The Old City of Mostar” to “The Old Bridge

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\(^{209}\) Mostar Evaluation, *supra* note 184, at 181.

\(^{210}\) *Id.*
area of the Old City of Mostar” as a more appropriate reflection of the nominated area. After much debate concerning authenticity, the Committee finally accepted the nomination as The Old Bridge area of the Old City of Mostar under criterion (vi) alone. In so doing—and as a nod to the revised authenticity guideline justifying reconstructions only in exceptional circumstances—the Committee recognized the technical refinement and skill of the reconstructions and included the following description highlighting the site’s intangible value:

With the “renaissance” of the Old Bridge and its surroundings, the symbolic power and meaning of the City of Mostar—as an exceptional and universal symbol of coexistence of communities from diverse cultural, ethnic and religious backgrounds—has been reinforced and strengthened, underlining the unlimited efforts of human solidarity for peace and powerful cooperation in the face of overwhelming

211 Id. at 182-83.
212 Cameron, supra note 109, at 23 & n.45; see also Interview with Christina Cameron, WORLD HERITAGE, Jan. 2018, at 64, 66 (saying the chair of the scientific committee for the Stari Most reconstruction confirmed the project mixed contemporary and historic methods and materials).
213 Ariel Gonzalez (Rapporteur), Decisions of the Twenty-Ninth Session of the World Heritage Committee (Durban, 2005), at 141, WHC-05/29.COM/22 (Sept. 9, 2005) [hereinafter 2005 WHComm. Decisions]. Criterion (vi) read “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).” 2005 Operational Guidelines, supra 91, ¶ 77(vi).
214 2005 WHComm. Decisions, supra note 213, at 141; see supra notes 182-83183 and accompanying text.
catastrophes.\textsuperscript{215}

The Old Bridge area was the first test for the redefined definition of authenticity for a site nominated to the World Heritage List. Seven years later, authenticity and reconstruction would again be tested, but this time the site was already inscribed to the World Heritage List.

\textit{D. The Authenticity of Reconstructions in Light of the Nara Document: Timbuktu, Mali}

Inscribed to the World Heritage List in 1988,\textsuperscript{216} the historic center of Timbuktu, Mali, is composed of three great mosques (Djingareyber, Sankore, and Sidi Yahi), sixteen mausoleums, and other holy public places.\textsuperscript{217} The city itself was founded in the fifth century, reaching its zenith in the fifteenth and sixteenth centuries as a center of Islamic culture.\textsuperscript{218} The World Heritage properties are built of “banco” (mud)\textsuperscript{219} and wood and were either erected or restored mainly in the sixteenth century.\textsuperscript{220} The site’s OUV is based on criteria (ii), (iv), and (v)\textsuperscript{221} for the following reasons:

\begin{footnotesize}
\begin{itemize}
    \item \textsuperscript{215} 2005 WHComm. Decisions, supra note 213, at 141; Cameron, supra note 109, at 23; Old Bridge Area of the Old City of Mostar, supra note 188.
    \item \textsuperscript{217} ICOMOS, Evaluation of the Old Town of Timbuktu, at 1-2 (Dec. 1987) [hereinafter Timbuktu Evaluation]; Ali Ould Sidi, Maintaining Timbuktu’s Unique Tangible and Intangible Heritage, 18 INT’L J. HERITAGE STUD. 324, 325 (2012); Timbuktu, supra note 144.
    \item \textsuperscript{218} Timbuktu, supra note 144.
    \item \textsuperscript{220} Timbuktu, supra note 144.
    \item \textsuperscript{221} In 1988 criteria (ii), (iv), and (v) were as follows:
\end{itemize}
\end{footnotesize}
(ii) The mosques and holy places of Timbuktu have played an essential role in the spread of Islam in Africa at an early period;

(iv) The three great mosques of Timbuktu... bear witness to the golden age of the intellectual and spiritual capital at the end of the Askia dynasty; and

(v) The three mosques and mausoleums are outstanding witnesses to the urban establishment of Timbuktu, its important role of commercial, spiritual and cultural centre on the southern trans-Saharan trading route, and its traditional characteristic construction techniques. Their environment has now become very vulnerable under the impact of irreversible change.222

Being constructed of the perishable materials of earth and wood means the buildings need frequent maintenance. Accordingly, a historic guild of master masons has developed with the exclusive
right to maintain the structures utilizing ancient rituals and construction techniques. The process is initiated by the Imam with the entire community assisting. The site’s authenticity is also linked to these traditional construction techniques that are necessary for maintenance and continued use of the buildings.

From 2012 to 2013, Islamic militants destroyed several mausoleums and damaged the mosques. Malians solicited

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223 Sidi, supra note 217, at 328; see also id. at 327-31.
224 Id. at 328; see also id. at 327-31.
225 Timbuktu, supra note 144; see Timbuktu Evaluation, supra note 217, at 3 (May 1988). The 1988 test of authenticity had remained consistent since the 1980 revision. 1988 Operational Guidelines, supra note 221, ¶ 21(b); 1980 Operational Guidelines, supra note 89, ¶ 18(b); see also supra note 132 and accompanying text.
227 Unlike with the Old Bridge, see supra note 197, international authorities were able to secure a conviction for cultural heritage destruction in Timbuktu, the first of its kind. Prosecutor v. Al Mahdi, ICC-01/12-01/15, Judgment and Sentence (Sept. 27, 2016). On September 27, 2016, the International Criminal Court ("ICC") sentenced Ahmad Al Faqui Mahdi to nine years’ imprisonment for violating Rome Statute Article 8(2)(e)(iv). Al Mahdi, Judgment and Sentence, at 49. The Rome Statute created the ICC and ICC prosecution of Al Mahdi was
UNESCO for help, describing the buildings “as the ‘second lung’ of their social life,” without which reconciliation would be difficult. UNESCO responded, leading the effort to reconstruct the mausoleums and restore the mosques by setting up a special account for donations, sending field missions to survey the damage, and organizing an international experts meeting in Paris on February 18, 2013. A major goal of the meeting was to finalize an Action Plan to guide the rehabilitation of Mali’s cultural heritage developed by a UNESCO-established working group composed of representatives from several international organizations in concert with Malian authorities. Malian and other African representatives at the meeting reiterated their desire to rebuild and restore the


228 Eloundou & Cissé, supra note 226, at 50.  
230 Id. at 3-4, 8-9.
In addition, these individuals and attendees from other countries and organizations stressed the need to involve the local community and its experts in the rehabilitation efforts, while being cognizant of local customs.

Thus, in Timbuktu, the question was never whether reconstruction should occur, but simply how to do it appropriately and systematically. The Final Action Plan listed desired results, the activities necessary to reach these results, the estimated costs of the activities, the partners to be involved (including heavy involvement of the local community and masonry guilds), and the timeframe in which the activities should be completed (i.e. urgent, short-, mid-, or long-term).

In short, although the Action Plan was ad hoc, it essentially incorporated and expanded upon the reasons why ICOMOS’ argued in favor of inscribing Mostar’s Old Bridge to the WHL in light of the Nara Document. It called for all work to be based on thorough documentation, involve the local community, use authentic materials and techniques, and result in authentic use and function, but overall the reconstruction of material assets was viewed as secondary to restoring the old—and possibly adding new—intangible dimensions of OUV to the properties, in addition to helping the war-torn community heal. Consequently, the Action Plan was an important step toward codifying a new understanding of authenticity in the World Heritage context for a property already on the WHL in need of reconstruction.

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231 Id. at 5, 6, 8.
232 Id. at 6, 8, 10.
233 Id. at 12-20.
234 See supra text accompanying note 210.

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In keeping with this new understanding, when mausoleum reconstruction began in March 2014, work was initiated by the Imam and undertaken by local masons with assistance from the larger community.\(^{237}\) This was because, as mentioned, the OUV and authenticity of the Timbuktu site are grounded in sustaining the intangible heritage of its traditional construction techniques.\(^{238}\) The Committee “note[d] with satisfaction” and “warmly welcome[d]” this reconstruction and restoration strategy involving the local community and the masonry guild.\(^{239}\) Within two years, the mausoleums were complete,\(^{240}\) Djingareyber mosque was restored,\(^{241}\) and Sidi Yahia mosque’s sacred gate was reinstalled.\(^{242}\) As of mid-2018, rehabilitation of the Sankore and Sidi Yahia mosques continued.\(^{243}\)


\(^{238}\) See supra note 222-25 and accompanying text; see also Eloundou & Cissé, supra note 226, at 53; sources cited infra note 243 providing more information on the reconstruction and restoration campaigns.

\(^{239}\) WHComm., Decisions Adopted by the World Heritage Committee at its Thirty-Eighth Session (Doha, 2014), at 33, WHC-14/38.COM/16 (July 7, 2014).


\(^{242}\) Sacred Gate, supra note 226.

V. TOWARD A NEW AUTHENTICITY AND A NEW STRATEGY

The specter of reconstruction continues to plague WHL sites, brought on by events occurring both before and after Timbuktu. These include the destruction of the Bamiyan Buddhas in Afghanistan in 2001\(^\text{244}\) and the continued unrest in the Middle

\(^{244}\) Patty Gerstenblith, *From Bamiyan to Baghdad: Warfare and the Preservation of Cultural Heritage at the Beginning of the 21st Century*, 37 Geo. J. Int'l L. 245, 246 (2006). The Buddhas were two large statues carved into a Bamiyan cliffside. *Id.* Dating from approximately the sixth century, the west Buddha stood fifty-five meters tall and the east thirty-eight meters tall. ICOMOS, *Evaluation of the Bamiyan Valley (Afghanistan)*, at 1 (June 2003) [hereinafter *Bamiyan Evaluation*]; Carlotta Gall, *From Ruins of Afghan Buddhas, a History Grows*, N.Y. TIMES (Dec. 6, 2006), http://www.nytimes.com/2006/12/06/world/asia/06budd.html. The valley where the Buddhas were carved was once part of a larger Buddhist monastery complex, representing Buddhist art spanning from the first to the thirteenth centuries. *Bamiyan Evaluation, supra*, at 1-2. The valley transitioned into Islamic rule around the eleventh century, and in March 2001, the Taliban who controlled the area destroyed the statues as shrines of infidels. *Id.* at 2; Manhart, *supra* note 226, at 280-81.

After the Taliban was overthrown, Afghanistan nominated the Bamiyan Valley to the WHL as a cultural site of eight separate zones, one of which included the niches where the statues once stood. *Bamiyan Evaluation, supra*, at 1. The Committee accepted the nomination in 2003 under OUV criteria (i), (ii), (iii), (iv), and (vi), with criterion (vi) commemorating the statues' deliberate destruction. Louise Graham (Rapporteur), *Decisions Adopted by the Twenty-Seventh Session of the World Heritage Committee in 2003*, at 122-23, WHC-03/27.COM/24 (Dec. 10, 2003).

Even before the site was listed, the Afghan government requested UNESCO coordinate the activities aimed at safeguarding the country’s cultural heritage, and in May 2002 UNESCO and the Afghan Ministry of Culture organized an International Seminar on the Rehabilitation of Afghanistan’s Cultural Heritage.” UNESCO & The Ministry of Info. & Culture of Afghanistan, *International Seminar on the Rehabilitation of Afghanistan’s Cultural Heritage May 27-29, 2002*, at 1 (June 11, 2002). At this meeting, representatives and
experts from both the Afghan and international communities agreed that the decision to reconstruct the statues was up to the government and people of Afghanistan and should be made at a later date once the niches were stabilized. Id. at 8; see also Junhi Han, Mohammad Rasoul Bawary & Andrea Bruno, The Bamiyan Buddhas: Issues of Reconstruction, WORLD HERITAGE, supra note 212, at 40, 42 (describing the consolidation work). Later that same year, UNESCO created an Expert Working Group composed of Afghan and international experts to further guide decisions pertaining to the site. Christian Manhart, UNESCO’s Role in the Rehabilitation of Bamiyan in Afghanistan, 1 LANDSLIDES 311, 312 (2004); Expert Working Group Releases Recommendations for Bamiyan Valley, Afghanistan, UNESCO WORLD HERITAGE CTR. (Feb. 14, 2012), http://whc.unesco.org/en/news/838/. In 2011, this group recommended the large western niche be “left empty as a testimony to the tragic act of destruction” and that the feasibility of partially reassembling fragments of the smaller eastern Buddha be explored. Bamiyan Expert Working Group, 10th Expert Working Group Meeting for the Safeguarding of the Cultural Landscape and Archaeological Remains of the Bamiyan Valley World Heritage Property Dec. 6-8, 2011, at 3 (no date). Note that UNESCO shut down an unsanctioned reconstruction led by the former head of ICOMOS in 2013. Alessandro Martini & Ermanno Rivetti, UNESCO Stops Unauthorized Reconstruction of Bamiyan Buddhas, THE ART NEWSPAPER (Feb. 6, 2014), http://www.unescobkk.org/fileadmin/user_upload/library/OPI/Documents/UNESCO_in_the_news_2014/140206Unesco_stops_unauthorised_reconstruction.pdf. As of 2016, the Afghan Government had officially requested permission to reconstruct at least one Buddha “on behalf of the people of Afghanistan.” The 13th Bamiyan Expert Working Group Meeting Met in Germany, UNESCO WORLD HERITAGE CTR. (Dec. 13, 2016), http://whc.unesco.org/en/news/1606. UNESCO took up this request at a September 2017 international symposium held in Tokyo. Id.; UNESCO Technical Meeting and International Symposium on “The Future of the Bamiyan Statues: Technical Considerations and Potential Effects on Authenticity and Outstanding Universal Value,” UNESCO WORLD HERITAGE CTR. (Oct. 11, 2017), https://whc.unesco.org/en/news/1733. Four technical proposals were submitted that the Afghan authorities are reviewing. Id. The symposium provided yet another opportunity “to clarify the existing theory and practice around the reconstruction of cultural properties and restoration ethics, while discussing questions of authenticity and the impact on the Outstanding Universal Value of the . . . World Heritage property.” Id. In its conclusions, the symposium also advised the Afghan government to undertake
East initiated by both the 2003 U.S.-led invasion of Iraq and the Arab Spring of 2010.\textsuperscript{245} The latter two events precipitated civil wars and the rise of radical Islamists, resulting in the previously discussed Timbuktu devastation and other severe destructions in Iraq, Libya, Syria, and Yemen.\textsuperscript{246} As explored below, the responses of UNESCO, the World Heritage Centre, the Advisory Bodies, and the World Heritage Committee to this continual destruction reveal these organizations’ recognition that the realities of the twenty-first century necessitate a full shift away from a materials-based test of authenticity to an authenticity encompassing both the tangible and intangible. This transformation required acknowledging both that the \textit{Operational Guidelines}' prohibition against reconstructing destroyed World Heritage sites must give way, not to black-and-white rules, but to guidelines, and that these guidelines must recognize—and address—the integral role of heritage recovery in the overall recovery of communities adversely impacted by the destructive events.

\textbf{A. Post-Conflict Reconstruction in the Middle East Context}


\textsuperscript{245} Gerstenblith, supra note 227, at 354.

As the second decade of the twenty-first century began, the international community’s reconstruction response to destroyed built cultural heritage remained ad hoc, and the response to the damage to the Old City of Aleppo was no different. For the first time, the Committee was faced with an entire World Heritage city that required reconstruction, and in June 2015, the World Heritage Centre organized a meeting of experts to brainstorm on “Post-Conflict Reconstruction in the Middle East Context,” focusing on Aleppo. The meeting aimed to “set out basic recommendations on reconstruction from a theoretical and practical point of view.”

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249 The World Heritage Centre was created in 1992 as the coordinating body within UNESCO for everything related to World Heritage, including but not limited to, organizing seminars and workshops. 2017 Operational Guidelines, supra note 80, ¶ 27-29; World Heritage Centre, UNESCO WORLD HERITAGE CTR., http://whc.unesco.org/en/world-heritage-centre/ (last visited Nov. 9, 2018).
250 Post-Conflict Reconstruction in the Middle East Context and in the Old City of Aleppo in Particular June 18-19, 2015, UNESCO, [hereinafter Post-Conflict Reconstruction], http://whc.unesco.org/en/events/1286/ (last visited Nov. 9, 2018); Ancient City of Aleppo, supra note 247.
251 2015 State of Conservation in Danger, supra note 226, at 60.
architectural conservation charters, the reconstructions in Europe after World War II, and UNESCO’s approaches to reconstruction in Mostar, Timbuktu, and Bamiyan, among other locations, to decide whether a new charter or recommendations for post-war reconstruction were necessary. The meeting produced an Action Plan calling for exactly this—new guidelines delineating an integrated approach to post-conflict reconstruction developed by UNESCO, ICOMOS, ICCROM, and other experts.

B. 40th Session of the World Heritage Community

The World Heritage Committee held its 40th Session in Istanbul, Turkey, and at UNESCO’s Paris, France, headquarters in 2016. At this meeting, the World Heritage Centre and the Advisory Bodies presented a State of Conservation of World Heritage Properties report in which they cited the Aleppo meeting and others as highlighting

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252 Post-Conflict Reconstruction, supra note 250.
253 UNESCO World Heritage Ctr.—Arab States Unit, Post-Conflict Reconstruction in the Middle East Context and in the Old City of Aleppo in Particular: Action Plan Resulting from the Meeting’s Recommendations, at 2 (June 19, 2015).
256 Two of these meetings were held in March 2016: a “Post-Trauma Reconstruction Colloquium” sponsored by ICOMOS and a roundtable entitled “From Conservation to Reconstruction: How World Heritage is Changing Theory
the need to see reconstruction not as a single concept but as a multi-faceted process that goes far beyond the idea of reconstructing fabric, and one that poses complex ideological and socio-economic questions, brings potential conflicting expectations, and may lead to many different outcomes.

An important outcome of these meetings was the need to start engaging in key partnerships and raising awareness on best practices in order to avoid tensions through reconstruction by developing an integrated approach that prioritizes the collective healing process, reconciliation and involvement of local communities, and that enlarges the dimension of intangible heritage and its role, as well as mitigating the risks of reinventing heritage/re-

and Practice” organized by The Canada Research Chair on Built Heritage of the Université de Montréal. 2016 State of Conservation, supra note 246, at 11-12; see also Post-Trauma Reconstruction – Proceedings Available for Download, ICOMOS, https://www.icomos.org/en/what-we-do/focus/6149-post-trauma-reconstruction-proceedings-available-for-download (last visited Nov. 9, 2018) (providing more information on the colloquium and a link to its proceedings); From Conservation to Reconstruction: How World Heritage is Changing Theory and Practice, UNIVERSITE DE MONTRÉAL CAN. RES. CHAIR ON BUILT HERITAGE, https://www.patrimoinebati.umontreal.ca/en/activities/round-tables/2016-from-conservation-to-reconstruction-how-world-heritage-is-changing-theory-and-practice/ (last visited Nov. 9, 2018) (same). Before the Committee specifically requested guidance on reconstruction, see infra text accompanying notes 259-61, it had “recommended” in its Decision 39 COM 7 that the World Heritage Centre and the Advisory Bodies develop a strategy to support post-conflict reconstruction in the Arab States region. WHComm., Decisions Adopted by the World Heritage Committee at its 39th Session (Bonn, 2015), at 10, WHC-15/39.COM/19 (July 2015). These other meetings were at least partially in response.
writing history.

The guidance on reconstruction in the Operational Guidelines is limited and Paragraph 86 presents a dilemma between the obligation to sustain the OUV and its attributes, and the obligation to adhere to the idea that reconstruction (apart from anastylosis) should be ruled out, other than in "exceptional circumstances" and "on the basis of complete and detailed documentation and to no extent on conjecture", both concepts, which lack definition.

Taking account of all of the above, it is suggested that more reflection is needed on the issue of reconstruction in World Heritage properties, and that there is a degree of urgency for this in the light of the traumas faced by communities who have lost their homes and frames of reference. Such a reflection could acknowledge the wealth of experience and knowledge that exists within the Advisory Bodies and the World Heritage Centre on technical and other facets of reconstruction.  

This exposition ended with the World Heritage Centre and the Advisory Bodies calling on the Committee to support the drafting of reconstruction guidance.  

257 2016 State of Conservation, supra note 246, at 12-13. Paragraph 86 reads in full: "In relation to authenticity, the reconstruction of archaeological remains or historic buildings or districts is justifiable only in exceptional circumstances. Reconstruction is acceptable only on the basis of complete and detailed documentation and to no extent on conjecture." 2017 Operational Guidelines, supra note 80, ¶ 86. This language dates from the incorporation of the Nara Document into the Operational Guidelines. See supra Section IV.B.  

The Committee subsequently issued Decision 40 COM 7,\textsuperscript{259} recognizing the inadequacy of the \textit{Operational Guidelines} to guide reconstructions in the face of "the recent and wide-ranging deliberate destruction of World Heritage properties as a result of armed conflict."\textsuperscript{260} Consequently, the Committee wrote, more in depth reflection [was] needed on reconstruction within World Heritage properties as a complex multi-disciplinary process, and that consideration should be given to developing new guidance to reflect the multi-faceted challenges that reconstruction brings, its social and economic context, the short- and long-term needs of properties, and the idea of reconstruction as a process that should be undertaken within the framework of the Outstanding Universal Value (OUV) of the properties.\textsuperscript{261}

With this statement, the Committee finally explicitly requested World Heritage reconstruction guidelines. In response, the Polish government offered to host an international reconstruction conference to produce the desired guidelines,\textsuperscript{262} but before this could happen, ICOMOS answered the call, issuing a

\textsuperscript{259} During the course of its annual meeting, the Committee makes several decisions associated with its responsibilities under the WHC, and these decisions are numbered in order to keep track.

\textsuperscript{260} WHComm., \textit{Report of the Decisions Adopted During the 40th Session of the World Heritage Committee (Istanbul/UNESCO, 2016)}, at 10, WHC/16/40.COM/19 (Nov. 15, 2016) [hereinafter 2016 Decisions]. The Committee also noted that natural disasters such as earthquakes also exposed the inadequacy of the \textit{Operational Guidelines} to deal with reconstructions. \textit{Id.}

\textsuperscript{261} \textit{Id.}

\textsuperscript{262} \textit{Id.}
document entitled *ICOMOS Guidance on Post Trauma Recovery and Reconstruction for World Heritage Cultural Properties*.\(^{263}\)

**C. Post Trauma Recovery and Reconstruction for World Heritage Cultural Properties**

ICOMOS regards this guidance as "a Working Document that will be tested, revised and refined through experience and reflection."\(^{264}\) It begins by referencing the transition in architectural conservation’s approach to reconstruction from the *Athens Charter*, through the *Venice Charter*, and on to the *Nara Document*, ending with the observation that the destruction of cultural heritage is something from which communities must recover.\(^{265}\) This recovery involves "processes and long-term commitments in which local populations, authorities and international bodies" work together.\(^{266}\)

The Committee directed that OUV should frame reconstruction decisions.\(^{267}\) This is because, as the *ICOMOS Guidance* explains, OUV is the foundation of the WHC and the WHL.\(^{268}\) For example, Warsaw’s reconstruction was an exemplary illustration of twentieth century restoration techniques, Mostar’s reconstruction was a way to forge a national identity, and Timbuktu’s reconstruction was accepted as sustaining not only the physical fabric but also the intangible processes related to traditional

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\(^{264}\) ICOMOS GUIDANCE, *supra* note 263, at 4.

\(^{265}\) *Id.* at 3.

\(^{266}\) *Id.*

\(^{267}\) See *supra* text accompanying note 261.

\(^{268}\) ICOMOS GUIDANCE, *supra* note 263, at 4.
construction techniques. In other words

[t]aken together over the years, these determinations reflect the understanding that in the context of safeguarding and sustaining OUV, reconstruction can take many forms, which are not mutually exclusive and can exist in parallel. As a concept, reconstruction is complex rather than singular and can extend beyond the reconstruction of fabric. From this perspective, reconstruction can be about reinvigorating communities and fostering processes and associations, as well as restoring form, function or physical fabric, depending on the nature of the attributes and their role in conveying OUV. Reconstruction is a process that responds to particular situations and, in the case of World Heritage properties, to the specific attributes that

269 See id. at 4; supra text accompanying notes 125-25 (Warsaw); supra text accompanying notes 208, 210, 215 (Mostar); supra text accompanying notes 235-38 (Timbuktu).

270 These types of reconstruction are: “reconstruction as before”; “modified reconstruction”; “partial reconstruction”; “reconstruction as a recurring process”; “reconstruction of newly revealed underlying historic layers”; “reconstruction as an opportunity to improve building or urban conditions”; and “reconstruction as a critical element to maintenance of customary knowledge, practices, beliefs, or as an opportunity to sustain these or other intangible attributes.” ICOMOS GUIDANCE, supra note 263, at 16. The ICOMOS Guidance is the first architectural conservation document analyzed in this essay to explicitly define “reconstruction” beyond anastylosis. With the emerging necessity for reconstruction guidelines in the World Heritage context, standardizing the definition(s) of reconstruction to be used becomes key. See infra Section V.D. For examples of how select dictionaries and other architectural conservation declarations and charters have defined “reconstruction,” see STUBBS, supra note 8, at 386.
convey OUV.\textsuperscript{271}

The \textit{ICOMOS Guidance} thus endeavors to provide the framework for post-trauma (that is post-conflict or post-natural disaster)\textsuperscript{272} reconstruction plans that respond to particular situations and specific attributes that convey OUV\textsuperscript{273} while also being part of a community’s overarching post-trauma environmental, social, and economic recovery.\textsuperscript{274} The following is a brief summary of the \textit{ICOMOS Guidance} framework.

The framework begins with the tangible and intangible elements of OUV underpinning a World Heritage site’s inscription.\textsuperscript{275} Upon a site’s destruction, the damage to these attributes must be assessed.\textsuperscript{276} This impact assessment will take time,\textsuperscript{277} and through it, not only may the original attributes conveying OUV be redefined but new attributes may also be realized from the destructive event(s).\textsuperscript{278} The assessment must, when feasible, document the event’s wider effect on economic and social conditions, services, environmental factors, infrastructure, and other cultural assets.\textsuperscript{279}

From the impact assessment, a Statement of Impacts is developed, detailing the damage and “apprais[ing] it in terms of the potential for recovery of the [original] attributes of OUV and of new opportunities.”\textsuperscript{280} The Statement of Impacts is then used to develop reconstruction options aimed at recovering and integrating new

\textsuperscript{271} See ICOMOS GUIDANCE, supra note 263, at 4.
\textsuperscript{272} Id. at 3, 4, 7.
\textsuperscript{273} Id. at 6.
\textsuperscript{274} Id. at 3, 5, 6, 9, 11.
\textsuperscript{275} Id. at 7.
\textsuperscript{276} Id. at 7-9, 13.
\textsuperscript{277} ICOMOS GUIDANCE, supra note 263, at 9.
\textsuperscript{278} Id. at 5, 7-8, 10, 13.
\textsuperscript{279} Id. at 9.
\textsuperscript{280} Id. at 10; see also id. at 14.
OUV attributes, as applicable.\textsuperscript{281} These options are compiled in an Evaluation of Options of Recovery, which identifies "the purpose, motivation, justification and expected outcomes for each potential [OUV attribute] recovery option."\textsuperscript{282} The Evaluation must specify a preferred option.\textsuperscript{283} Both the Statement of Impacts and the Evaluation of Options of Recovery are submitted to the World Heritage Centre for review\textsuperscript{284} and once a recovery option is approved in principle by the Committee, an overall Master Plan is developed incorporating detailed Action Plans (project plans).\textsuperscript{285} These plans detail the methods by which recovery and reconstruction will take place.\textsuperscript{286} For material attributes and assets conveying OUV, the plans will specify technologies, techniques, and implementation provisions.\textsuperscript{287} For intangible OUV attributes, the plans will spell out "provisions to monitor developments, foster community cohesion and sustainability, and ensure viability of future uses."\textsuperscript{288}

Under the ICOMOS Guidance, successful post-trauma World Heritage property reconstruction requires that the Master Plan and its component Action Plans be effectively integrated into a community's overall recovery.\textsuperscript{289} As explained by the Advisory Bodies and the Committee, this is because reconstruction is "multi-faceted," involving matters of socio-economic importance, not just issues of building materials.\textsuperscript{290} The ICOMOS Guidance frames the

\begin{thebibliography}{9}
\bibitem{281} Id. at 10.
\bibitem{282} Id. at 10; see also id. at 14.
\bibitem{283} ICOMOS GUIDANCE, supra note 263, at 10, 14.
\bibitem{284} Id. at 10.
\bibitem{285} Id. at 11, 14.
\bibitem{286} Id. at 5, 11. 14.
\bibitem{287} Id. at 5, 14
\bibitem{288} Id. at 5; see also id. at 14.
\bibitem{289} See supra text accompanying note 274.
\bibitem{290} See supra text accompanying notes 257, 261.
\end{thebibliography}
reasoning thusly: for “many properties the attributes of OUV are indissolubly linked to social and cultural associations and practices,” noting also that culture and cultural heritage drive sustainable development, and in post-trauma circumstances, provide social cohesion and identity.

The ICOMOS Guidance methodology to achieve integration is not as thoroughly delineated as that for developing reconstruction options, but it does highlight the necessity of identifying and involving stakeholders at all points of the processes. Furthermore, the framework explains that successful integration requires clear delineation of responsibilities; explicit mechanisms for collaboration and communication; and effective use of international and local expertise, funds, and other resources.

The ICOMOS Guidance was the first overarching, solid framework to guide post-trauma World Heritage property reconstructions. No longer were State Parties, architectural conservationists, and communities expected to navigate on their own the interplay between the cryptic directives of Operational Guidelines paragraph 86 and the inclusive ideals of both the revised test of authenticity based on the Nara Document and the ICOMOS GUIDANCE, supra note 263, at 11.

The ICOMOS Guidance has a final section dealing with risk preparedness and disaster response plans. It is not as detailed as the reconstruction section, but its suggestions support creating the capacity of State Parties to implement the ICOMOS Guidance framework should disaster strike. These suggestions include, for example, coordinating information sharing between key agencies and individuals domestically and internationally; ensuring the comprehensiveness and availability of heritage documentation in emergency circumstances, including updating technologies used to gather and store the information; job training in heritage restoration trades; and facilitating active involvement of the community with their heritage through education, use, and care.

See supra note 257 and accompanying text.

See supra text accompanying notes 177-80.
However, the ICOMOS Guidance is not a one-size-fits-all approach for handling this relationship. It still allows for context-based approaches to reconstruction and for understanding authenticity as relative; these are expected because no two sites have the same OUV. And just as important, the framework also facilitates the connection between rebuilding the property and rebuilding the communities of which the property is part. In sum, what the ICOMOS Guidance provides is what was needed: a definitive reference for how to approach and justify the post-trauma reconstruction of a World Heritage site, or potential World Heritage site, in the twenty-first century.

Nevertheless, however thorough the ICOMOS Guidance may be, it was only considered an interim fix before the conference hosted by Poland.

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297 See supra Section IV.A.
298 As the ICOMOS Guidance notes, it was prepared “in response to persistent and urgent requests for guidance.” ICOMOS GUIDANCE, supra note 263, at 4.
299 WHComm., Reports of the World Heritage Centre and the Advisory Bodies: Reports of the Advisory Bodies, at 7, WHC/18/42.COM/5B (May 14, 2018); WHComm., State of Conservation of World Heritage Properties, at 12, WHC/17/41.COM/7 (June 19, 2017) [hereinafter 2017 State of Conservation]; WHComm., Reports of the World Heritage Centre and the Advisory Bodies: Reports of the Advisory Bodies, at 7, WHC/17/41.COM/5B (May 19, 2017); see also WHComm., Decisions Adopted During the 41st Session of the World Heritage Committee (Krakow, 2017), at 9-10, WHC/17/41.COM/18 (July 2017) (Committee Decision 41 COM 7 repeating need for reconstruction guidance found in Decision 40 COM 7).
300 An important outgrowth of ICOMOS’ experience in developing the Guidance is the Global Case Study Project on Recovery and Reconstruction. ICOMOS Global Case Study Project on Recovery and Reconstruction, ICOMOS [hereinafter ICOMOS Case Study Project] https://www.icomos.org/en/focus/reconstruction/41704-icomos-global-case-study-project-on-reconstruction (last visited Nov. 9, 2018); see also ICOMOS, How ICOMOS Fuels Discussion on Reconstruction as a Dynamic Process, WORLD HERITAGE, supra note 212, at 69, 70 (briefly describing the project’s
D. Warsaw Recommendation on Recovery and Reconstruction of Cultural Heritage

The conference, entitled “The Challenges of World Heritage Recovery: An International Conference on Reconstruction,” was held in Warsaw from May 6-8, 2018. Warsaw was a deliberate choice, and there were 200 participants from over thirty countries.

As a result, ICOMOS developed a matrix for experts writing case studies to follow, thereby hopefully facilitating comparative analysis “that allows for wider, shared learning and appropriate action in the recovery process.”

Case studies are posted on the ICOMOS website. ICOMOS Case Study Project, supra.

It is striking the marked change in the characterizations of the reconstruction of Warsaw’s Old Town in official World Heritage publications since its contentious inscription on the WHL in 1980 discussed supra Section III.C. For example, even though the Bureau did not want Old Town to be precedent for inscribing reconstructed sites (and the Committee correspondingly revised the Operational Guidelines to make nominating reconstructions more difficult), thirty-eight years later Warsaw was being hailed as exactly that. Background Document, supra, at 3; UNESCO World Heritage Ctr., Ministry of Culture & Nat’l Heritage of the Republic of Pol., & Nat’l Heritage Bd. of Pol., Warsaw Recommendation on Recovery and Reconstruction of Cultural Heritage, at 5, 13 (Magdalena Marcinkowska & Dąbrówka Lipska eds., 2018) [hereinafter Warsaw Recommendation Booklet].


from across the globe. The conference’s purpose “was to summarize previous discussions and experiences regarding the recovery and reconstruction of UNESCO World Heritage sites and attempt to develop the most appropriate, universal guidelines for moving forward with properties of exceptional value” destroyed by armed conflict or natural disasters.

To do so, the conference was organized into five panel discussions, and it was from these panels that the Warsaw Recommendation on Recovery and Reconstruction of Cultural Heritage (“Warsaw Recommendation”) was distilled. The Warsaw Recommendation begins with eleven orienting paragraphs, subsequently details eleven non-exhaustive principles, and then ends with four specific recommendations.

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306 Background Document, supra note 302, at 12; WARSAW RECOMMENDATION, supra note 303, ¶ 11; International Conference, supra note 301.

307 WARSAW RECOMMENDATION, supra note 303. The Warsaw Recommendation calls its tenets “principles,” not “guidelines.” A “guideline” is defined as “an indication or outline of policy or conduct.” Guideline, MERRIAM-WEBSTER’S COLLEGIATE DICTIONARY (11th ed. 2012) (ebook). “Principle” can be defined as either “a comprehensive and fundamental law, doctrine, or assumption” or “a rule
i. Warsaw Recommendation's Orienting Paragraphs – Setting the Stage

The orienting paragraphs—in addition to briefly summarizing the attendees, the reasons for holding the conference in Warsaw, and condemning the intentional attacks on peoples and their cultural heritage that precipitated the gathering also summarize the several themes underlying the Warsaw Recommendation’s principles. For instance, the conference attendees were “cognizant” of the architectural conservation field’s “established doctrine” (e.g. the Venice Charter and the Nara Document) and that reconstruction is only appropriate in “exceptional circumstances” (i.e. Operational Guidelines paragraph 86) where it protects OUV while “meeting the test of authenticity.” However, at the same time, the conference

or code of conduct.” Principle, MERRIAM-WEBSTER’S COLLEGIATE DICTIONARY (11th ed. 2012) (ebook). In other words, the terms can be synonyms, but as explained infra V.D.3., it the drafters view the Warsaw Recommendation as fundamentals upon which future guidelines must be based.

WARSAW RECOMMENDATION, supra note 303, ¶ 1.

Id. ¶ 2.

Id. ¶¶ 3-4.

Id. ¶ 5. Speaking of the test of authenticity, at first glance, it may seem that orienting paragraph nine echoes the original test of authenticity deleted from the Operational Guidelines following the inscription of Warsaw’s Old Town to the WHL. Recall that the original test valued “all subsequent modifications and additions over the course of time, which in themselves possess artistic or historical values.” 1977 Operational Guidelines, supra note 88, ¶ 9; see Section III.B. Paragraph nine asserts that “each generation has the right to contribute to human legacy and to the wellbeing of present and future generations, including through adaptation to natural and historic processes of change and transformation.” WARSAW RECOMMENDATION, supra note 303, ¶ 9. Yet, these statements must be understood in the contexts of the times in which each are written and are not parallels. The former was understood as disqualifying reconstructions from the WHL as inauthentic, see supra text accompanying note 117; Sections III.B.-C., although it was altered to render the prohibition more
participants had to reconcile these elements against two factors.

First, communities adversely impacted by conflicts and disasters desire to quickly rebuild their cultural heritage “as a means to reaffirm their identity, restore their dignity and lay the conditions for sustainable social and economic recovery.”312 Second, the findings of several other meetings and case study analyses indicate how integral the recovery of damaged or lost cultural heritage is to community stabilization and reconciliation, particularly that rebuilding cultural heritage properties cannot be considered apart from a community’s overarching recovery plan.313 Additionally, the attendees cited the rapid advance of technology producing new possibilities for documenting and reproducing the material features of World Heritage properties as adding further complexity to the debate surrounding the authenticity of reconstructions.314 The resulting principles are meant to help navigate these multifaceted challenges of post-trauma reconstruction and are divided into the following subjects: Terminology; Values; Conservation Doctrine; Communities; Allowing Time for Reflection; Resilience, Capacities and Sustainability; Memory and Reconciliation; Documentation; Governance; Planning; and Education and Awareness Raising.315 These principles are discussed in turn below.

312 WARSAW RECOMMENDATION, supra note 303, ¶ 6.
313 Id. ¶ 7-8.
314 Id. ¶ 10.
315 Id. ¶ 11, at 2-5.
ii. Warsaw Recommendation’s Principles – Elucidating the Concepts

Terminology begins with noting that heritage recovery is essential to society’s recovery from conflict and disaster and that reconstruction may be part of this process.\(^{316}\) Reconstruction in the World Heritage context is then defined as

a technical process for the restitution of destroyed or severely damaged physical assets and infrastructure following an armed conflict or a disaster . . . [that] give[s] due consideration to [the physical assets’] associated intangible practices, beliefs and traditional knowledge which are essential for sustaining cultural values among local communities.\(^ {317}\)

This definition somewhat merges those advanced by the *ICOMOS Guidance*, significantly simplifying the concept.\(^ {318}\)

The Values principle and the Conservation Doctrine principle are interrelated.\(^ {319}\) The former reiterates the *ICOMOS Guidance* directive that a site’s OUV must frame the decision to reconstruct,\(^ {320}\) while the latter calls for reconstruction decisions to “take into consideration conservation doctrine that aims to protect the Outstanding Universal Value of properties.”\(^ {321}\) Moreover, as with the *ICOMOS Guidance*, both state that OUV includes tangible as well as intangible attributes,\(^ {322}\) with the Values principle also echoing the *ICOMOS Guidance* allowance for new OUV attributes.

\(^{316}\) *Id.* ¶ 11, at 2 (emphasis added).

\(^{317}\) *Id.* ¶ 11, at 2-3.

\(^{318}\) See supra note 270 and accompanying text.

\(^{319}\) *WARSAW RECOMMENDATION*, supra note 303, ¶ 11, at 3.

\(^{320}\) *Id.*; see supra text accompanying notes 268, 271, 273.

\(^{321}\) *WARSAW RECOMMENDATION*, supra note 303, ¶ 11, at 3.

\(^{322}\) *Id.*; see supra text accompanying note 275.
resulting from the destructive event(s). The Values principle ends with calling for the authenticity of World Heritage sites to be assessed using the Nara Document, while Conservation Doctrine advocates for consolidating the intangible dimensions of OUV into current conservation doctrine. Considering that the entirety of the Nara Document was annexed to the end of the Operational Guidelines and only certain sections were integrated into the Operational Guidelines’ text, the Conservation Doctrine principle seems to advocate further incorporating the Nara Document into the World Heritage Convention’s implementing document.

In the following principle, Communities, the Warsaw Recommendation adds an important layer to the reconstruction debate: cultural rights. Although a full analysis of cultural rights vis-à-vis human rights, cultural heritage, the intentional destruction—and reconstruction—of cultural heritage sites is

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323 Id.; see supra text accompanying note 278, 281.
324 WARSAW RECOMMENDATION, supra note 303, ¶ 11, at 3.
325 Id.
326 See supra text accompanying notes 177-79.
327 Cultural rights

protect the rights for each person, individually and in community with others, as well as groups of people, to develop and express their humanity, their world view and the meanings they give to their existence and their development through, inter alia, values, beliefs, convictions, languages, knowledge and the arts, institutions and ways of life. They may also be considered as protecting access to cultural heritage and resources that allow such identification and development processes to take place.

beyond the scope of this essay, in sum, a rights-based approach is about identifying cultural rights and involving the holders of these rights as stakeholders in reconstruction decisions, thereby “ensur[ing] full participation in cultural life, freedom of expression and access to cultural heritage for all [these] individuals and groups.”

Next the Warsaw Recommendation calls for Allowing Time for Reflection. This principle mirrors the ICOMOS Guidance by advocating for a measured approach to reconstruction. The urge to rebuild immediately should be resisted to allow for full consideration of evolving post-trauma values, to ensure an inclusive and participatory decision-making process, and to assist in negotiating the complex interrelationship between heritage and society’s other post-conflict and post-disaster recovery and


329 WARSAW RECOMMENDATION, supra note 303, ¶ 11, at 3.

330 Id.; see supra text accompanying note 277.
reconstruction needs.\textsuperscript{331}

The principle Resilience, Capacities and Sustainability emphasizes the need for recovery and reconstruction initiatives "to improve [the] quality of life" by "building back better" and "reduc[ing] existing structural and social vulnerabilities," while "retaining cultural values."\textsuperscript{332} To these ends, post-trauma situations provide an opportunity for, among other things, cultural capacity building, such as the training of craftspeople who can contribute to a World Heritage site's sustainability.\textsuperscript{333} Here, the \textit{Warsaw Recommendation} expands upon the themes of community well-being and sustainability found in the \textit{ICOMOS Guidance}.\textsuperscript{334}

Similarly, the \textit{Warsaw Recommendation} also adds to the \textit{ICOMOS Guidance}'s push for reconstruction and recovery to foster community cohesion through the Memory and Reconciliation principle, which asks for memorializing the destruction in some way as a form of reconciliation.\textsuperscript{335} This memorialization should include a narrative of the events leading to the destruction that reflects the views of the affected society.\textsuperscript{336}

The Documentation principle reiterates the \textit{ICOMOS Guidance}'s focus on the need for proper documentation of building form, materials, and methods before reconstruction because pre-disaster documentation provides the necessary records upon which to base the post-trauma response.\textsuperscript{337} If no technical documentation exists, the \textit{Warsaw Recommendation} does allow for guiding the reconstruction with communal memories of the site and traditional

\textsuperscript{331} \textit{Warsaw Recommendation}, supra note 303, ¶ 11, at 3.
\textsuperscript{332} \textit{Id}. ¶ 11, at 4.
\textsuperscript{333} \textit{Id}.
\textsuperscript{334} \textit{See supra text accompanying notes 274, 289-92}.
\textsuperscript{335} \textit{Warsaw Recommendation}, supra note 303, ¶ 11, at 4.
\textsuperscript{336} \textit{Id}.
\textsuperscript{337} \textit{Id}; \textit{see supra note 294}.
Further, the *Warsaw Recommendation* instructs that both during and after reconstruction, documentation should not be limited to recording the physical aspects; it should also capture the decision-making processes and the economic and social relations of the communities associated with the reconstruction.\(^{339}\) And where possible, all documentation should harness the power of new technologies.\(^{340}\)

The last three *Warsaw Recommendation* principles are Governance, Planning, and Education and Awareness Raising.\(^{341}\) Governance briefly outlines the "strong governance" necessary to develop and lead the operational strategy behind successful restorations.\(^{342}\) This principle is analogous to the *ICOMOS Guidance* methodology for achieving effective integration of reconstructions into a community's overall recovery.\(^{343}\)

By referencing the Historic Urban Landscape ("HUL") approach, Planning adds some substance to the *ICOMOS Guidance* process for integrating cultural heritage reconstruction and recovery specifically in terms of the wider urban planning context.\(^{344}\) Although originally developed to help cities facing rapid urbanization to prevent the loss of distinctive heritage, cultural identity, and sense of place,\(^{345}\) the *Warsaw Recommendation*’s

\(^{338}\) *Warsaw Recommendation*, supra note 303, ¶ 11, at 4.

\(^{339}\) Id.

\(^{340}\) Id.; see also *ICOMOS Guidance*, supra note 263, at 8 (advocating the use of new technologies to gather and store documentation of post-trauma World Heritage destruction); supra note 294 (*ICOMOS Guidance* urging use of new technologies to gather and store World Heritage information as part of disaster preparedness planning).

\(^{341}\) *Warsaw Recommendation*, supra note 303, ¶ 11, at 4-5.

\(^{342}\) Id. ¶ 11, at 4.

\(^{343}\) See supra text accompanying notes 293-94.

\(^{344}\) *Warsaw Recommendation*, supra note 303, ¶ 11, at 4-5.

\(^{345}\) *UNESCO*, *Recommendation on the Historic Urban Landscape*, ¶¶ 1-6, 12, 17 (Nov. 10, 2011); see also *UNESCO*, *New Life for Historic Cities: The Historic Urban Landscape Approach Explained* (2013) (explaining the HUL approach); *UNESCO World Heritage Ctr.*, *The HUL Guidebook*.
drafters believe the approach’s tools can also be utilized to manage overall rebuilding efforts in historic urban areas damaged by conflict or disaster.\textsuperscript{346}

The final principle, Education and Awareness Raising, also addresses concepts touched upon by the ICOMOS Guidance.\textsuperscript{347} Yet, whereas the ICOMOS Guidance presented these concepts as a way to facilitate a community’s involvement with its heritage, thus creating the capacity of State Parties to implement the ICOMOS Guidance framework after traumatic events,\textsuperscript{348} the Warsaw Recommendation recasts the concepts as those which should promote appreciation and respect for cultural diversity and heritage to prevent cultural heritage destruction in the first place, not just aid its recovery.\textsuperscript{349}

As can be seen from the above synopsis, the eleven Warsaw Recommendation principles and ICOMOS Guidance are extremely similar. The Warsaw Recommendation has, however, added important concepts, such as cultural rights and the HUL approach, that further exhibit “the paradigm shift from reconstruction, as a physical process of the built environment, to recovery, as a holistic concept to encompass both tangible and intangible heritage, participatory and multidisciplinary approaches, training and job creation and most and foremost the full involvement of all stakeholders.”\textsuperscript{350} Yet in so doing, the Warsaw Recommendation

\textsuperscript{346} Warsaw Recommendation, supra note 303, ¶ 11, at 5.
\textsuperscript{347} Id.
\textsuperscript{348} See supra note 294.
\textsuperscript{349} Warsaw Recommendation, supra note 303, ¶ 11, at 5.
\textsuperscript{350} WHComm., State of Conservation of the World Heritage Properties, at 10, WHC/18/42.COM/7 (June 15, 2018) [hereinafter 2018 State of Conservation].
essentially transformed the *ICOMOS Guidance* from a practical framework for action into bite-sized chunks of pure theory. In sum, even though a purpose of the Warsaw conference was to attempt to develop post-trauma reconstruction guidelines for World Heritage properties, these guidelines did not materialize. Instead the conference attendees promulgated eleven theoretical principles and ended the *Warsaw Recommendation* with just that: recommendations.

**iii. Warsaw Recommendation - Recommendations and Next Steps**

Four recommendations follow the *Warsaw Recommendation*’s principles, two of which are most pertinent to this essay. First, the World Heritage Committee should use the principles to develop guidance for recovery and reconstruction at World Heritage properties, including resource manuals, case studies, and examples of best practices. Second, the Advisory Bodies should clarify conservation doctrine by reviewing charters, declarations and recommendations; further developing case studies; and providing State Parties with specific advice.

In its Decision 42 COM 7, the World Heritage Committee requested that the *Warsaw Recommendation* be disseminated broadly and that the World Heritage Centre and the Advisory Bodies report back on implementation at the 2019 Committee meeting. Therefore, final universal guidance for post-trauma reconstruction, recovery, and authenticity of World Heritage—or potential World Heritage—sites still does not exist, most likely because the World Heritage Committee does not believe there is “a

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351 See *supra* text accompanying note 304.
352 *WARSAW RECOMMENDATION, supra* note 303, ¶ 11, at 5.
353 *Id.*
354 *Id.*
355 WHComm., *Decisions Adopted During the 42nd Session of the World Heritage Committee (Manama, 2018)*, at 11, WHC/18/42.COM/18 (July 4, 2018).
VI. CONCLUSION

The Western understanding of authenticity is the foundational theory upon which the field of architectural conservation was built. As developed through the Athens and Venice Charters, this authenticity was narrowly focused on building materials, calling for historic monuments to be passed to future generations composed predominantly of original material with nothing added based on conjecture. The theory did not recognize a monument’s associated elements of intangible cultural heritage or the bearing these intangible elements could have on the concept of authenticity. Consequently, destroyed historic monuments reconstructed by any method other than anastylosis were considered inauthentic.

Adopted as a criterion upon which potential World Heritage sites were judged, this materials-based authenticity was challenged repeatedly. Shaky from these challenges, this theory finally began to crack with the Nara Document and its emphasis on the intangible aspects of authenticity. But it was the responses to the targeted destructions of World Heritage sites by armed militants, and the resultant devastation these acts also wreaked on surrounding communities, that hastened the demise of materials-based authenticity. Through these responses, the belief that reconstructions in the World Heritage context were inauthentic and thus ineligible for inclusion on the WHL gave way to viewing authenticity as contextually relative, therefore condoning reconstructions if based on the tangible and intangible attributes of

outstanding universal value of each property, both before and after destruction. Ensuring the authenticity of World Heritage reconstructions under this revised theory necessitated guidelines, but experience showed that these guidelines could not simply focus on the World Heritage site; the guidelines must also facilitate the role of heritage recovery in rebuilding the communities adversely impacted by the destructive events as well.

As it now stands, there are no final guidelines for reconstructions in the World Heritage context, but the ICOMOS Guidance and the Warsaw Recommendation can be used together until the final guidance is promulgated. Currently, UNESCO is working with the World Bank on a white paper aimed “at preparing a framework and operational guidance for the planning, financing, and implementation of activities in postdisaster/conflict and recovery in urban areas.” The draft white paper was presented for review and comment in February 2018 before the Warsaw Recommendation was published. Yet, because the final version has not been released, it is unknown whether it will constitute the definitive guidance. Nonetheless, even as the World Heritage community grapples with applying the ICOMOS Guidance and the Warsaw Recommendation while awaiting the white paper, one thing is sure: In the twenty-first century World Heritage context, the evolution in the theory of authenticity has rendered Theseus’ paradox moot.

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